

# *The Detention of Asylum Seekers: 20 Reasons Why Criminologists Should Care*

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This article draws on empirical research into the detention of asylum seekers which was carried out at several international ports in the United Kingdom (see Weber & Gelsthorpe 2000; Weber & Landman 2002). The *Deciding to Detain* research was motivated by concern over the opaque and highly discretionary way in which decisions to detain asylum seekers are made at UK ports, the relatively frequent recourse to detention on arrival, and official denial that detention is used as a deterrent. The research programme began within a mainstream criminological institution then migrated to an inter-disciplinary centre dedicated to advancing the theory and practice of human rights.

The origins of this article lie in a personal attempt to locate that work within a wider intellectual context. The intention is not merely to recount the research findings, but to consider the wider issue of whether research of this kind falls within the purview of criminology.<sup>1</sup> That anyone might care, in a personal sense, about what is being done to these strangers in our midst needs no explanation. But those of a literal persuasion might argue that the detention of asylum seekers falls beyond the bounds of criminological enquiry, since the power to detain is contained within administrative law (the *Immigration Act* 1971) and is exercised by immigration officers rather than police or judges. Why then should a criminologist care, in a professional sense, about how, where, why, when and against whom these administrative powers are used?

I will argue that there are many theoretical, practical, methodological and moral reasons why the detention of asylum seekers should fall within the domain of criminological concern. The aim is not to present a single, sustained argument but to range widely over familiar professional terrain, erecting a few signposts wherever a space might be found for the study of *Immigration Act* detention.

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1 Extracts from the *Deciding to Detain* research are cited at appropriate points for the purpose of illustration but should not be taken as a balanced overview of the findings.

## Links To Broad Theoretical Debates

### *Globalisation, risk and exclusion of the 'enemy without'*

It is widely argued by theorists of late modernity that economic deregulation and other globalising forces have given rise to a deep-seated insecurity. This has translated into a 'single, overwhelming concern about personal safety' (Bauman 2000) and created societies that are 'more deeply divided than ever on principles of security-seeking' (Lianos 2000). It is of course the inhabitants of the non-western world who bear the heaviest burden from the unequal distribution of global risks; most particularly refugees whose sudden loss of permanency gives them a tangible reason to experience genuine 'ontological insecurity' (Richmond 1994). However, with fears about the 'omnipresent probability of victimization' gripping large sections of the affluent world (Lianos 2000), the desperate tide of humanity circulating the globe in search of basic physical and economic security has been perceived instead as a destabilizing force and a threat to national security.

The mass population flows that follow from what Bauman (2000) calls the 'wasteful, rejecting logic of globalization' have been met with a corresponding range of globalised control measures aimed at containment rather than protection (Shacknove 1993). What is seen to be at stake is 'nothing less than a question of sovereignty', as the power to control borders is one of the few remaining prerogatives of the declining nation state (Joly 1996:17). Networks of visa restrictions, carrier sanctions and extra-territorial controls have effectively created a system of 'global apartheid' (Richmond 1994) which ensures the 'extraterritoriality of the new global elite and the forced territoriality of the rest' (Bauman 2000). Perhaps no other area of policy so clearly unites the late modern themes of the threatened state and the impetus towards social exclusion as immigration policy, which has turned whole nations into gated communities where "'safe home"' becomes the passkey to all doors which one feels must be locked up' (Bauman 2000:214).

Asylum seekers could therefore be seen as doubly victimised by globalisation — once when forced to leave their countries of origin, and again when subjected to hostility and rejection by risk-averse western governments. Public rhetoric about the 'dangerousness' of asylum seekers has been an adjunct of these exclusionary policies: 'the distinction between refugees, illegal immigrants, drug traffickers and terrorists has become blurred in the public mind and they are all seen to be problems that can only be resolved by stricter border controls' (Hebenton & Thomas 1995:143, quoting Loescher).

### *The regulatory-punitive state and exclusion of the 'enemy within'*

Braithwaite (2000) argues that the 'globalizing logic of risk management' has transformed the Keynesian welfare state into a new regulatory state that 'steers rather than rows'. This has sparked a proliferation of public and private regulatory agencies, a blurring of boundaries between the state and civil society, and reliance on means of social control which are increasingly automated and asocial.<sup>2</sup> According to Rose (2000:326), these new forms of control operate through a variety of 'switch point(s) to be passed in order to access the benefits of liberty'. Within this 'territory of exclusion', asylum seekers can be seen to occupy the most marginal of positions. More than 80,000 people managed to breach the outer defences of visa regimes and carriers' liability legislation to seek asylum in Britain in the year 2000 (Home Office 2001). Successive waves of legislation through the 1990s have ensured that they are excluded on arrival from the right to work and from access to cash

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2 See almost any contribution to the Special Edition of the *British Journal of Criminology*, vol 40, no 2, Spring 2000

benefits, and further stigmatised by having to survive on vouchers.<sup>3</sup> A White Paper released earlier this year proposes identity cards which would become another ‘switchpoint’ for the marking out of asylum seekers from others, and a confidential hotline encouraging members of the public to identify ‘immigration offenders’ (Home Office 2002).

The ultimate form of social control in a society pre-occupied with physical mobility is immobilisation which serves to ‘quarantine whole sections of the population’ (Garland & Sparks 2000:200). This is clear from the expansion in public and private prisons and police numbers, so that: ‘While the welfare state is wound back, the punitive state is not’ (Braithwaite 2000:227). Increases in imprisonment have been most apparent in the United States (Parenti 1999), but Britain also has a rising prison population and the highest rate of imprisonment per capita in Europe (Carrabine et al 2000). Bauman (2000:214) relates this punitive trend directly to the processes of globalisation: ‘Fortunately for the increasingly impotent governments, doing something, or to be seen to be doing something, about fighting crime which threatens personal safety is, however, a realistic option.’ The *Deciding to Detain* research established that detention was being used for containment, for example to deter further asylum applications and to protect the public from a range of perceived threats to security and safety (Weber & Gelsthorpe 2000:section 3.2). The political calculus behind the use of detention was not lost on more critical immigration officers: ‘Maybe it’s a knee-jerk reaction to detain more ... Because I think politically it may appear to have a short term effect — “But at least we’re doing something about it”’ (cited in Weber & Landman 2002:16).

