
Asylum Justice Matters

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I first came to know asylum seekers in 2000 when working at Newcastle Cathedral. First a Rwandan joined our worship, and later an Iranian. I never asked if the Rwandan was Hutu or Tutsi since the massacres there were too complex for labelling. We knew his family were prominent French-speaking Anglicans, and that in the camps he had become separated from his wife and children. A year or so later my wife recognised his wife's name in an account by a senior Mothers' Union lady of her visit to Africa and to a refugee camp in which his wife had formed an MU branch. Eventually his wife and children were able to join him on Tyneside.

The Iranian quickly got permission to stay. The son of an Ayatollah, he had written books opposing untruths he had found in Islam. I prepared him for baptism and confirmation, as I did subsequently other Iranians who joined our worship. Some had left Iran for political reasons and found a welcome in British churches. Three as teenagers in Tehran had school-friends in the ancient Chaldean Catholic church, and were curious to go with them. The priest stopped them. 'You are Moslems, it is too dangerous for you, and too dangerous for me and my family'. The Chaldean Church survives by not letting Muslims convert. Under Sharī'a law apostates are liable to death. But the three persisted under cover of the crowds; eventually lay Christians instructed them, and a priest baptised them. Before long the police raided their homes and they fled. That was their story, but they seemed sincere to me as they knelt regularly for their communion.

One Iranian in the group quickly got permission to stay. He had become a very articulate Christian and the Tribunal was convinced he was evangelistic. Another, a latecomer to the group, also got permission to stay, not on Christian grounds but because he had worked in the Defence industry and had a political claim; he has now been able to bring his wife and child. Two of the single men still have no permission eight years later. One has been here for eleven years, through a saga of lost papers and administrative muddle. Like others he runs a pizza-shop. It's not what he wants to do, but how he survives.

For one who became a Christian in Tehran I gave evidence at a tribunal in Darlington. At that point I discovered the gulf of incomprehension they have

1 This article is an edited version of a lecture delivered in September 2009 in Lincoln's Inn as part of the annual series of Ecclesiastical Law Society London Lectures.

to cross. The Adjudicator accepted that the applicant (M) was genuinely a convert but would she convert others? I quote from the Determination:

Her answers were vague. However, I do not conclude from this that the appellant is not a genuine Christian ... even those people who have lived their lives in Christianity might not know the answers. I conclude simply that her knowledge and understanding of Christianity is not sufficient to enable her to proselytize and her lack of knowledge of the bible indicates that she is not of an evangelical turn of mind. She said that she had spoken to a few people (not many) in the UK about Christianity. She said that she encourages them to read about the life of Jesus. She confirmed, however, that she had not 'finished' the Bible but has read parts of it. Ask(ed) what was her favourite part, she said that every part was interesting. She said that she had not personally read the bible to anyone but had encouraged them to read it for themselves. ... A reasonable understanding for the purposes of belief and a reasonable understanding for the purposes of converting others are two very different things.

M after two years had little English; how would she have spoken to 'many' people about Christianity as distinct from a few? How many would count, and what kind of knowledge does an effective evangelist need? Have we all read every part of the Bible?

At the same hearing, the Adjudicator asked me, correctly, if Newcastle Cathedral was the one between the Castle and the Bigg Market, but later asked me: 'This Cathedral, is it mainstream Church of England, or one of the fringe sects?' M was asked: 'Why do you refer to the Cathedral clergy as "priests"? It's only in the Catholic Church that they are priests.' And also 'How is it you don't know Canon Miller if you say you go to the Cathedral?' Like many Anglicans M spoke of the clergy as priests, and like most at that Cathedral knew Canon Miller only as 'Father Geoff'.

Later on M got leave to appeal against this determination and six years after that hearing, she and her husband and their son, born here, received indefinite leave to remain, part of the Government's drive to clear 450,000 'legacy' cases.

When I moved to Oxford in 2003 I learned of other Iranians worshipping across the country. Gradually a network grew, pooling information, not only about Iranians, but Congolese, Zimbabweans, Eritreans, Pakistanis. Many interviews and tribunals showed a similar pattern of ignorance and inappropriate questions. The Evangelical Alliance listed some at a Home Office meeting in February 2004, but the pattern persisted:

What happens in the four weeks before Easter? Lent lasts six weeks, and not all Christian churches observe it.

