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CIVIC STRATIFICATION AND THE COSMOPOLITAN IDEAL

The case of welfare and asylum

Lydia Morris
Department of Sociology, University of Essex, Wivenhoe Park, Colchester, CO4 3SQ, UK

ABSTRACT: Beck (2006) has suggested that trans-national migration and the consolidation of human rights are features of an emergent cosmopolitan society in which we see a *blurring* of distinctions with respect to the rights of citizens and non-citizens. This paper argues that the presence of noncitizens on national territory has rather been accompanied by an *expansion* of distinctions in a system of civic stratification. It outlines the construction of asylum seekers as a 'target group' within this complex, and the withdrawal of welfare support from 'late claimers'. However, the paper also considers the limits placed on the erosion of rights through the human rights challenge that followed, in which the European Convention on Human Rights played a central role. Finally, the paper elaborates the interplay of formal entitlement and informal status in the process of change, and examines the implications of the whole account for cosmopolitan thinking.
Key words: cosmopolitanism; civic stratification; human rights; asylum; welfare

1. Introduction

The significant presence of migrants and asylum seekers in sometimes reluctant host countries has for many (Soysal 1994; Smith 1995; Beck 2006) signalled the uncoupling of nation, state and society, especially when that presence is underpinned by claims to universal human rights. This combination of factors has led Beck (2006) to challenge the 'methodological nationalism' associated with territorial understandings of society, and to advocate instead a 'methodological cosmopolitanism'. Such an approach would recognise what he sees as the increasingly 'mythic' status of the nation, and the transnational realities and causalities which are becoming a universal norm (p. 28). In stating this position, however, Beck distinguishes between cosmopolitanism as an ideal and

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'banal cosmopolitanism' – a condition of really existing 'cosmopolitanisation', which may be passive, latent or unconscious (p. 19).

Bred of the everyday disruption of bounded national spaces, this cosmopolitanisation is seen as a side effect of global forces, not actively chosen and sometimes consciously resisted. Thus, cosmopolitanisation may transform the 'experiential spaces' of the nation state from within, though often against popular and political will (p. 101). For Beck, this tension inevitably raises the question of how the nation state deals with difference, and while much of his discussion turns on culture and identity, he recognises that other issues are in play, as global inequalities and transnational conflicts reappear within the national space. The figure of the trans-national migrant is central to the picture he paints; one in which 'explosive questions' arise over the distinction between foreigners and nationals, or citizens and non-citizens, and their status in relation to different kinds of rights (p. 27).

In making these observations Beck seeks to promote an imagining of the national and the trans-national as interlocking and mutually constituting; not an either/or but a both/and perspective, or a world of cosmopolitan nationalism (p. 49). Universal human rights are argued to play a key role in this configuration, superseding the national/international distinction and, according to Levy and Sznaider (2006), carrying the potential for a denationalised understanding of legitimacy. Human rights, they argue, provide a globally available repertoire for legitimate claims making, and can contribute to the reconfiguration of sovereignty whereby the treatment of citizens (and others) is no longer the exclusive domain of the state. Beck and Sznaider (2006) go further, to suggest that when people defend the human rights of foreigners they may also feel they are defending the foundations of their own identities.

However, Fine (2007) has noted the danger of treating cosmopolitanism as a law of nature, without exposing its rational necessity to scrutiny or debate, and indeed Beck and Sznaider recognise that there is no necessary relation between internal cosmopolitanisation and the development of a cosmopolitan consciousness. They find that normative theories of cosmopolitanism tend to ignore society and its 'more banal forms of everyday life' (2006: 22), and pose the advance of cosmopolitanisation as an empirical question. In similar spirit Grande (2006) speaks of a new architecture of governance, though not yet a 'cosmopolitan state', in which the nation state plays an important and indispensible part but no longer stands for 'society' in the traditional sense. He sees structural opportunities for the emergence of a cosmopolitan political authority, but argues that its realisation lags some way behind.

Grande, like Beck, therefore underlines the need for empirical research in which the task is not to weigh state autonomy against the force of

external constraints, but to explore the ways in which internal and external features of cosmopolitanism can function in combination. Again human rights are cited as an example, whereby the legitimate powers of the national state may be necessary to carry through changes initiated elsewhere – though it may of course be the national state itself which is the object of scrutiny and challenge. While new oppositions will emerge that are not aligned with the traditional structures and cleavages contained within national boundaries, they are still most likely to be articulated and dealt with at national level (Grande 2006: 103). The 'container' view of society is, however, rejected (Fine 2007: 7), in favour of an empirical enquiry into how new dialectics of de-nationalisation and re-nationalisation unfold, and how national and transnational forces mingle to create cosmopolitan spaces.

The present paper pursues these and related questions through an exploration of the UK government's treatment of asylum seekers, and specifically the denial of welfare support for those who do not claim asylum on entry into the country (late claimers). This policy has been the subject of 14 different legal judgements, most of which have gone against the government, and a close analysis of their content has been conducted elsewhere (Morris, forthcoming). However, the history holds an interest beyond the detail of the judgements themselves as the underlying policy, embraced on different occasions by both Conservative and Labour governments, sought to grapple with what were then growing numbers of asylum seekers. Key policy changes in 1996 and 2002 each coincided with a peak in asylum applications (43,925 in 1995 and 84,135 in 2002)[1] and in response asserted a restrictive definition of the national interest. In line with Grande's (2006) observations above, we therefore see how the national state is pre-eminent in the allocation and administration of rights – unless and until its power is challenged through judicial authority.