### ***Human rights and the limits of state power***

The rise of the regulatory-punitive state has been met with a renewed concern about the need to protect individuals from abuses of state power. This has led some criminologists to embrace the normative and legal framework of human rights and seek a fundamental shift in the perception of criminal law: ‘The criminal law must be seen not in its usual restricted, liberal terms but as a guarantee of certain basic human rights. A denial of these rights should properly be called criminal’ (Cohen 1988:245). Since the incorporation of the European Convention of Human Rights into British law through the *Human Rights Act* 1998, traditional concerns amongst criminologists about the accountability of police and criminal justice agencies are increasingly cast in the language of human rights.<sup>4</sup>

This project is complicated by the proliferation of control agencies within the regulatory-punitive state. Braithwaite (2000:233) argues that the most coercive of regulatory powers ‘are so dangerous that the only place we should locate them is in those places surrounded by the maximum of checks and balances’. The retention of old-style Keynesian institutions such as state police and courts is justified, he claims, ‘where they can operate more efficiently and in a more rights-respecting way than markets or communities’ (Braithwaite 2000:234). Moves to establish an effective global human rights framework also appear to be at odds with attempts by ‘cut down’ late modern states to re-assert their sovereignty: ‘There is, to be sure, something incongruous in the spectacle of government officials meeting solemnly all over the world to seek the criminalization of practices which they themselves employ or support’ (Cohen 1988:265).<sup>5</sup>

3 At the time of writing the British government had announced the scrapping of the voucher system but still advocated separate material support for asylum seekers

4 Witness a national conference hosted by the Howard League for Penal Reform in September 2000 on ‘Human Rights and Penal Issues’ and texts such as Neyroud & Beckley (2001) on human rights and policing

5 In fact, apparently rights-respecting reforms such as the incorporation of the European Convention could be interpreted as a re-assertion of state sovereignty after several decades during which Britain faced the humiliation of being the most frequent respondent in the European Court of Human Rights

Asylum seekers are at the heart of this conflict between international human rights norms and domestic law. By fleeing oppression and chaos they transport the reality of gross human rights abuses to the largely closeted populations of relatively well-ordered nations. Their claims for refugee status frustrate state attempts to assert the primacy of their domestic immigration policies and force them to confront their obligations under international refugee treaties and human rights law. And the treatment asylum seekers experience at the hands of host governments may itself violate human rights standards. It has been argued, for example, that survivors of torture experience a 'second exile', akin to secondary victimisation, on being detained in Britain (from Pourgirides et al 1996; see also Medical Foundation 1994).

## Links To Specific Criminological Themes

### *Detention, deterrence and deviancy amplification*

'Illegal' entry is not a new phenomenon but is said to cycle through periods of toleration and prohibition (Hebenton & Thomas 1995; Zolberg et al 1990). This parallels the cycles of 'normalization' and 'criminalization' observed within the criminal law (Cohen 1988). Immigration officers may see asylum seeking as just another episode in a cycle of official measures and reactive countermeasures aimed at avoiding immigration controls, just as police officers are said to 'see their combat with "villains" as a ritualised game' (Reiner 2000).

*The Immigration Act 1971* ... was supposed to deal with the perceived problem of containing immigration in some form, and deal with the new situation of the EC. Almost immediately a new set of problems arose. People naturally sidestepped the legislation, they'd find loopholes and move on. Things like the Asylum and Immigration Acts 1993 and 1996 — the same thing has happened. The problem moves on and you have to find new ways to combat it or approach it (cited in Weber & Landman 2002:90).

This pattern is recognisable to criminologists as a cycle of deviancy amplification, fuelled by restrictive policies aimed at preventing the arrival of asylum seekers. Desperate individuals unable to obtain visas have no choice but to seek the services of organised people smugglers (Morrison & Crosland 2001), and are thereby 'forced to comply with the image of the fraudulent refugee which Western states have constructed' (Tuit 1996). Third country rules force asylum seekers into further deception as they try to conceal their route so that a country of first asylum cannot be identified (Joly et al 1992) or into even riskier forms of clandestine entry (Morrison 2001). These tactics may render asylum seekers more liable to detention while, at the same time, greatly complicating the work of immigration officers at ports: 'As soon as you stick a visa regime on a nationality then they start switching over to other things which are more difficult' (immigration officer cited in Weber & Landman 2002:90). Where visa regimes cannot be imposed for foreign policy reasons, detention may be used systematically as a deterrent against certain nationalities (Weber & Gelsthorpe 2000:section 2.4). For example, Eastern European Roma have been particularly targeted for 'head of household' detention, in the hope that whole families will abandon their asylum claims. The *Deciding to Detain* interviews revealed some stark and sometimes shocking examples of deviancy amplification in response to these measures.<sup>6</sup>

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6 Note that the behaviour being attributed to Roma families can hardly be described as 'deviant' by everyday standards, but may be perceived as such by immigration officers seeking to implement these 'special exercises'

They decided that to stop [repeat claims] they'd start looking at detention ... And then they started arriving with minor children — babies, with just heads of families, thinking they were going to get released. So I think in a couple of cases the children ended up with Social Services for a week or two until the father decided that wasn't what he wanted after all. And then they brought in the whole family, so the child could go with the mother (cited in Weber & Landman 2002:90).

### *Asylum seekers as the new 'Black muggers'*

The seminal study by Hall et al (1978) about the 'mugging crisis' of the 1970s made a clear connection between the two exclusionary themes of immigration control and crime. Hall and his colleagues did not deny the existence of the phenomenon that came to be known as 'mugging', nor the involvement of some Black youths. But they argued that the official reaction was out of all proportion and effectively criminalised an entire social group, namely young Black males. Some commentators have noted an historical continuity between the 'moral panic' surrounding the arrival of immigrants from the 'New Commonwealth' and the reaction to the 'New Asylum Seekers' of the 1980s and 90s.

Many characteristics formerly attributed to immigrants to Europe are now attributed to refugees. Many of the themes of ethnicity, belonging, nationality and xenophobia are now being increasingly debated in the arena of refugees, rather than in relation to immigrants. With immigration channels largely closed, refugees have become the new target (foreword to Joly et al 1997).