Who was the leader of the Christian Church after the death of Jesus? James, Peter and Paul are all reasonable answers. What did the questioner want?

What is the significance of 666? Would most British Christians recognise those numbers, let alone what they mean?

What was Jesus' first miracle? In which Gospel? How many British Christians would know even if you specified the Gospel?

How many books are there in the Bible? How would knowing this show that you had truly become a Christian?

When was Jesus born? Is this a trick question, or does it assume the answer 25 December, which many Christians know is not strictly true? And what year does the questioner require?

What was the name of Jesus' mother? Miriam, the Farsi way of saying the name, was judged wrong.

If you claim to be Anglican, why do you use the Roman Catholic word 'Mass'?

What were the names of the thieves crucified either side of Jesus? Is this a trick question to be recognised as such, or have the questioners seen names for the thieves in a novel?

What was the forbidden fruit? Is the expected answer 'an apple', even though Genesis does not specify the fruit?

How do you prepare a turkey for Christmas? Are you meant to say that you stuff it, or bless it, or perhaps give it a confirmation class?

The transcript of an initial interview in the Midlands records this exchange:

Where is the book in the Bible that talks about Jesus and his life?

It's in the four gospels – Matthew, Mark, Luke and John.

It is not in all of them. It is in one – life of Jesus. (silence) If you trusted and read about the life of Jesus, you can only find it in one book of New Testament – you must have read one of books in New Testament to know about Jesus – so which one was it?

I studied the book about the four – Matthew, Mark, Luke and John.

It is in one of them, life of Jesus – if you studied Bible you'd know.

When I arrived and become interested I was given a small book called Bible – I read that.

No matter what bible you studied, Matthew, Mark, Luke and John will be there.

One of those books traces the life of Jesus. If you studied them you would know which one – so why don't you know?

In February 2005 an ecumenical group of us sent Home Secretary Charles Clarke a 13-page dossier illustrating many of these cases. Charles Clarke sent a prompt and constructive reply, and opened the door to a series of written exchanges and meetings with Home Office and Asylum officials. Our small

voluntary group became linked to the Churches Main Committee (now the Churches Legislative Advisory Service) and also to the Churches' Refugee Network as its Advocacy Arm.

UKBA has improved the questions, but an Iranian Christian was recently asked: 'What do you know about the Twelve [sic] Commandments?'. His reply on tape was 'Twelve Commandments? I don't understand', but the transcription appeared as 'he doesn't understand the commandments'. The Judge threw out the question as unacceptable. The question was more likely a slip than a trick. That Iranian is a regular server in his Anglican church on Tyneside, leads a youth group, has permission to administer the chalice, and is someone whom people in his congregation think should one day be ordained.

One prejudicial factor can be the interpreter. Translating is always delicate, and Court translators try to interpret the sense of the answer and its nuances, the silence, the facial expression, shrugs of shoulder, raising of eyebrow. To a Christian convert, a Muslim interpreter may seem hostile or may have difficulties translating Christian terms which are either unknown or would be anathema for a Muslim to speak. Speaking a language is not the same as skill in translating.²

Sometimes converts fear information leaking to local Muslims, whether that fear is justified or not. A young Iranian in Wolverhampton, now a skilled electrician with college passes, fluent in English and the greatly-respected cross-bearer in his local church, was a teenager with almost no English when he arrived here. His veracity was challenged because he did not claim to be Christian when he first arrived but at that time he was uncertain with words, had been warned by his parents in Iran to be careful whom he trusted, and found himself faced with a Muslim interpreter. As his MP discovered, he had been given two separate case numbers; in one, while his name and address were correct, he'd been described as Palestinian rather than Iranian, and with a quite wrong date of birth, day, month and year. After nine years, and supportive lobbying by bishops and others, he has been given permission to stay but, although he was unremitting in his appeals, for most of that time he was an 'illegal over-stayer'.