A central device in this process of management is not so much what Beck (2006: 39) terms a 'blurring' of distinctions with respect to rights but rather their expansion, through the elaboration of a complex system of legal statuses. These statuses delineate a system for the differential granting or denial of rights, or in other words a system of 'civic stratification' (Lockwood 1996; Morris 2002). The present paper therefore outlines the concept of civic stratification, before considering the construction of asylum seekers as a 'target group' within this complex, the eventual human rights challenge which ensued, and the implications of the whole process for cosmopolitan thinking.

The European Convention on Human Rights (ECHR) may be seen as one attempt to embody the ideals of cosmopolitanism in a legal

1. MPI data hub.

instrument, and the interpretation of article 3 – freedom from torture and inhuman and degrading treatment – became central to challenges which followed the legislation. The broader significance of this history as a European issue of some reach is heightened by inclusion of the denial of welfare to late claimers as an acceptable policy in the European Directive on minimum standards of treatment for asylum seekers (Council Directive 2003/9/EC). The present paper reflects on the background and responses to its implementation in the UK.

2. Civic stratification and target populations

According to Lockwood (1996) one reason social stratification has been so central to sociology is in illuminating the question of how much inequality may be tolerated or rejected in a given society. However, he goes beyond traditional conceptions of social class to recognise citizenship and its attendant rights as one potential and neglected source of inequality, such that:

> The ethos and practice of citizenship is at least as likely as class relations to structure groups interests and thereby fields of conflict and discontent. (p. 536)

This possibility inevitably raises questions about the granting and denial of rights to non-citizens, and therefore has direct bearing on any enquiry into degrees of cosmopolitanisation.

A crucial step in Lockwood's argument is the role of citizenship rights in securing social integration, in part through the legitimation of inequality, whereby equal citizenship status compensates for market inequalities (Marshall 1950). However, Lockwood poses the question of when such integration might come under challenge, and explores the scope for inequality in entitlement and access to the basic rights which citizenship itself confers. Though the focus of his enquiry is the internal functioning of national citizenship, Lockwood's question becomes more pressing in the context of ongoing 'cosmopolitanisation', driven by the presence of non-citizens on national territory. While citizenship acts as both a status of inclusion for members of the national community, and a device of exclusion against others, cosmopolitanism threatens to disrupt the national orientation of this system and to usher in a rights revolution (cf. Soysal 1994). So how does this potential play out in practice?

Lockwood outlines two axes for plotting inequality with respect to rights; one refers to formal entitlement and is expressed in terms of the presence or absence of a right (inclusion/exclusion), the other refers to possession of moral or material resources – or more loosely social

standing, which can enhance or reduce access to or enjoyment of a right (gain/deficit). This schema contains vast analytical potential and the following points have implications for both a general interest in cosmopolitanisation, and the more specific topic of the rights of asylum seekers.

(a) Firstly, the whole complex of rights is open to manipulation by the state and its officials in the pursuit of policy goals, revealing the potential for a close alliance between rights and controls. Entitlement to rights can be granted as rewards or inducements, as in recent attempts to attract highly skilled workers through preferential immigration rules and residence entitlement (Home Office 2005: 16, 22). Conversely, exclusion from rights can be used as a deterrent, and we hear more of this below with respect to the denial of work and welfare rights for certain categories of asylum seeker. Deficit may occur where prejudice means rights are administered in a punitive manner, as in the treatment of those deemed 'undeserving' within the benefits system (Morris 1994), or the scepticism which seems pervasive in the asylum and asylum support system (Stevens 2004). Such deficit can have the effect of both deterrence from making a claim and exclusion from the full benefits of entitlement.[2]

(b) Secondly, Lockwood's schema reveals the scope for a potential link between formal entitlement and status, or public standing, in its informal guise. One possibility is that rights acknowledge or confer public standing, acting as a statement of respect and/or desert. The example of highly skilled migrants serves again in this context, since a more nuanced presentation of economic migration has meant enhanced social standing for those at the upper end of the skills spectrum, in contrast to the low skilled and/or undocumented (Home Office 2005: 16). Conversely, the denial of rights can serve to undermine public standing, and the general suspicion which now surrounds asylum seekers is one example. This suspicion grew as numbers rose through the 1980s and 1990s (Stevens 2004), and contrasts sharply with a more positive image of the refugee in the politics of the Cold War era (Cohen 1994; Bloch and Schuster 2002).

(c) Thirdly, the elements depicted in (a) and (b) above, together contain the beginnings of a theory of change with respect to a scheme of rights. This is explicit in Lockwood's account, in so far as he argues that the possession of moral and/or material resources can lead to enhanced entitlement. Such a connection is often at work in the process of claims making, whereby public campaigning can heighten respect or moral acceptability, which may be followed by an improvement in formal recognition and rights. Early feminism, and more recently the gay movement, provide clear examples of this process (Lister 2003; Plummer

2. Gain refers to the less common reverse dynamic.

2006). However, unless this recognition is balanced by some understanding of the corresponding scope for a contraction of rights then it runs a risk common to much theorising in the field – the assumption of a necessarily expansive dynamic.

(d) The schema as presented by Lockwood has no explicit means of dealing with the contraction of rights, though this possibility is implied by the discussion above, which provides some clues as to how contraction might come about. We could look, for example, for a deterioration in the moral resources or public standing of a group, such as suspicions surrounding the long term unemployed as their numbers rose (Morris 1994), or the public discrediting of asylum seekers through the allegation that a majority of claims are 'bogus' (see below). We could also look to the possibility that this process may be harnessed as a political ploy, an argument explicitly developed by work on the social construction of target populations (Schneider and Ingram 1993). More generally speaking, some theory of change – both positive and negative, is a necessary foundation for any assessment of claims about cosmopolitanisation.