Just as fears about immigration in the 1960s and 70s were not merely about numbers, commentators argue that what was 'new' about the asylum seekers who arrived from the mid-1980s onwards was their non-European origin (Cohen & Joly 1989) and the unpredictable and disorderly manner of their arrival (Martin 1988). Hall et al argued that the portrayal of street crime as a new danger associated with a newly-arrived segment of the population was reinforced through the emotive label of 'mugging', and they proposed that a 'moratorium should now be declared' on its use. In the 1980s and 90s the language of 'bogus' asylum seekers has performed the same function, despite the fact that there 'never was a "golden age" of pure refugees which has now collapsed into a regime of abuse' (Rudge 1998:9). Previous Conservative governments attracted such severe and sustained criticism for labelling asylum seekers as 'bogus', that the incoming Labour Minister announced he was going to 'take it out of the lexicon'. However, by substituting the term 'abusive' he signalled, in effect, more of the same thinking.<sup>7</sup> As in the 'mugging' crisis, sensationalised media stories and routine reporting of the comments of institutional 'primary definers' have further amplified the perception of refugee deviancy, which has 'assumed a fantasy life of its own out of all proportion with the reality' (Joly et al 1992). Over time, representations of refugees have merged with criminal imagery, so that refugees 'are portrayed as a class of people, motivated significantly by criminal intent, or a desire to 'milk' the host state, whom it is legitimate to exclude' (Tuitt 1996:19). Moreover, having created an international market for people smuggling and trafficking, governments are now able to define the 'refugee problem' as a 'fight against transnational organised crime' (Morrison 2001).

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7 Interview with Mike O'Brien reported in the Refugee Council newsletter *iNexile*, Nov 1998.

### *Administrative detention as 'procedural criminalisation'*

The criminalisation of asylum seekers could be said to occur through three mutually reinforcing processes: 'rhetorical' or 'symbolic' criminalisation, whereby asylum seekers are constructed as dangerous and criminal through public discourse; 'direct' or 'literal' criminalisation, where asylum seekers are actually charged with criminal offences; and 'quasi' or 'procedural' criminalisation in which asylum seekers are treated as if they were criminals. The rhetorical criminalisation of asylum seekers was described in the previous section, and literal criminalisation will be discussed later in relation to points of contact of asylum seekers with the criminal justice system. This section is concerned with procedural criminalisation through practices which treat asylum seekers as 'virtual criminals' (Joly et al 1997).

Detention is most obviously criminalising when it takes place in prisons. But despite their seemingly more relaxed regimes and generally newer surroundings, specialist detention centres are still experienced as criminalising by those detained under the *Immigration Act*.<sup>8</sup> The belief expressed by one immigration officer interviewed for the *Deciding to Detain* research, that detention was not a 'big lock and key job' is not reflected in the experience of detainees. The European Committee for the Prevention of Torture (1994) noted in relation to immigration detention that 'many detained persons will find it hard to accept being in custody when they are not suspected of committing a criminal offence'. Indeed, detainees consistently report being confused and ashamed at being treated like criminals: 'I asked the interpreter why are they taking me to prison? I haven't committed any crime. I'm not a thief or something' (cited in Weber & Gelsthorpe 2000:108). In fact, the legal distinction between criminal and administrative processes seems inconsequential in this graphic description of immigration enforcement practices in Britain.

You might say I am cheating, that this is not crime and punishment but administrative detention. But when people are subjected to routine fingerprinting, when they are locked up, when they are restrained by body belts and leg shackles and thirteen feet of tape, or forcibly injected with sedatives to keep them quiet as they are bundled onto aircraft, it seems reasonable to ask: what have they done? The answer is that they have tried to come to western Europe, to seek asylum, or to live here with their families, or to work here. And the whole panoply of modern policing, with its associated rhetoric, is applied against them (Webber 1996a).<sup>9</sup>

The legal distinction between administrative detention and punishment is also likely to be a moot point to members of the public who express concerns about security when detention centres are opened in their areas. When some detainees at Oakington detention centre near Cambridge scaled the perimeter fence the local police announced that they would only pursue the escapees if they were accused of committing a criminal offence. Public concerns were fuelled again by a devastating fire at Yarl's Wood detention centre, during which a number of detainees went missing. The Home Secretary blamed the catastrophe on a small number of convicted criminals awaiting deportation (a claim disputed by campaign groups), thus further inflating public perceptions of the dangerousness of individuals being held there.

8 Note that the practice of some global security firms of rotating custodial officers between privatised prisons and detention centres, and the use of prison rules in Britain as a basis for detention centre operating standards (discussed later) reinforces the similarities between the regimes.

9 This raises the issue of police involvement in deportations, which will be discussed later.

### ***Risk reduction and the drift towards preventative detention***

Asylum seekers are not the only group of unconvicted people within Britain to be targeted for extra-judicial detention. Incarceration or intensive surveillance is increasingly being proposed to prevent a range of risks to the public. For example, Rose (2000:334) notes that 'a whole variety of paralegal forms of containment are being devised, including pre-emptive or preventative detention prior to a crime being committed'. For example, controversial measures are being proposed to allow the detention of personality disordered people who are perceived to be dangerous, but who have not committed a criminal offence (Padfield 2002). The criminological literature has also charted shifts in the use of pre-trial custody in criminal cases which emphasise the importance of preventing re-offending while on bail (Prison Reform Trust 1994; Penal Affairs Consortium 1995; Hucklesby 1996). These developments follow predictably from the advent of the new regulatory-punitive state based on preventative governance, prudentialism and actuarial logic (Braithwaite 2000), and from the process of 'dangerization' which means that: 'They do not need to break rules to be excluded ... what is important is their perceived probability of being dangerous and this can even be associated with completely legal behaviour' (Lianos 2000:263).

The growing responsibility on public officials to 'manage dangerous sites and dangerous persons' carries with it the threat of being held accountable for failures to do so (Rose 2000:333). The anxiety associated with unrealistic demands to prevent all risks to the public was expressed by a number of immigration officers interviewed for the *Deciding to Detain* research: 'If someone comes in and he's a suspected rapist and we then let him out and he goes and does something you know where the headlines are going to be pointing the next day. One of my colleagues here had to go to the Old Bailey because she released someone who went out and murdered someone' (cited in Weber & Landman 2002:22). Whereas other extra-legal uses of detention, such as deterrence-based detention, have been denied by successive British governments, preventative detention appears to have met with political approval. Provisions for automatic bail hearings which were introduced in the *Immigration and Asylum Act 1999* included the likelihood of committing a criminal offence, being a danger to public health or public order, or posing a danger to oneself or others due to a mental disorder, as reasons for denying bail. The possibility of detention being used for preventative purposes has been increased by the (post-September 11) *Anti-Terrorism, Crime and Security Act 2001* which authorises the use of *Immigration Act* detention against asylum seekers who have been certified as 'suspected terrorists'.