Another Appellant was asked 'What is the Trinity?' The interpreter unsuccessfully struggled through her electronic dictionary to translate the question, and in the end the Appellant answered in English: 'Father, Son and Holy Spirit'.

The determining question for Christians from Iran, Pakistan or Eritrea is whether they would be evangelistic. Not only the media are often confused between the words evangelistic and evangelical, and ludicrous judgements have been reached with sweeping statements, for instance, that 'the Methodist

2 'Justice system compromised by unqualified interpreters', *Scottish Sunday Herald*, 24 May 2008.

Church is not an evangelical church'. In another Iranian case, even the ultra-Reform Clayton Memorial Church in Jesmond, Newcastle, was described as 'not evangelistic'. And in the Darlington case, the Adjudicator wrote: 'I do not consider that a mainstream Church of England adherent is required to proselytise Christianity, in the sense of attempting to convert others'. The Determination in a Midlands case read: 'You will not be in danger if you are sent back because it is not an evangelical church that you attend, it is Derby Cathedral.'

Not long after the Darlington hearing, the Court of Appeal asked the Immigrations Appeals Tribunal to look at inconsistent judgements on whether or not Christian converts were at risk in Iran. The Tribunal looked at three separate cases (now known as *FS and Ors CG* [2004] UKIAT 00303). The old ethnic communities of the Armenian and Assyrian-Chaldean Christians are distinct from more recent Protestant or evangelical Churches. They total about 300,000 in Iran and have survived by not proselytising; services in Assyrian or Armenian, not in Farsi, are thought less likely to attract converts. Though not persecuted, they experience discrimination, and Christians are haemorrhaging, mostly to the USA, at about 15,000 to 20,000 a year. The test case was concerned mostly with the actively proselytising Pentecostal Evangelical Assembly churches and the Anglican Episcopal Church. The tribunal noted that Iranian leaders suspect that these churches' connection with the UK and the USA continues their missionary, imperialist, past. Even so, the Tribunal reckoned that only 'the more active convert, Pastor, church leader, proselytiser and evangelist' would have a high enough profile to be at real risk from the mal-evolence of the licensed zealot and the serious attention of the theocratic state. But the Tribunal thought there would not be enough risk for 'the ordinary convert, who is neither a leader, lay or ordained, nor a Pastor, nor a proselytiser or evangelist' to need protection under the European Convention on Human Rights or Geneva Convention. Christianity could be practised – even if cautiously at times. Sometimes questioning, disruption, orders not to attend Church, might require the convert to stay away for a while. Is it 'freedom of worship' within the European Convention when worshippers must be discreet?

That judgment has become the basis for tribunal decisions. Although two appellants were refused, one woman got permission to stay because 'where an ordinary individual convert has additional risk factors', such as being a single woman (as she was), or having a political profile, or experiencing family hostility, there may be a real risk. Despite this, in March 2007 the Home Office made an abortive effort to deport to Iran a single woman terribly disfigured facially following a suicide attempt, the scars making her more vulnerable still. The Bishops of Winchester, Durham, Worcester and Guildford with Methodist and URC leaders published a joint letter of protest in the *Times*.

Our 2005 dossier to Charles Clarke listed concerns from the FS case, particularly the distinction between 'ordinary converts' and 'more active ones', and the

claim that our churches do not encourage members to share their faith – though we may differ as to how that is done. We asked how deported children, including babies baptised in the UK, could be brought up in Christian faith, nurtured by the sacraments; children chatter to their peers. Just saying ‘Amen’ when receiving Communion assents to doctrines anathema to Muslims. Family and neighbours can be bitterly hostile to converts. A further concern was that Tribunals often swept aside evidence by clergy and church members about the claimants’ genuine faith: adjudicators based decisions on brief encounters in a frightening tribunal, and often with inaccurate understanding of the differences in Christian culture both between Churches in Iran and between Churches in this country. So, for instance, Roman Catholics were asked about speaking in tongues, Eritrean Pentecostals about Sacramental Confession.