3. Target populations and policy design

The construction of particular social groups as targets for policy initiatives holds considerable potential for the understanding of social change, and provides a dynamic illustration of some aspects of the civic stratification argument. Schneider and Ingram (1993) have argued that the social construction of target populations is an overlooked political phenomenon, whereby the images of particular groups can be harnessed by purposive aspects of policy. The intent of such policy is often to enable or coerce behavioural change, but these images may in turn be absorbed by the general population, serving to legitimise policy and win electoral support. It is argued that an important calculation for politicians is the way that social constructions may influence their prospects of re-election, and assist their claims to address widely acknowledged public problems.

In fact, the social construction of certain groups can also be an important element in the creation and depiction of such problems (cf. Kaye 1994). Public officials must explain and justify their actions to the public by articulating a vision of public interest and showing how a proposed policy is logically connected to widely shared public values. Four types of target populations are argued to emerge from this process (Schneider and Ingram 1993) – the advantaged, on whom positive benefits are conferred; the contenders, who can mobilise for improvement; the dependents, who are rendered passive and powerless; and the deviants, who are subject to punishment and/or coercion. Hence, it is suggested

that policy makers draw ever finer distinctions, dividing particular groups into the deserving and undeserving, to yield a picture which displays many features of Lockwood's account of civic stratification.

Like Lockwood, Schneider and Ingram are also interested in acceptable degrees of inequality, and they pose the question of how far inherent contradictions within the policy process will lead to cyclical patterns of correction. This may happen through public reactions against overly advantaged groups, or principled challenges to overly punitive constructions. In the latter case groups may harness public sympathy to refute their negative image and mobilise for improved treatment, producing pendulum swings in policy content. However, Schneider and Ingram also note that there is no inherent self-correction in the policy process, as social constructions once firmly embedded can be difficult to dislodge. Indeed, policy itself is an important factor in shaping both public perceptions and internalised identities, such that groups portrayed as dependent or deviant may fail to mobilise. Stigmatised by the policy process, they will often lack public support and hence the will or capacity to take collective action (cf. Lockwood 1996: 46).

Schneider and Ingram argue that while contenders have sufficient power and influence to blunt the imposition of negative policy, powerless and negatively constructed groups are more commonly driven to court action in pursuit of their rights. Furthermore, they suggest that the application of constitutional principles in defence of negatively viewed groups may be difficult to sustain in the context of widespread belief that such groups deserve to be punished and respond best to such policy. Finally, they also suggest that the process of targeting, especially in pursuit of electoral support, can sometimes account for apparently illogical policy, as the negative construction of a group in policy terms may serve political ends while having no obvious practical impact.

Immigration policy is cited as a good example of social construction in operation. It is also argued that some social constructions are stable over time, while others are subject to continual debate and manipulation. Asylum seekers are a case in point, and in Schneider and Ingram's terms have moved over time from being contenders to dependents and eventually, as we see below, to deviants. Asylum policy also provides an example of the construction of finer distinctions within the group, such that their differential treatment constitutes an elaboration of civic stratification. This has been evident not only in terms of the expanding possible outcomes of an asylum application – which include rejection, toleration, temporary protection, discretionary leave, humanitarian protection and full recognition as a refugee (Morris 2007) – but in various attempts to build support policy around a distinction between 'at port' and 'in country' claimants.

Applying the concepts of civic stratification and target populations, there are therefore a number of inter-related questions we can ask about the evolution of the policy itself, the legal challenge that ensued and the possible public impact of the whole process. Lockwood's argument directs us to the formal inclusions and exclusions operating with respect to rights, and their possible connection with informal aspects of social standing, such that the diminution of rights both confirms an existing lack of status and further weakens that position. His argument also invites consideration of the acceptable limits of inequality and thereby the scope for challenge, and he has noted the importance of judicial review for cases of 'civic expansion' through enhanced access to rights.

What Schnieder and Ingram's (1993) argument potentially brings to this configuration is the political motivation lying behind policy which targets particular groups for negative or positive treatment. This lends a dynamic political force to the schema outlined by Lockwood, and potentially illuminates the relationship between rights, controls, and public sentiment. Both pieces invite questions about the erosion of rights and the circumstances and scope for challenge, returning us in more nuanced form to questions posed by Beck about the relation between the cosmopolitan ideal and banal cosmopolitanism. Research to date has documented the rise of deterrence in immigration and asylum policy (Bloch and Schuster 2002; Morris 2002; Stevens 2004) and the role played by erosions of support (Sales 2002; Webber 2004). However, the policy warrants closer examination with respect to civic stratification, target populations, and their possible contribution to an understanding of cosmopolitanisation. We can therefore explore the policy background to welfare and asylum by posing questions about the stated and hidden purpose of the legislation; its potential impact on the social status of the target group; any related irrationality in the framing of the policy; the moral and material resources enabling a challenge; and the outcome with respect to the contours of rights.

4. Asylum seekers as a target population

Asylum seekers who claim asylum from inside the country rather than at an arrival point must have entered in some other capacity, and this has made them a target for suspicion. Some insight into the process of targeting can be gleaned from parliamentary debate around the introduction of key items of legislation aimed at this group. There have been three critical moments – under a Conservative government we saw the introduction of secondary regulations removing late claimers from entitlement for income support in 1996 (DSS 1996). When these

regulations were declared *ultra vires*[3] key elements were enshrined in primary legislation via the 1996 Asylum and Immigration Act. A New Labour Government restored maintenance support for late claimers via the National Asylum Support System (NASS) in 1999, but by 2002 had introduced a third attempt to remove support from late claimers through section 55 of the Nationality Immigration and Asylum Act.