## **Comparisons With The Criminal Justice System**

### ***Procedural safeguards and separation of powers***

There is evidence of an increasing reliance on administrative discretion within the new regulatory state where: 'Laws cease to be a guide to action in any normal sense, they are rather the empowering of government agencies' (Hirst 2000:283). Administrative law is said to occupy a 'hybrid sphere' (Ross undated) which can provide 'unprecedented powers to agencies under a fiction that they are not engaged in criminal investigations but administrative actions' (Hocking 2002). This accounts for the fact that the Immigration Service routinely prefers to use their flexible powers of arrest, detention and expulsion where channels for criminal prosecution would be open to them (Cope & Luqmani 1995). The power to detain was created in 1971 to facilitate the questioning of arriving passengers and the removal of those refused entry, and rarely resulted in a detention of more than a few hours. Its application to asylum seekers has occurred without further reference to parliament, and has often led to prolonged detentions, the punitive nature of which was sometimes noted

by immigration officers: 'I think the concern is that, with a lot of these people, they end up being detained under immigration powers for longer than they would have got for a fairly serious crime had they gone to court' (cited in Weber & Gelsthorpe 2000:112).

This dramatic shift in the use of *Immigration Act* powers of detention has not been accompanied by increased legal safeguards. Packer's distinction between 'crime control' and 'due process' models has become a standard tool in the analysis of the criminal justice system (Packer 1968). Even the most cursory application of these principles to *Immigration Act* detention reveals an almost complete focus on control with few concessions to procedural justice. The vague and permissive detention guidelines have an unclear status in law, are left to staff at individual ports to interpret in line with 'operational priorities' and were, until recently, considered to be secret. The *Immigration and Asylum Act 1999* provided a limited right to external review through automatic bail hearings which have never been implemented. The government now considers access to bail is 'inconsistent with the need to ensure that we can streamline the removals process' and proposes repealing the 1999 provisions (Home Office 2002:69). This leaves detainees reliant on internal reviews, which were found in the *Deciding to Detain* research to be flawed by 'organisational inertia' which made it difficult for reviewing officers to overturn decisions that had been repeatedly endorsed by their colleagues (Weber & Gelsthorpe 2000:sections 4.1-4.4). The research also found evidence of practices which are known to impede external reviews, such as the disclosure of the 'barest minimum of information about the reasons for detention' (Greer 1995).

Whereas there are separate arresting, prosecuting, sentencing and custodial authorities within the criminal justice system, the Immigration Service fulfils all these roles in relation to detention under the *Immigration Act*. One consequence is that officers at ports tend to match potential detainees to the number of beds available displaying a 'market driven', rather than principled, approach (Weber & Gelsthorpe 2000:section 2.8). Some of the more critical immigration officers interviewed for *Deciding to Detain* showed an awareness of the unparalleled discretion they exercised: 'We must be virtually the only law enforcement agency that has such an open-ended power. I mean, I can just lock people up for months on end and no-one can really challenge it — not very effectively' (cited in Weber & Gelsthorpe 2000:86). It is unsurprising therefore that those subjected to *Immigration Act* powers experience their detention as arbitrary: 'The immigration officer has the power to detain and has the power to release. If an immigration officer sees you and doesn't like your face, he will detain you and he will release you when he likes. That's what they do.'<sup>10</sup>

### ***Discretion and occupational culture***

Early research on policing established that occupational norms, as well as law and formal policy, shaped the way officers used their discretion (e.g. Skolnick 1966). Many parallels are apparent between the literature on police culture and the organisational environment observed at ports (Weber & Landman 2002:chapter 2). As with police patrols, the least experienced immigration officers tend to operate at the 'periphery' of the organisation, where they have direct contact with the travelling public. Although base-grade immigration officers have the power in law to detain, initial decisions are authorised by chief immigration officers as a matter of policy. This formal distinction encourages senior Immigration Service managers to believe that base-grade officers have no role in detention decisions. However the *Deciding to Detain* research showed that front-line officers could exercise a significant gate-keeping role: 'If you want to get somebody detained you know how to refer the case. It's not a very good process really' (immigration officer cited in Weber & Landman 2002:44).

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10 Former detainee interviewed for the *Deciding to Detain* research (Case 93).



For many immigration officers, dealing with asylum seekers is akin to what is referred to in the policing literature as 'rubbish' (e.g. Kemp et al 1992). This term reflects the time-consuming administrative and welfare role involved and the long delays in decisions about refugee status which are outside the control of officers at ports. Immigration officers perceived medical crises in custody and serious crimes committed by an asylum seeker on temporary admission as examples of 'trouble', and considered a 'result' to be resolving a problematic case, especially by removing a refused passenger or rejected asylum seeker from the country. It was argued that officers used detention at times to manufacture 'removal momentum' — a concept based on the idea of 'prosecutorial momentum' described by McConville et al (1991) in relation to police. Many immigration officers also displayed the 'core characteristics' commonly attributed to police offices (Reiner 2000), such as cynicism, a sense of 'mission' and solidarity, and a preference for action.<sup>11</sup>

### *The construction of official statistics*

Criminologists have contributed significantly to the development of criminal justice statistics, by being critical users of official data, and through specific research and commentary on its collection and interpretation (e.g. Maguire 1994). By comparison, immigration detention and enforcement statistics are woefully undeveloped. Campaigning groups have criticised the lack of official data on rates of detention in Britain, and have had to settle for 'snapshot' figures of the detained population obtained through occasional Parliamentary Questions. In the absence of sound statistics, political debates have been marred by reference to flawed and misleading figures. Successive governments have argued that 'only a very small proportion' of all asylum seekers are detained, and a generic figure around one and a half percent is often quoted (e.g. Amnesty International 1995).<sup>12</sup>

The *Deciding to Detain* research established that the overall proportion of asylum seekers who arrived at the studied ports during 1998 and were detained for five days or more ranged from none at Felixstowe (a container port where virtually all arrivals are clandestine entrants), between two to four percent at Heathrow, around nine percent at Manchester, and sixteen percent at Stansted — variations which are worthy of further investigation (Weber & Gelsthorpe 2000:section 3.5). These crude figures undoubtedly under-estimate the risk of detention faced by targeted nationalities, and also include women and children who are less likely than men to be detained.

In-house statistics that purported to show differential rates at which certain national groups 'absconded' from temporary admission were said to be circulated at ports. But readers with experience of recidivism research will know that sophisticated 'survival models' are essential when representing a time-dependent phenomenon such as absconding. Criminological research has also shown that law enforcement agencies may vary in their recording practices and definitions (Farrington & Dowds 1985) and that statistics tabulated by nationality or ethnic group (such as police 'stop-and-search' figures) should not be taken at face value without attempting to disentangle possible differences in official treatment or other co-varying factors (e.g. Bowling & Phillips 2002:138-148).