In May 2008 I gave evidence in a 3-day appeal hearing of two cases listed together for the Tribunal to consider developments since the *FS & Ors* decision. Both appellants were Iranians, so-called ‘ordinary converts’. One had become a Roman Catholic, in Glasgow, the other an evangelical in a Christian Fellowship in Gateshead. Neither was known to me. I had been asked to give evidence on matters of conversion and discipleship. The *FS* Tribunal had concluded that, for the ordinary convert, Christianity could be practised, if necessary, cautiously at times, by Church attendance, association with Christians and Bible study. ‘There is evidence of random or sporadic violence by the likes of the Basiji, but at too infrequent a level to constitute a real risk to the ordinary convert’. I quoted the Five Marks of Mission which should describe a practising Christian: to proclaim the good news; to teach, baptise and nurture new believers; to respond to human need by loving service; to seek to transform unjust structures of society; and to strive to safeguard the integrity of creation and to sustain and renew the life of the earth. Any one of those marks could draw attention to a Christian. Asked where attending church fits in, I replied that while all Christians are called to share in mission, worship enables Christians to grow up together, an essential for Christian formation. I did not claim that all who had gone through baptism and confirmation would be at risk if returned to Iran, but I did say that committed regular churchgoers would feel called to give an account of the faith that is in them, and to create opportunities for that. First-generation Christians particularly might feel that obligation.

The Lambeth Conference 1998 said that the first of the Five Marks of Mission, ‘proclaiming the good news of the Kingdom of God’ was ‘the key statement about everything we do in mission’. That Conference also affirmed that Anglicans are those who gather in worship to be people of mission, and that the Mission of God into which all Anglicans are called is one of transformation – transforming individual lives, transforming communities and transforming the world. So much for that Darlington Adjudicator writing in her Determination: ‘I do not consider

that a mainstream Church of England adherent is required to proselytise Christianity, in the sense of attempting to convert others.'

That 2008 Appeal reached a surprising distinction. The Roman Catholic in Glasgow got permission to remain; the evangelical in Gateshead did not. Although the judges accepted that spreading the gospel was part of Roman Catholic obligation, they did not believe that he would proselytise or evangelise in such a way as to be at risk of serious harm. However, they felt that in contrast to Protestant converts he would have limited scope for attending services. They said: 'Being a sacramental church, it is not possible to meet in a meaningful way without the presence of a priest to administer Mass and take confession.' As an Iranian he would stand out: 'In practice he will be unable to attend church for mass or confession, to associate and worship openly with other Roman Catholics or access the services of a priest in any meaningful way.' To deprive him of 'any meaningful contact with his church, and any of the accepted essential elements of that sacramental religion, is to require him to live a life that he could not reasonably be expected to tolerate. It would partially suppress his religious identity.' The judges therefore found for him that it was reasonably likely that he would be subjected to persecution. They also found that returning him to Iran would cause the United Kingdom to be in breach of his rights as protected by article 3 (European Convention on Human Rights) on the grounds that 'if it amounts to persecution to return a person to a place where it is unreasonable to expect them to tolerate such suppression of their identity, we cannot but find that would be to subject them to inhuman or degrading treatment'.

The Gateshead evangelical did not get permission. The judge at first instance held that the Adjudicator had made a material error of law in finding it significant that the appellant had not shown any desire to proselytise when he lived previously in Iran – despite evidence that evangelism only become a significant part of his faith after he came to the UK. This order for reconsideration was upheld at appeal. The judge at first instance also ruled that the Adjudicator had overlooked the tenet of not hiding one's Christian faith. Despite this, the new Appeal Tribunal last year held that he would not draw attention to himself by proselytising or evangelising openly. In cross-examination he said that he would not put himself at risk; he might spread the word to a neighbour on a one-to-one basis but 'would not do anything foolish'. The Tribunal found that he could maintain his basic religious identity by worshipping with others, or attending bible classes (ie by discreet ways of being religious). 'His religious behaviour will not take the form of proclaiming the word from street corners, but we are not persuaded that for him it is essential to his religious identity that his behaviour takes that form'. That appellant had begun in fairly fluent English but with such a strong Geordie accent that the judges had insisted that he continue in Farsi through an interpreter. Listening then to the sustained interpreted cross-examination and re-examination I was not convinced that in

the to-and-fro of argument he any longer appreciated the significance of his words when he answered 'No' to the question whether he would do anything foolish or put himself at risk. Nor am I happy at the Tribunal shifting the distinction between 'ordinary convert' and 'active evangelising' to 'proclaiming the word from street corners': I thought we had well established that there are many shades of active evangelising which can gradually lead to conversion, and could lead to persecution.