The issue central to all measures was expressed in a parliamentary question on the 1996 regulations:

> Does my right honourable friend agree that the government should not encourage bogus asylum seekers who are not escaping persecution but are merely interested in benefit.[4]

The underpinning rationale for the regulations was set out in an explanatory memorandum to the Social Security Advisory Committee (1995) and based on a classification of asylum seekers into at port and in country claimants (late claimers), the latter normally gaining entry on condition of no recourse to public funds. It was then assumed that this group was drawn to Britain by the availability of benefits should they subsequently claim asylum and they were made a target for suspicions of abuse, supported by an association with 'deceitful' means of entry.[5] A further association was made between mode of entry and the validity of the asylum claim such that late claimers, who made around 70 percent of all claims, were deemed 'bogus'. The purpose of the regulations was then presented as an attempt to address the growing trend for non-genuine applications by reducing the attractiveness of the UK for economic migrants, thereby reducing costs to the tax payer. The method for pursuing this aim was the removal of benefits from late claimers and those pursuing an appeal, and the message to the public was:

> The proposals [. . .] will have a significant effect in safeguarding the interests of the UK by reducing the attractiveness of this country to those who are essentially economic migrants not refugees fleeing political persecution. (Department of Social Security 1995: 10)

Drawing on Schneider and Ingram we can identify both stated and hidden purpose here, and trace a process of classification and targeting which recurs in all debate on the issue. In line with their observations we find an underlying irrationality in the chain of reasoning, which lies in the

3. See *JCWI,* EWCA.
4. HC Hansard, 20 Feb 1996, col 160.
5. Though the Geneva Convention prohibits penalties for illegal entry.

ineffectiveness of the measure for distinguishing between genuine and non-genuine cases. This points to the possibility of some hidden purpose behind the stated intentions, and certainly the unstated effect is to feed public concern about asylum, undermine the credibility and standing of late claimers, and create an impression of vigorous government action. Charges of this hidden purpose appeared when the bill was debated in parliament, where it was argued that the real motive was its electoral 'potential to hurt', and that it pandered to xenophobic voters by using the 'race card'.[6] The bill was condemned by Jack Straw[7] as 'unbalanced and disproportionate', and misleading about the extent of abuse of the asylum system. There were also charges that the measure was punitive and would create a new underclass, stigmatising and criminalising all refugees.

We see here an illustration of civic stratification in action, by the targeting of a sub-group for punishment via reduced entitlement to welfare rights, and by tying this erosion to a lessening of their public status through accusations of deceit and abuse of the system. In Schneider and Ingram's terms, late claimers for asylum had been moved from dependents to deviants.

5. From deviants to dependents, and back again

Given New Labour opposition to the 1996 measure it was no surprise that they reinstituted maintenance and accommodation rights for all asylum seekers *via* NASS. They also promoted a commitment to human rights and embraced the aim of building a culture of rights, through the passing of the Human Rights Act (HRA) in 1998, which established the ECHR in domestic law. However, the 2002 Nationality Immigration and Asylum Act carried strong echoes of the 1996 exclusions in denying support for asylum seekers who did not claim 'as soon as reasonably practicable' (S55(1)). Under New Labour this was one aspect of a spectrum of policies which promised a greater capacity to grade all forms of migration into good and bad varieties, with accompanying mechanisms of control (Morris 2007).

However, the 2002 measure directed against late claimers for asylum was made more complex by the incorporation of Section 55(5) which secured consistency with the HRA by *permitting* support where necessary to 'avoid a breach of Convention rights'. The measure was also more nuanced in design and presentation than the 1996 measure, in part through the use of the concept of 'reasonably practicable', which ostensibly offered the opportunity to explain and justify any delay in

6. HC Hansard 22 Feb 1996, col 547.
7. Then Shadow Home Secretary.

claiming. Nevertheless, while the National Assistance Act had provided a safety net for disentitled asylum seekers in 1996, the removal of their eligibility for such support left only recourse to the ECHR (*via* the HRA) for those falling foul of Section 55. Presented as a late amendment in the House of Lords (HoL),[8] the policy was argued to address costs to the tax payer, which had risen to £1 billion per year, and to reduce illegal migration and manipulation of the asylum system.

Broadly speaking, the argument depended on the same classification and reasoning applied by the previous government, seeking to discriminate between the genuine and non-genuine by means of a rather blunt tool. The denial of support to late claimers was argued to assist genuine cases by increasing the likelihood that the non-genuine would return home, and to discourage claims from those simply seeking to extend their stay. The measure thus cast suspicion on late claimers, who were assumed to have been supported and living somewhere until the time of their claim. One expression of the purpose and rationale of the bill was:

> To win wider public support for our duty properly to consider claims for asylum. Part of that means that all reasonable steps must be taken to minimise fraud and abuse.[9]

Again the rationality of the policy was queried by its opponents,[10] who doubted the effect of a measure unlikely to be known in advance by most applicants, and cited HO research showing benefits are not the principle factor in asylum seekers choice of destination.[11] Subsequent debate presented data showing a slightly higher rate of success among in-country than port applicants,[12] and also questioned the feasibility of control:

> The Prime Minister has said that he wants to see a 50% cut in the number of applications [. . .] That target is ludicrous. It is something over which we have no control.[13]

The hidden purpose of the measure was identified – that by treating people badly others would be deterred,[14] while later debate also revealed a link with ease of removal and administrative convenience:

8. Lords Hansard 17 Oct 2002, cols 976–1006.
9. Lords Hansard 17 Oct 2002, col 991.
10. Not least on the difficulties of implementation, as for example those who travel clandestinely on the backs of lorries and have no opportunity to claim at port.
11. Lords Hansard 17 Oct 2002, cols 976-1006.
12. Lords Hansard 24 Oct 2002, col 1468.
13. HC Hansard 26 Feb 2003 col 81WH.
14. Lords Hansard 17 Oct 2002, col 986.