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11 Some original theory was also developed in the *Deciding to Detain* research to explain the clear individual differences observed in immigration officers' orientations to these supposedly 'cultural' traits (Weber & Landman 2002 chapter 5; Weber 2002).

12 This is a 'static' rather than 'flow' figure (derived by dividing the number in detention on any one day by the total number of applications under active consideration) and does not reflect the overall risk of detention faced by an individual asylum seeker coming into contact with the system.

### ***Stereotypes, discrimination and ethnic monitoring***

Research that investigates the differential impact of criminal justice practices on different ethnic or gender groups is a well-established field of criminological enquiry. Through this history of scholarship quantitative methodologies have developed from simple statistical comparisons to complex multi-factorial analyses, while qualitative work on the perception of difference has enriched our understanding of discriminatory processes. In Britain, enormous public attention has been focused on the police in the wake of the MacPherson Inquiry.<sup>13</sup> This accumulated body of criminological analysis was influential in informing the Inquiry, for example about the nature of 'institutional racism'. In contrast to the increased surveillance of policing practices, the Immigration Service has been granted a wide-ranging exemption from recent legislation (the *Race Relations (Amendment) Act 2000*) which is intended to bring public bodies within the anti-discrimination provisions of the *Race Relations Act 1976*. Remarkably, 'authorisations' from the Home Secretary allow immigration officers to discriminate lawfully against entire national and ethnic groups believed to be involved in 'systematic abuse' of the asylum system (Dummett 2001).

It is not clear whether the Immigration Service will be required to instigate systematic monitoring of the impact of their practices on members of different racial and ethnic groups in accordance with the *Race Relations Act*. In the meantime, criminological research can help to fill this gap. The *Deciding to Detain* research demonstrated that the routine, nationality-based nature of immigration work is a particularly fertile ground for the formation of stereotypes, and postulated that these stereotypes may be resorted to more readily at times of particularly high workload. Both direct and indirect discrimination were apparent from reported detention practices; the latter due to differential procedures for processing asylum claims from different nationalities, and the former based on longstanding and widespread prejudice, notably in relation to Nigerians, Algerians and Roma (Weber & Landman 2002:sections 4.3-4.4).

## **Asylum Seekers Within The Criminal Justice System**

### ***Asylum seekers as offenders***

Like any other section of the population, some asylum seekers will commit criminal offences. There is no reason to make an analytical distinction in relation to the criminality of asylum seekers and refugees, unless some aspect of their offending is directly attributable to their immigration status. One such justification is the tendency of sections of the media to distort and sensationalise the levels and types of offending by asylum seekers. A further reason might be to explore the criminogenic influences inherent within asylum policies. Campaigners and refugee supporters have often argued that successive reductions in levels of material support for asylum seekers (aimed at deterring claims) would lead inevitably to 'crimes of survival' such as theft and prostitution, and possibly to longer term effects, as 'children brought up in these conditions of marginalisation are likely to get involved in criminality, violence, dishonesty, drug use. The criminalisation process is thus complete' (Webber 1996a).

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13 This inquiry into the racially motivated murder of Stephen Lawrence was severely critical of the police response.

The term 'crimes of arrival' has been used to describe measures which force refugees into illegality by denying legal means of entry (Webber 1996a). As these measures involve the prohibition of a previously 'normalised' behaviour (arriving in Britain without a visa), 'crimes of arrival' appear to be an example of *literal* criminalisation. However it has already been observed that (apart from the sanctions against facilitators) the criminal offences contained within the *Immigration Act 1971* (s24-26) are largely unused. Even when criminal sanctions were extended in the *Asylum and Immigration Act 1996*, they were widely considered to be merely symbolic of a tough political stance. However, there is a need for criminological research which explores the way in which criminal sanctions for immigration offences are being used. For example, a service level agreement between the Immigration Service and Metropolitan Police mentions a Special Immigration Service Crime Investigation Section with a 'distinct role of investigating immigration related crime with a view to prosecution' (UK Immigration Service/Commissioner of Police undated).

Ironically, the clearest example of *literal* criminalisation of asylum seekers relates to the prosecution of individuals apprehended trying to *leave* Britain on false passports. Hales (1996) observed that transit passengers (usually hoping to claim asylum in North America) were being identified by airline officials at Heathrow and referred to police, who then initiated criminal prosecutions for 'obtaining services by deception' and/or 'using false instruments'.<sup>14</sup> This routinely resulted in six months imprisonment, during which many individuals lodged claims for asylum in Britain. It was subsequently established that criminal prosecution was contrary to Article 31 of the United Nations Convention on the Status of Refugees 1951, which states that asylum seekers should not suffer penalties merely for making an illegal entry.<sup>15</sup>

### *Asylum seekers as victims*

Asylum seekers released into the community can suffer victimisation that is directly related to their identity as asylum seekers. This author knows of no systematic studies of the victimisation of asylum seekers in Britain, but at least one refugee commentator has argued that there is evidence of increasing violent crime against asylum seekers throughout Europe (Joly et al 1992). The rhetorical criminalisation of asylum seekers by government (described earlier) lays the foundation for these increased levels of racist violence and hate crime, and campaign groups have long argued that specific policies such as the removal of benefits, dispersal and the stigmatisation associated with the use of vouchers encourages attacks on asylum seekers (e.g. Webber 1996b). The Refugee Council has documented many examples in their *iNexile* magazine including the murder of a Kurdish asylum seeker on a Glasgow housing estate (*iNexile* October 2001) and the beating of a Kosovan man by a group of 15 men in Sheffield (*iNexile* August 2001) — events which have prompted the development of special police schemes to encourage asylum seekers to report racial abuse or violence (e.g. in Hull, *iNexile* August 2000).

Asylum seekers may also experience exploitation by organised traffickers supplying bonded labour and sex workers. Immigration officers interviewed for the *Deciding to Detain* research sometimes expressed concern about these forms of victimisation, but felt powerless to intervene.