So many of these cases reveal a culture of disbelief, pervading the system. Once someone has been disbelieved in initial interviews, it is hard to overcome that disbelief. The Rt Hon Iain Duncan Smith wrote last year a Foreword to a report on asylum and destitution published by the Centre for Social Justice which he chairs: 'when asylum seekers arrive in the UK, they are too often met by a bureaucracy that fails to assess their claims fairly: more than 20% of refusals are overturned on appeal'. And he wrote: 'The evidence gathered for this report shows that the welcome offered today falls far short of our traditional standards.'

Also last year the Independent Asylum Commission, chaired by Sir John Waite, concluded two years of hearings across Britain, hundreds of written submissions and a great number of expert reports. The Commission's three reports print the UK Border Agency's responses to each initial finding, and the Commission's assessments after those responses. The Commission's many concerns included the 'difficulty of accessing the asylum system, . . .the unacceptably poor standard of some initial asylum decisions, . . .and that the adversarial asylum system is heavily weighted against the asylum seeker'. They were concerned that Detained Fast Track procedures be not only lawful but appropriate. The Court of Appeal in 2004 (*R (Refugee Legal Centre) v Home Secretary*³) held that Fast Track must operate flexibly according to a published policy for it not to be inherently unfair and unlawful. The Commission held that 'the combination of the fact of detention and the speed of the fast track process imperils the high standards of fairness that should be used in deciding issues, where, if the decision is incorrect, the applicant's life may be at risk'. They urged effective and thorough screening of applicants for the fast track process; they expressed concern that necessary legal advice and representation was not available to all who need it, particularly legal representation at appeals within the detained fast track process.

Of course there must be limits to the legal aid budget, but the Commission believed that all asylum seekers should have a guaranteed legal representative at their substantive interview. They commended UKBA's Solihull Early Legal Advice Pilot project where all asylum claimants have legal support from the pre-decision stage. However, providing early advice at Solihull resulted in an

3 [2004] EWCA Civ 1481, [2005] 1 WLR 2219.

unusually high number of permissions to stay, which raised alarm about extending it across the country.

In January 2007 the Immigration Lawyers Practitioners' Association obtained Joint Counsel's opinion from Michael Fordham QC and Naina Patel that to apply performance indicators to detained super fast-track claimants when cases have to be lodged in a matter of days offends natural justice. To have legal representation only for the Secretary of State at all stages in accelerated appellate decision-making while individual asylum seekers often have to fend for themselves on appeal raises a prima facie case of public law illegality, particularly as the law is made increasingly labyrinthine.

People who have undergone torture, rape, bereavement and terror do not quickly and coherently tell their stories, especially to officials through unfamiliar interpreters. The impact of restrictions on legal aid is widely known, the limited time for cases to be made, the difficulties when people are shifted from one part of the country to another far from their previous legal advisers and from their friends in community. Some parts of the country have been described as a 'legal desert' because of the dearth of experienced and trustworthy immigration lawyers. Good firms have been lost to that work, as well as poor performers who have rightly been weeded out.

On numerous occasions now Appeal Judges have rapped the Home Secretary's fingers for short-circuiting natural justice or for conditions in detention centres. *Times* Law Reports headlines read: 'Irrational action of Home Secretary',⁴ 'Home Secretary's conduct earns court's strongest disapproval',⁵ 'Inhuman treatment by state',⁶ 'Minister cannot thwart tribunal decision',⁷ and so on. The High Court has forced the Government to bring back appellants who have been wrongly deported. In one case solicitors got a High Court interim order to suspend deportation at 4.15 pm when the flight was due at 5 pm; the authorities wrote next day to the solicitors to say that it was too late, the doors had closed. That was not true: the plane had been one hour delayed and the doors did not close until 6 pm.