> People prefer, and are advised, to make their claim for asylum once they have entered the country rather that at the port as it then becomes more difficult to deport them.[15] (cf. Feria 1996)

A further classificatory issue emerged with respect to the Section 55(5) safety net, and the question of what level of destitution would warrant support under article 3 of the ECHR (protection from inhuman and degrading treatment). Hence, parliamentary debate made reference to critical comment from the JCHR which queried the notion of 'degrees' of destitution,[16] and found it difficult to envisage destitution without some threat of a breach of article 3.[17] We therefore see civic stratification at play both in the distinction between at port and in-country claimants, and in the matter of degrees of destitution. Late claimers were targeted as suspicious in terms of both the validity of their asylum claim and their genuine need for support. The administrative treatment likely to be meted out was hinted at in observations on NASS personnel in Scotland, who were described as second rate civil servants, low paid, angry and jealous of their clients.[18] Thus, the punitive treatment of late claimers with respect to their formal entitlement seemed set to be amplified by the informal treatment they might encounter in its implementation (cf. Stevens 2004).

6. The dynamics of contraction

The parliamentary debates documented above sketch out the dynamic of a contraction or erosion of rights, which moved through a series of stages. First came the elaboration of a social problem – high numbers of asylum applicants, followed by the discrediting of a sub-category of claimants by various allegations of abuse, which were in turn to be addressed by a policy initiative. The fact that the irrational design of the policy could not plausibly address the stated objectives of reducing false claims and aiding genuine asylum seekers, suggests some other purpose at work. The public discrediting of asylum seekers, an appearance of vigorous government action and a gain in public support are all likely candidates, and in some sense interlocking.

In Lockwood's schema an expansion of entitlement can flow from a process whereby moral resources are brought to bear in the consolidation of rights. However, some informed speculation about the reverse dynamic

15. HC Hansard 26 Feb 2003, col 73WH.
16. Lords Hansard 17 Oct 2002, col 989.
17. Lords Hansard 24 Oct 2002, col 1465.
18. Lords Hansard 17 Oct 2002 col 985–6.

is also possible. Kaye (1994), for example, has noted the role of political parties in agenda setting, and in the transition from the identification of a social problem to the construction of an institutional response. Such work points to the role which politicians can play in constructing the very problem they seek to address, prior to the introduction of some remedial measure, and we have discussed the treatment of late claimers as one example. What then can be said about the implications of this process for public attitudes towards asylum seekers, and their perceived moral worth or public standing? The status of late claimers is eroded by both the construction of the problem and the nature of the measure introduced in response – in Lockwood's terms, an association between a contraction of their rights and an erosion of their moral standing seems likely.

Recent work on the British Social Attitudes survey (McLaren and Johnson 2004) documents an increase in anti-immigration sentiment throughout the 1990s which saw a dramatic rise in asylum applications. The explanation offered by McLaren and Johnson turns on the role of the media, not in any immediate and direct manner, but rather by virtue of the negative government statements which were central to press coverage of the issue. Revealingly, anti-immigration sentiment among Labour voters rose from 58 to 71 percent over the period 1995 to 2003,[19] and while higher education has traditionally been associated with a more positive sentiment, degree holders with anti-immigrant views also rose from 35 to 56 percent. The authors conclude that there has been a 'culture shift' throughout society, the change being greatest among groups previously expressing a relatively favourable view of immigration.

The argument above does not exclude the possibility of an independent media influence working alongside government statements and policy, and one indication of this is the guidance issued by the Press Complaints Commission in 2003 on the coverage of issues relating to refugees and asylum seekers.[20] In evidence to the JCHR, the UNHCR called for a strengthening of such guidance and expressed particular anxiety about the tabloids alarmist reporting on asylum issues. There was also a caution to politicians about the need for balanced presentation of asylum issues, and concern that:

> In the United Kingdom asylum seekers – and the refugees among them – have increasingly become tools for politicians, or have been turned into mere statistics by the popular press. Asylum seekers are easy to demonise. They are foreign, so an attractive target for those who are suspicious of, or actively dislike, foreigners or minorities with foreign origins. (JCHR 2007: Ev 429)

19. New Labour came to power in 1997 and continues in power in 2008.
20. www.pcc.oprg.uk/news/index.html?article=OTE= accessed 7.7.08.

What seems to be at work is a cyclical process whereby politicians seek to discredit the target group – late claimers for asylum, as a preliminary to measures of deterrence which erode their rights. This erosion in turn legitimates the public's negative perception and potentially feeds into a diminution of the public standing of the target group. Though ipsos-MORI data[21] suggest that asylum and immigration lacked any real salience for voting from 1995 to 2005, by 2006 it appeared in third place among the top ten important issues. However, their data[22] also show wide divergence in attitudes, depending on age, education and region, suggesting that reservoirs of sympathy could well exist alongside more negative perceptions. So can we find any theoretical or empirical indication that an undermining of the public status of asylum seekers could be arrested?