14 Section 1(1) of the *Criminal Attempts Act 1981* and 3(1) of the *Forgery and Counterfeiting Act 1981*, respectively

15 *R v Uxbridge Stipendiary Magistrate Stephen Day and CPS ex parte Adimi*, CO/2533/99, *R v CPS ex parte Sorani*, *R v SSHD ex parte Sorani*, CO/3007/98 and CO/2742/98, *R v CPS ex parte Kazuu* and *R v SSHD ex parte Kazuu*, CO/1167/99 QBD 15 July 1999. Reported in *The Times* 28 July 1999 and *The Guardian* 30 July 1999

It fitted a scenario where young West African girls were being sent over to Europe for vice. And I told Social Services this and said 'Under no circumstances is this girl to be released to the sponsor' ... an hour after I released her to Social Services they released her to the sponsor. And the child's gone missing ... Police were saying 'We can't get involved. All right it fits the profile, but the sponsor's not done anything wrong' (cited in Weber & Landman 2002:89).

Despite government assurances to the contrary, indiscriminate efforts to clamp down on people smuggling (which is generally non-coercive) and human trafficking (which involves coercion and ongoing exploitation) tends to impact negatively on asylum seekers. Those who are forced to use the services of people smugglers may be viewed primarily as witnesses or accomplices to a crime rather than as candidates for refugee status. This can prolong their detention on arrival, as described by this asylum seeker.

They interviewed me about four or five times during the five days. (And what sort of questions were they asking you?) They were asking me 'How you came from your country? How you got here?' (Were they asking you anything about why you wanted to claim asylum?) No they didn't ask ... (Did you understand why they were asking you these questions?) I didn't know why they were asking me so many times ... They were just investigating regarding my arrival ... Just they were suspicious of me (cited in Weber & Landman 2002:89).

### *Asylum seekers and the police*

The role of police in dealing with asylum seekers has varied over time as the balance of immigration control has shifted between internal enforcement, external (i.e. border) controls and extra-territorial controls (such as visa regimes). During the Cold War, Soviet defectors were few in number and were initially held at police stations. One long-serving immigration officer interviewed for the *Deciding to Detain* research recounted feeling 'very honoured being asked go to the police station where a defecting Eastern European person had turned up'.<sup>16</sup> Since then, a huge bureaucratic machinery has developed for dealing with asylum seekers. Police may still be expected to deal initially with clandestine entrants who emerge from lorries or present themselves at police stations, but newly arrived asylum seekers are no longer considered to be primarily 'police property'. Routine reporting to police stations for asylum seekers on temporary admission has been discontinued in London because of the resource and public relations implications. And the use of police cells for asylum seekers detained on arrival is now discouraged, except where specific local arrangements exist.<sup>17</sup>

Other aspects of the policing of immigration may present more opportunity to achieve a policing 'result'. Special Branch police stationed at ports have an historical role in the detection of terrorists and organised crime, and a more recent brief to investigate people smuggling and human trafficking. Immigration officers reported pressure at times to use their flexible detention powers to assist police with their enquiries: 'The police will pressure you to lock someone up because they haven't got enough evidence, which isn't what we're here for really. It's sort of an easy alternative' (Weber & Gelsthorpe 2000:16). In turn, the Immigration Service calls on the police where their more extensive powers are needed. Immigration officers were granted extra powers of entry, search, and seizure in Part VII of the *Immigration and Asylum Act 1999* to enable them to work independently of police on 'low risk' enforcement operations. However police assistance is still required for

16 Previously unreported – Immigration Officer interview 35.

17 For example at Waterloo International Terminal, British Transport Police cells are routinely used for port detainees.

large-scale raids or where resistance is expected, and police provide the initial custodial facilities for 'immigration offenders' who are arrested for deportation and held at first under the provisions of the *Police and Criminal Evidence Act 1984* (Metropolitan Police Authority 2001).<sup>18</sup>

In the analysis by Hall et al (discussed earlier) the tendency to form specialist squads was another aspect of the 'signification spiral' associated with street crime. Specialist immigration enforcement units have operated previously in London, such as the Illegal Immigration Intelligence Unit of the 1970s (Gordon 1984) and the Metropolitan Police Deportation Group which was disbanded following the violent death of Joy Gardner during a forced deportation (European Committee for the Prevention of Torture 1994). But ambitious government targets to remove 30,000 people this year have required a significant stepping up of police involvement through newly constituted Police-Immigration teams that have been dubbed 'snatch squads'. Joint protocols have been agreed to provide continued police training and support to the Immigration Service, although it is clear from the language within these documents that senior police are anxious not to be viewed as the primary instigators of enforcement activities (UK Immigration Service/Commissioner of Police undated; Immigration Service/Association of Chief Police Officers 2001). The involvement of police in immigration functions ('immigration policing') and the increasingly police-like powers being granted to immigration officers ('policing immigration') are prime candidates for criminological study.<sup>19</sup>

### *Asylum seekers, courts and bail*

In the absence of systematic access to bail for *Immigration Act* detainees, the higher courts have played a role in defining the scope of detention through judicial review and habeas corpus. Test cases about the legality of detention are just beginning to be brought under the *Human Rights Act 1998* (discussed later). The system of automatic bail hearings promised in the *Immigration and Asylum Act 1999* (although never implemented) introduced the new and extraordinary possibility that asylum seekers, who are not accused of any crime, would be brought before Magistrates for consideration of bail. However, the government's refusal to incorporate a meaningful presumption of liberty meant that a higher burden of proof would have applied to administrative detainees than for criminal suspects, effectively creating a two tier bail system. Had this proposal been implemented it would have been another example of the increasingly blurred boundary between administrative and criminal law and a prime candidate for study by criminologists with an interest in bail.

### *Asylum seekers in prison*

The imprisonment of asylum seekers convicted of passport offences (discussed earlier) came to widespread notice through a probation officer at Wormwood Scrubs prison who was puzzled by the appearance of this new client group amongst the convicted population (Hales 1996). On 30 September 2001, 390 *unconvicted* asylum seekers were also held in prisons under purely administrative powers.<sup>20</sup> An additional 390 asylum seekers were held in dedicated Immigration Service wings at Rochester, Haslar and Lindholme. This means that more than half of all asylum seekers detained on that day were held in facilities where they were subject

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18 It is unclear from this document whether this legal regime applies to 'failed asylum seekers' who have not broken any law and are not 'immigration offenders', but these terms are used interchangeably in the document cited

19 See Weber and Bowling (2002) for a mapping out of this terrain.

20 Source: Figures circulated by the National Coalition of Anti-Deportation Campaigns.

to prison rules.<sup>21</sup> Asylum seekers within prisons bring with them all the usual problems of language and isolation faced by other foreign-born prisoners (Cheney 1993) and many specific problems associated with their particular situation as asylum seekers (Ellis 1998; Hales 1996).