Working within the Churches' Commission for Racial Justice, a section called 'Bail Circle' has several times succeeded in getting plane doors opened and people taken off with only five minutes to spare. However, Deportee escorts and Enforcement staff get a bonus for 'Successful Enforced Removal' so they have an interest in the number they ship out. In 2008 Austin Mitchell described

4 *R (I) v Secretary of State for the Home Department; R (O) v Same* [2005] *The Times*, 10 June.

5 *R (G) v Secretary of State for the Home Department; R (J) v Same; R (K) v Same; R (H) v Same R (N) v Same* [2006] *The Times*, 14 June.

6 *R (Limbuella) v Secretary of State for the Home Department; R (Tesema) v Same; R (Adam) v Same* [2005] *The Times*, 4 November.

7 *TB (Jamaica) v Secretary of State for the Home Department* [2008] *The Times*, 9 September.

in *The Independent*⁸ a similar deportation to Pakistan in handcuffs of a model family in Grimsby, saying that he was ashamed to be a Labour MP: a note sent him by accident revealed that documents in Urdu about dangers in Pakistan were not translated for ministers. Despite his personal meeting with minister Liam Byrne, messages to say that the appeal was rejected reached Austin Mitchell when the plane had gone.

Support from Bishops and other Church leaders has been strong and consistent. Thirty-five of them backed a letter to the *Times* on the eve of the last General Election asking electors to challenge candidates to give priority to just and compassionate treatment to those seeking asylum. Several of the Bishops have regularly spoken or asked questions in the House of Lords, and have signed letters in newspapers. Our small group has had several well-prepared substantial meetings with a dozen or so leading civil servants at Lunar House, Croydon, and also in the Ministry of Justice. By and large our various points were met with considerable understanding and sympathy.

The difficulty lies at other levels. It lies above with Government ministers, desperate to convince the popular press that they are tough on immigration – more serious papers have frequently printed carefully researched articles detailing the cat-and-mouse treatment of those seeking sanctuary. And the difficulty has also lain with lower-level officials, thinking that they are implementing policy by dawn raids on families, tearing families away from communities where they have been for several years, giving schoolchildren no chance to say goodbye to friends, or loading people into Friday evening aeroplanes when there is least chance of a Court injunction to stop them.⁹

In the House of Lords in June 2009, in reply to the Bishop of Bradford, Lord Brett said that ‘the pejorative term “dawn raid” is not one that we recognise in the UK Border Agency’s activities’. The bishop had described teams of people, almost exclusively male, coming in like storm-troopers in protective jackets. Lord Brett continued: ‘No visit is made before 6.30 in the morning and it is normally preceded by seeking entry in the normal, peaceful manner of ringing the bell or knocking on the door’.¹⁰ The very next morning at 6 am in Manchester (as confirmed by the police who accompanied immigration officers) while a family was in bed there was a very loud knock on the door but by the time the father had gone downstairs, the officers had burst through the door and snapped the chain. There were about 14 officers in the house and more outside. The father was taken away in one van, the mother and five young children in another. An

8 ‘Austin Mitchell: Treatment of model family makes me ashamed to be a Labour MP’, *The Independent*, 1 February 2007.

9 M Weaver, ‘Deportee separated from breastfeeding son’, *The Guardian*, 22 May 2007; ‘Border Authority raids vicarage’, *Church Times*, 19 September 2009 and 25 September 2009; ‘Outcry’, *The Children’s Society Magazine*, Summer 2009.

10 House of Lords debate on Children in Detention Centres, Hansard, 30 June 2009.

attempt to deport them via Heathrow failed at the last minute only because the family refused to get on the plane and the officers would not force the terrified children. This is an Egyptian Coptic family, well respected in their local community but twice let down by law firms who, despite being paid up front, failed to represent the family at vital hearings. A more competent firm is now preparing a fresh application on what they believe are strong grounds.¹¹

The *Northern Echo* in November 2007¹² reported a complaint by the local MEP that a pregnant Ugandan woman with her two-year-old daughter had been so roughly treated by immigration officials trying to put her on a plane, with sustained bruising from the handcuffs, that airline staff refused to take her and made immigration officials leave the plane. The woman claims she was raped and tortured by Ugandan rebel forces. She is engaged to the father of her baby, a legal immigrant from Uganda.