7. From deviants to contenders?

In Lockwood's schema social integration is achieved by the integrity of democratic, market and welfare state relations, and secured on an individual basis through the guarantee of political, civil and social rights. It is the delivery of these rights which provides a legitimate foundation for the system as a whole. However, as we have observed, this framework was devised as part of an analysis of the functioning of citizenship, and its coherence is potentially threatened by the presence of those outside of citizenship and thus excluded from the polity. The access of such outsider groups to the rights associated with citizenship is therefore a matter for political determination, *via* a process in which the outsiders themselves have no direct voice, unless such rights can be claimed as universal human rights.

Lockwood recognises the possibility of expansion for groups denied access to rights, fuelled by the moral and/or material resources which can be brought to bear on either the political process or public opinion. He identifies one such area of campaigning as universal human rights activism, which we will see has been central to the struggles of late claimers for asylum. However, both Lockwood, and Schneider and Ingram see excluded groups as disadvantaged by a negative public image, often associated with the very policy which confirms and legitimates their formal exclusion. In Lockwood's schema, they already suffer from 'stigmatised deficit', while:

21. www.ipsos-mori.com/content/importance-of-key-issues-to-voting.ashx, accessed 6.12.08.
22. Ipsosmori.com/content/british-views-on-immigration.ashx, accessed 6.12.08.

> lack of incentive, capacity and opportunity to engage in collective action is further diminished by the indignity of the status itself. (p. 546)

Such groups are the least able to accumulate moral force and mobilise for change.

Nevertheless, both Lockwood, and Schneider and Ingram see court action as offering a possible recourse for those too marginal or stigmatised to command public sympathy or support. Thus, Lockwood argues that for civic activists seeking to establish new rights, judicial review has become an ever more frequent feature of the process, while Schneider and Ingram note that the most beneficial outcomes for disadvantaged groups have been achieved through court action to secure their rights. So legal action can offer the possibility of challenge to formal aspects of exclusion and disentitlement among the lower reaches of the civic stratification hierarchy. Can it also correct the informal erosion of public standing by virtue of what Lockwood calls the 'indignity of the status itself'?

This topic has become a matter of interest for Alexander (2006) in his argument for a new conception of the civil, as a sphere built around solidarity and commitment to a common secular faith. In an argument which complements the civic stratification approach, he suggests that we must rethink the law as a form of symbolic representation. Alexander recognises that law often serves to legalise exclusion and domination, as in the formal aspects of civic stratification, and we have seen above that there can be a degree of manipulation in this process. However, he argues that divisions can be reconstructed through a process of civil repair, in which individual injustices transcend their particularist nature to become interwoven with universal themes. This process suggests to Alexander an active civic role which extends beyond the selection of political representatives to that of monitoring and control.

The ascendency of human rights and their consolidation in domestic law provides one possible vehicle for this control, such that judicial rulings on government action become part of the democratic process. They enable legal forms of civil repair and thus play a role in securing the legitimacy of the democratic system. However, for this process to function as Alexander hopes the subjects of regulation must be equal actors in their quest for justice, and research on immigration law shows this has not traditionally been the case (Legomsky 1987; Stevens 2004). Nevertheless, the growing accessibility of human rights law has expanded legal recourse, while also requiring a higher level of scrutiny than other aspects of the law (Stevens 2004). Thus, argues Alexander:

> Legal interpretations by judges are one way of crystallizing changes in civil regulation. (p. 191)

Similarly, both Lockwood, and Shneider and Ingram argue that where power, stigma and disadvantage work towards exclusion, the courts may offer a means of correction. Thus,

> In the course of social conflicts, individuals, organisations and large social groups may be transferred from one side of the social classification to another. (Alexander 2006: 234)

This possibility raises the additional question of whether judicial decisions can reverse some of the negative effects of civic stratification and targeting, in both their formal and informal guises.

8. Judicial opinion and civic status

Judicial views on the legitimacy of policy have the potential to confirm or undermine associated status issues, and a number of the judgements on challenges to disentitlement for late-claimers rehearse points covered in parliamentary debate. They variously note the aim to withdraw support from non-genuine claimants and those with alternative resources, to reduce costs to the taxpayer, to deter non-genuine applications, and to discourage economic migration.[23] However, a number of the judgements also recognise the policy's inability to effectively distinguish between the genuine and non-genuine, or to enhance efficiency.[24] Thus one HoL judge stated:

> It is in reality unlikely that many claims will be made earlier as a result ... Nor do statistics suggest that late claimants make a disproportionate number of unmeritorious claims. (*Adam* UKHL Para 101)

Provided that the aims of the policy were legitimate, however, the method of pursuing those aims was deemed beyond the purview of the court.[25] Nevertheless, the airing of these issues in court gave further public exposure to a measure little debated in parliament, while confirmation of the flawed nature of the policy itself could serve to offset its negative status impact.

The early cases brought against S55 placed great emphasis on procedural fairness. This underscores Lockwood's point that not only can the formal content of a measure shape the public standing of its

23. Eg., *JCWI* QBD; *Q*, EWCA; *S,D and T; Adam* UKHL.
24. Eg., *JCWI* QBD, p. 8; *JCWI* EWCA, p. 3; *Q*, EWHC, para 14; *Q* EWCA, para 25.
25. *JCWI* EWHC, p. 8; *Q*, EWHC, para 15.

recipients, but so too can the manner of its administration. Parliamentary debate had already raised questions about the quality of NASS decision making (cf. Stevens 2004), but this received closer consideration in some judgements. Hence Collins J in *Q* (EWHC) noted that 40 percent of appeals on maintenance decisions by NASS[26] were successful, highlighting their poor quality, while he later remarked that the approach to S55:

> Has been coloured by an assumption that a failure to claim at the port will itself be justification for refusal. (para 56)

Similarly, Kay J in *Q*, *D*, and *H* emphasised the need for proper instruction to officials:

> So that they do not resort to generic stereotyping regardless of accepted evidence to the contrary. (para 9; cf *S, D and T,* para 16)

The appeal judgement in *Q* stressed the importance of 'fairness' both for the applicant and for the public interest (para 71), especially given the 'potentially draconian effect' of the measure. Yet the judge found the decision making system to fall short, sometimes rejecting the credibility of claimants 'out of hand' (para 100).