The routine detention of asylum seekers in prisons has been widely condemned (e.g. UN Working Party on Arbitrary Detention 1998; European Committee for the Prevention of Torture 1994). Incoming Home Secretary David Blunkett denounced detention in prison as 'scandalous', but his response has been a massive building programme of specialist holding centres rather than the more limited use of detention. Despite the expansion of 'reception' and 'removal' centres, the government acknowledges that some administrative detainees will continue to be held in prisons, particularly where they are judged (by processes unknown) to be 'high risk' (Home Office 2002). The forced closure of Yarl's Wood detention centre has been a set-back to this programme and many detainees have been transferred from there to prison at a time when overcrowding is on the political agenda.<sup>22</sup> Detainees are also transferred to prisons from specialist detention centres for punishment and after suicide attempts. Immigration authorities argue that the latter is intended to locate detainees in institutions with suitable medical facilities, but this practice is often perceived as punitive in circumstances where release is the humane option.

After years of secrecy over the basis on which private security firms are contracted to run immigration detention centres, section 153 of the *Immigration and Asylum Act 1999* introduced an obligation on the Home Secretary to establish and publish operating rules. In another example of blurred boundaries, these rules are being based on prison rules which apply to convicted persons. Senior prisons personnel have been seconded to the Immigration Service to build in-house expertise about prison management, and Her Majesty's Inspectorate of Prisons now has a mandate to inspect immigration detention centres. These developments confirm the status of immigration detention centres as prison-like institutions.

## Debates About The Scope And Purpose Of Criminology

### *Redefining crime: detention as 'state crime'*

After a decade of managerial and left realist criminology, which either accepted dominant definitions of crime or 'bracketed off' wider concerns to be tackled as a second front (Cohen 1988:28), there is a resurgence of interest in challenging traditional categories of crime. Refocusing on harm brings Muncie (2000) to include poverty, malnutrition, pollution, medical negligence, breaches of workplace health and safety laws, corporate corruption, state violence, genocide and human rights violations within the broad scope of a 'decriminalised criminology'. Cohen (1993:97) opts for a narrower focus in arguing that 'the criminological agenda should take into account the subject of crimes of the state and its even wider referent, that is, human rights violations'. While Cohen judges only 'gross violations of human rights' such as genocide, mass political killings, state terrorism, torture and disappearances as worthy of the label, Green and Ward (2000) seek to define 'state crime' by reference to a broader range of human rights standards.

21 Two of these establishments (Haslar and Lindholme) have since been redesignated as immigration detention centres.

22 Prison Governors spoke out publicly about the need to curb the rise in prison numbers in March 2002

Explicit mistreatment of asylum seekers, such as violent deportations or knowingly returning an individual at risk of torture to their country of origin, are possible candidates for Cohen's narrower conception of state crime.<sup>23</sup> The detention of asylum seekers fits Green and Ward's wider definition where it violates international human rights standards, for example in relation to arbitrary detention. Although a successful test case is yet to be brought under the *Human Rights Act* 1998, human rights groups have long argued that certain aspects of the UK detention system contravene Article 5 of the European Convention on Human Rights (Amnesty International 1995, 1996, 1997, 1999).<sup>24</sup> Green and Ward label as 'state organisational deviance' actions by state agents in pursuit of organisational goals that are 'not necessarily those publicly prescribed for them'. This would include systematic detention through 'special exercises' which one immigration officer interviewed for the *Deciding to Detain* research described as an 'informal, formal instruction'. The deviant nature of this practice is evidenced by the sustained denial of successive governments that detention is used as a general deterrent.<sup>25</sup>

Green and Ward (2000:103) propose that 'the key point about state crime in liberal democracies is that it is not aberrant or anomalous, and has no clear boundaries, but shades imperceptibly into the routine'. The detention of asylum seekers as a result of bureaucratic decisions at ports is a clear example of the routine production of harm. One immigration officer encapsulated its routine nature in the words: 'You're allowed to detain — perhaps you do or you don't' (cited in Weber & Gelsthorpe 2000:64). But the harm resulting from these decisions was recognised by other officers, one of whom said 'terrible things' had happened at Rochester and described being 'horrified' by the atmosphere at Campsfield House (cited in Weber & Landman 2002:104). The *Deciding to Detain* research found that immigration officers varied in their propensity to commit these 'crimes of obedience' (Kelman & Hamilton 1989) and might resist routine detention practices if they recognised them as illegitimate (Weber & Landman 2002:sections 5.3-5.4; Weber 2002).

### ***New forms of regulation: transcending administrative criminology***

Throughout the debates about the scope and purpose of criminology the term 'administrative criminology' has been used to describe criminological approaches that are driven by funding sources and organised around criminal justice institutions (Galliher 2000) — what Cohen (1988:5) describes as doing criminology on 'empirical terms'. But Rose (2000:324) notes that shifts in ways of thinking about social control mean it is 'necessary to de-centre analysis from the "criminal justice system"' and Garland and Sparks (2000:201) have appealed for a new epistemology for the discipline: 'For most of its existence, criminology has been located, for all practical purposes, within the institutions of the criminal justice state ... Today the viability of that institutional epistemology has been undercut by a whole series of developments.'

23 Article 33 of the 1951 UN Convention Relating to the Status of Refugees prohibits the so-called *refoulement* of individuals at risk of persecution, and the European Court of Human Rights has established that the forcible return of someone at risk of torture violates Article 3 of the European Convention on Human Rights (see *Chahal v UK* (70/1995/576/662, 15 Nov 1996)).

24 The High Court ruled earlier this year that routine detention of asylum seekers at Oakington 'reception' centre was a breach of Article 5 but the decision was over-turned (on limited grounds) by the Court of Appeal (*R (Saadi and others) v Secretary of State for the Home Department* [2001] EWCA Civ 1512 [2002] 1 W.L.R. 356, [2001] 4 All E.R. 961).

25 The detention of whole nationalities has since been formalised at Oakington, but has been justified on the basis of administrative efficiency rather than deterrence. (See Cohen (1993) on official strategies of denial.)

In the 1980s, Cohen (1988:273) wrote that: 'Another project, even more remote sounding to most criminologists, is the study of social control outside the formal state punitive system.' A decade or so later, the first signs of this 'remote sounding' project were being observed: 'Criminologists of all stripes — whether engaged in the study of police, or prevention, or criminal justice, or victims — have begun to think "beyond the state" in ways that reflect this changing terrain' (Garland & Sparks 2000:191). This thinking has not gone far enough according to Braithwaite (2000:229), who complains of the 'limited relevance of criminology, with its focus on the old state institutions of police-courts-prisons, to the crimes which pose the greatest risks to all of us'.