Such observations draw attention to the punitive nature of the decision making procedure, which placed an onus on the claimant to prove that alternative support was not available. There were negative views on the requirement to present evidence of failed attempts to secure charitable support, described by Shelter's intervention in *Limbuela* (EWCA) as a 'charade' and 'waste of public funds'. The requirement of repeated submissions until the requisite level of suffering had been reached was described as 'distasteful' by Collins J in *Limbuela* (EWHC para 32), and 'contrary to any reasonable conception of justice' by Gibbs J in *Tesema* (EWHC para 59). Evoking a distinction between the deserving and undeserving, Lady Hale condemned the whole policy as having:

> Taken the Poor Law policy of 'less eligibility' to an extreme which the Poor Law itself did not contemplate. (*Adam* UKHL para 77)

A minority of judges showed some deference to resource constraints, making reference to the need for restraint in resource allocation (*JCWI* EWCA, p. 9; *T* para 11), and for caution when applying the ECHR in the area of social rights (*Limbuela* EWCA para 73). However, other cases

26. This does not include S55 decisions, which are not appealable.

stressed the particular predicament of asylum seekers as strangers in a strange land (*M* EWCA, p. 23), resourceless and vulnerable when denied the possibility of both employment and maintenance (*S, D and T* para 33). Hence, a majority of the 14 cases found against the government, and endorsed a challenge which drew on a notion of the equal status of humanity. This was supported in *JCWI* (EWCA) by the common law notion of the law of humanity, and later through the protection against inhuman and degrading treatment provided by article 3 (e.g., *Adam* UKHL).

The hearings also provided an opportunity to detail the abject circumstances of claimants denied support. So, for example, S (in *S, D and T* paras 28–30) showed signs of psychological disturbance and malnutrition, after sleeping rough for nine days; *Tesema* (para 21), having suffered beatings and assault at home, and experienced stress and trauma at the prospect of homelessness, was described as unfit and depressed; *Adam* (EWHC, para 16) had been sleeping in a car park, fearful of assault and surviving on one meal a day; etc. Indeed, the heart of the case history rested on an interpretation of such details in determining the level of suffering which would meet the high threshold for article 3 protection under the ECHR.

While the judge in *Zardasht* required proof of a high degree of severity, beyond that common to all disentitled claimants, others viewed deterioration to the requisite level of suffering as a matter of 'common sense', once someone was deprived of employment and basic maintenance (*Limbuela* EWHC). In the HoL the very nature of the policy was argued to contribute to this conclusion:

> It is one thing to say [. . .] there are unfortunately many homeless people and whether to provide funds for them is a political, not judicial, issue; quite another for a comparatively rich country to single out a particular group to be left utterly destitute on the streets as a matter of policy. (*Adam* UKHL para 99)

The prospect of living cashless and without shelter was described in the HoL (para 78) as both inhuman and degrading by the standards of our society.

9. A cosmopolitan outcome?

The paper began with a reference to Beck's distinction between the cosmopolitan ideal and really existing conditions of 'cosmopolitanisation', alongside Grande's argument that the nation state continues to be pre-eminent in the allocation and administration of rights. It was suggested

that one way to pursue these issues in the form of an empirical enquiry was through the concept of civic stratification; a system of inequality that functions through the differential granting or denial of rights by the state. This concept has been applied in the present paper to an analysis of legislation on the welfare rights of late claimers for asylum, and given a dynamic form by attention to the relation between its formal and informal aspects, and through a linkage with the concept of target populations.

In tracing the construction of asylum seekers as a target population, we have seen how successive governments have justified the denial of welfare rights for late claimers by constructing an association between in-country claims and multi-faceted abuse of the system. By this means, late claimers have been shuffled between the categories of 'dependent' and 'deviant' according to changes in government policy, and we have suggested the possibility of a consequent shift in their public standing. While the formal dimension of civic stratification is expressed in terms of legal entitlement, a further dimension refers to the informal status of a group in terms of public esteem. While the granting of a formal entitlement in some sense confirms the general standing of a group, the withdrawal of such a right, especially on grounds of fraudulent behaviour, will inevitably reduce their public standing. However, this argument raises the corresponding possibility, that a series of successful challenges to the withdrawal of welfare from late claimers could go some way towards civil repair.

The outcome of the legal history seems to offer some indication of a cosmopolitan ethos at work. Expressed in terms of civic stratification, the conclusion is that there are limits to which the erosion of rights in a system of differentiated entitlement can descend. Although the policy itself could not be over-ruled as irrational, or struck down as inconsistent with the HRA, it could be held to standards of humanity which its implementation had failed to meet. This applied both to the level of degradation to which someone could be permitted to sink before engaging the protection of article 3, and also to the manner in which the system was administered. In Lockwood's terms, the disentitlement itself, the procedure formally applied, and the respect informally denied each fell below acceptable levels of humanity, fairness and dignity. The judgements therefore went some way towards restoring both the exclusions and the deficits entailed in the regime; to converting asylum seekers from deviants to contenders; and to moving 'cosmopolitanisation' in the direction of cosmopolitanism.

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References

Alexander, J. C. (2006) *The Civil Sphere*, Oxford: Oxford University Press.
Beck, U. (2006) *Cosmopolitan Vision*, Cambridge: Polity Press.
Beck, U. and Sznaider, N. (2006) 'Unpacking cosmopolitanism for the social sciences', *British Journal of Sociology* 57(1): 1–23.
Bloch, A. and Schuster, L. (2002) 'Asylum and welfare: contemporary debates', *Critical Social Policy* 22(3): 393–413.
Cohen, R. (1994) *Frontiers of Identity*, London: Longman.
Department of Social Security (DSS) (1995) *Explanatory Memorandum to the Social Security Advisory Committee*, London: DSS.
Department of Social Security (DSS) (1996) *Social Security (Persons from Abroad) Amendments 1996*, London: HMSO.
Feria, M. (1996) 'Commentaries on the social security (persons from abroad) (miscellaneous amendments) regulations 1996', *INLP* 10: 91–101.
Fine, R. (2007) *Cosmopolitanism*, London: Routledge.
Grande, E. (2006) 'Cosmopolitan political science', *British Journal of Sociology* 57(1): 87–111.
Home Office (1993) *Asylum and Immigration Appeals Act,* London: HMSO.
Home Office (1998) *Human Rights Act*, London: HMSO.
Home Office (1999) *Immigration and Asylum Act*, London: HMSO.
Home Office (2002) *Nationality Immigration and Asylum Act*, London: HMSO.
Home Office (2005) *The Five Year Strategy for Asylum and Immigration*, Cm 6472, London: HMSO.
Joint Committee on Human Rights (2002) *Nationality Immigration and Asylum Bill: Further Report*, Twenty-third Report of Session 2001–02 HL 176, HC 1255.
Kaye, R. (1994) 'Defining the agenda', *Journal of Refugee Studies* 7(2): 144–59.
Legomsky, S. H. (1987) *Immigration and the Judiciary*, Oxford: Clarendon Press.
Levy, D. and Sznaider, N. (2006) 'Sovereignty transformed: a sociology of human rights', *British Journal of Sociology* 57(4): 657–76.
Lister, R. (2003) *Citizenship: Feminist Perspectives*, London: Palgrave.
Lockwood, D. (1996) 'Civic integration and class formation', *British Journal of Sociology* 47(3): 531–50.
Marshall, T. H. (1950) *Citizenship and Social Class*, Cambridge: Cambridge University Press.
McLaren, L. and Johnson, M. (2005) 'Understanding the rising tide of anti-immigrant sentiment', in A. Park, J. Curtice, K. Thomson,

C. Bromley and M. Phillips (eds), *British Social Attitudes, 21st Report*, London: Sage, pp. 169–200.
Morris, L. D. (1994) *Dangerous Classes*, London: Routledge.
Morris, L. D. (2002) *Managing Migration: Civic Stratification and Migrants Rights*, London: Routledge.
Morris, L. D. (2007) 'New Labour's community of rights', *Journal of Social Policy* 36(1): 39–57.
Morris, L. D. (forthcoming) 'Asylum welfare and the politics of judgement', *Journal of Social Policy*.
Plummer, K. (2006) Rights work: constructing lesbian, gay and sexual rights in late modern times, in L. D. Morris (ed.), *Rights: Sociological Perspectives*, London: Routledge, pp. 152–67.
Sales, R. (2002) 'The deserving and the undeserving? Refugees, asylum seekers and welfare in Britain', *Critical Social Policy* 22(3): 456–78.
Schnieder, A. and Ingram, H (1993) 'Social construction of target populations', *American Political Science Review* 87(2): 334–46.
Smith, A. (1995) *Nations and Nationalism in a Global Era*, Cambridge: Polity.
Soysal, Y. (1994) *Limits of Citizenship*, Chicago, IL: University of Chicago Press.
Stevens, D. (2004) *UK Asylum Law and Policy*, London: Sweet and Maxwell.
Webber, F. (2004) 'Asylum – from deterrence to destitution', *Race and Class* 45(3): 77–85.

Cases

R v Secretary of State for Social Security (SSSS) ex parte JCWI, QBD
R V SSSS ex parte JCWI [1996] 4 All ER 385
R v Westminster Council ex parte M [1997] 1 CCLR 85, CA
R v SSHD ex parte Q [2003] EWHC 195 (Admin)
R v SSHD ex parte Q [2003] EWCA Civ 364
R v SSHD ex parte Q, D, H and others [2003] EWHC 2507 (Admin)
R v SSHD ex parte S, D and T [2003] EWHC 1941 (Admin)
R v SSHD ex parte T [2003] EWCA Civ 1285
R v SSHD ex parte Zardasht [2004] EWHC 91 (Admin)
R v SSHD ex parte Limbuela [2004] EWHC 219 (Admin)
R v SSHD ex parte Tesema [2004] EWHC 295 (Admin)
R v SSHD ex parte Adam [2004] EWHC 354 (Admin)
R v SSHD ex parte Adam, Limbuela and Tesema [2004] EWCA Civ 540
R v SSHD ex parte Adam, Limbuela and Tesema [2005] UKHL 66

Lydia Morris is a Professor of Sociology at the University of Esset. She is author of *The Workings of the Household* (Polity Press, 1990), *Dangerous Classes* (Routledge, 1994), *Social Divisions* (UCL Press, 1995) and *Managing Migration* (Routledge, 2002).

Address for correspondence: Dr Lydia Morris, Department of Sociology, University of Essex, Colchester CO4 35Q, UK.
E-mail: ldmorris@essex.ac.uk