The conclusion towards which much of this paper has been moving is that if 'criminal-justice-like' powers are escaping from the confines of the criminal justice system, then criminologists interested in accountability should follow them. This journey will take them into private prisons, private security firms, and proposals for 'community support officers' (whose intended police-like powers belie their benign title),<sup>26</sup> into the mediating and sentencing bodies being advocated as community-based alternatives to court; and into the 'hybrid' sphere of immigration enforcement which includes privately-run detention facilities (see Green 1989).

### *The issue of relevance: contributing to research-led policy*

Arguments have also surfaced periodically between those who advocate an engagement with social policy and those who believe this compromises theoretical purity.<sup>27</sup> The polarisation of these debates has created an unhelpful dichotomy between unreflective description and collusion with the *status quo* on the one hand, and radical disengagement and 'impossibilism' on the other. But there is considerable space in between for a critical reformism to flourish. Garland and Sparks (2000:191) describe criminology as 'a contemporary, timely, worldly subject' and argue that the opposition between these extremes can no longer be sustained. The alternative is allowing policy to be dictated by 'highly politicised articulations of public sentiment' (Garland & Sparks 2000:197) and empirical evidence to be 'conveniently' interpreted or dismissed altogether (Carrabine et al 2000:208). It is increasingly argued that a human rights perspective and/or a commitment to principles of social justice can provide a vehicle for criminologists to engage with policy without adopting an uncritical, state-defined perspective (e.g. Cohen 1993; Green & Ward 2000; Carrabine et al 2000; Hil & Robertson, forthcoming).

Although immigration has been contentious in Britain since at least the 1960s, the Home Office is only now developing its support for immigration-related research, modelled on the state-funded crime and criminal justice research programme which has operated since 1948. Until now, empirical research into the detention of asylum seekers has been largely left to human rights groups and voluntary organisations. Much of this work has met with outright denial by governments. For example, important research conducted by Amnesty International (1995) was rejected by the Conservative government on the grounds that the sampling was unrepresentative. While this was a valid criticism in terms of the more quantitative claims made by some users of the research, the findings provided a powerful refutation of the government's assertion that asylum seekers were *only* being detained after all avenues of appeal had been exhausted, and should have been accepted on that basis. Academic criminologists are in a strong position to apply their expertise to the study of

26 On 25 April the House of Lords rejected the Home Secretary's proposal, with Lord Dholakia describing these civilian posts as 'little police officers'.

27 See the exchange between Smith (1997, 1998) and McConville et al (1997).



immigration detention in a way which should minimise accusations of bias or methodological error (although other forms of denial of unpalatable findings are of course still possible). Moreover, being relatively independent of campaigning bodies, they may stand a better chance of gaining that all-important access to organisational actors and official data sources.

### ***Criminologists as political activists and moral entrepreneurs***

The resurgent agenda for critical engagement with policy is discussed by some commentators in terms of morality and by others in terms of politics. Pat Carlen advocates a 'political criminology' that attempts to put politics and commitment back into the discipline (cited in Carrabine et al 2000), while Carrabine et al present an argument for a 'public criminology' based on 'pursuing work that is applied to publicly relevant issues informed by theory and debate'. Haines and Sutton (2000:158), on the other hand, observe that criminology 'has been as much a moral as an empirical science' and argue that 'for most criminologists "better" in the context of social control always has had connotations of social justice as well as technical efficiency'. Braithwaite (2000:235) also appeals to the moral sensibilities of criminologists in arguing that criminologists 'need to integrate normative theory from the discipline of moral philosophy with our explanatory theory'. And Cohen (1988:267), while also acknowledging the 'hidden political agenda at the very source of much criminological knowledge' concludes that: 'Criminologists who have chosen the critical over the administrative paradigm will always be playing the dual role of knowledge producer and moral entrepreneurs' (Cohen 1988:270).

What all these positions have in common is that they advocate critical and committed policy-relevant research. This constitutes a professional imperative which concerns the 'why' of criminology as much as the 'what' and 'how'. Criminologists who have a sense of this imperative will recognise the importance of incorporating asylum seekers into the domain of criminological concern. The critical criminologists of the 1970s are often said to have been motivated by identification with 'the underdog'. In our globalised era, this position is undoubtedly filled in western societies by asylum seekers, who are socially marginalised, politically powerless and personally vulnerable to the real risks arising from the late modern condition. If we are to foster a 'morally grounded comprehension of the new regulatory state', as Braithwaite suggests, then criminologists cannot ignore the use of coercive state powers against this largely non-criminal group.

### **Conclusion**

I have tried to establish that criminologists who wish to contribute to a critical understanding of new forms of regulation and new targets for social control will be attracted to the study of immigration enforcement. For some, the desire to influence the way the 'moral panic' about asylum seekers is perceived will amount to a moral or political imperative. For others, the journey into new terrain may be based more on professional curiosity as they find that their methodologies and analytical tools transfer well from the study of the criminal justice system to the 'policing' (in the widest sense) of immigration. Criminologists of a theoretical persuasion will find many points of contrast and continuity with debates about globalisation and mobility; criminalisation, human rights and state crime; social exclusion and risk. But even those who prefer not to venture beyond the established boundaries of criminal justice and criminological research may find asylum seekers coming to them, as they appear more and more as a recognisable group amongst defendants, prisoners, probationers and victims of crime.

Meanwhile, irrespective of the musings of criminologists about the scope of their discipline, the business of immigration control carries on at our borders and on newly-defined frontiers, and the permeable boundary between the criminal and administrative spheres becomes increasingly blurred. Asylum seekers occupy this ambiguous conceptual space where 'criminal-justice-like powers' have escaped the confines of the criminal justice system. Garland and Sparks (2000:203) have argued that 'the remarkable pace of change that characterizes the field ... create(s) conditions that can easily escape our conceptual languages and make our long established research agendas seem outmoded and irrelevant. Under such circumstances the special tasks of social theory include those of raising new questions, making new sightings, and seeing connections between apparently unconnected phenomena'. In that spirit, this discussion has set out to pose questions about the treatment of asylum seekers which may be new to many criminologists, and signpost some connections to more familiar criminological terrain. These signposts are intended to point the way to a new frontier of criminological enquiry which I hope more criminologists will begin to explore.

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