These are not random examples. In the *Times* in October 2005 the respected writer Magnus Linklater listed a worrying series of unnecessarily violent police actions,¹³ and in January 2006 the Children's Commissioner, Al Aynsley-Green, described as outrageous the traumatic way in which children were rounded up for deportation without any proper attempt to explain what was going on, particularly when those children had spent several years growing up in this country.¹⁴

It is important to face the political context, particularly the persistent tabloid anxiety about migration figures. But asylum-seekers are only a drop in the ocean against the annual net inflow/outflow of migrants. Initial asylum applications in 2008 were just under 26,000. In 2008 some 590,000 migrants arrived in the UK, and 267,865 workers, students, spouses and visitors applied for an extension of their leave to remain, of whom 21,120 were refused an extension. That same year 427,000 left the UK for a year or more, 50,000 going (or returning) to Poland. The net migration figure for 2008 was 163,000.

The fact that those seeking sanctuary here, for whom the UK has a traditional concern as Iain Duncan-Smith pointed out, are now down to about 25,000 per annum is not itself a cause for congratulation, if British justice and generosity are no longer trusted internationally. It's hardly for lack of need. UK asylum figures are small by comparison with many other countries; although we are the third highest in Europe, after Sweden and France, we only receive 3% of the world's refugees; most are taken by developing countries, notably Pakistan and Iran as neighbouring countries to Afghanistan and Iraq.

11 *South Manchester Reporter*, 9 July 2009.

12 *Northern Echo*, 6 November 2007.

13 M Linklater, 'The dawning of jackboot justice. Barge in first, ask questions later: we should all be worried by the police's gung-ho tactics', *The Times*, 28 September 2005.

14 A Fearn, 'Children traumatised by asylum raids, says watchdog', *The Times*, 5 January 2006, article quoting Al Aynsley-Green; 'Immigration camps "harmful for children" say Royal Colleges', *The Independent*, 10 December 2009.

It is now very hard to be a legal asylum seeker. The Asylum and Immigration (Treatment of Claimants etc) Act 2004 made it a criminal offence subject to up to 2 years' imprisonment to arrive for an asylum interview without valid papers establishing identity and nationality or being deemed to have destroyed papers used to get here. How easily can passports be obtained in countries from which people are fleeing? How easily can they obtain travel documents from British embassies?¹⁵ In the London Review of Books, Sedley LJ described as a 'serious invasion of judicial independence' the fact that a judge is prescriptively compelled to disbelieve an otherwise credible story solely on the basis that they have fled using a false passport.¹⁶

Other pieces of legislation are designed to make asylum almost impossible, and to limit the possibilities of appeal. In 2005 the House of Lords (Lord Bingham, Lord Hope, Lord Scott, Baroness Hale and Lord Brown) declared that the package of restrictions and deprivations imposed upon asylum-seekers for failing to make their claim as soon as reasonably practical, was so severe as to amount to inhumane or degrading treatment within article 3 of the European Convention on Human Rights. In February 2009 the countrywide Convention on Modern Liberty, at which Lord Bingham was one of many notable speakers, detailed the relentless erosion of civil liberties over the last decade; many rights removed impact sharply on those seeking sanctuary.¹⁷

Asylum and net migration figures should also be put in the context of national birth rate figures. 2008 saw the biggest baby boom since 1973, and the British population is now 61.4 million. Half the increase in births came from women born outside the UK and predominantly in the London area and south-east, where the population is most dense (numerically that is).

Of course it's a complex picture. Fewer women now postpone having children until they reach 30. In the first three months of 2009 the number of births fell compared with all quarters in 2008, possibly due to the recession. And there's always a time-lag as people used to large families adjust to different economic circumstances, as happened in 20th century Britain. The *Times* welcomed the higher birth rate; so long as it can be more evenly spread across the regions, it is needed to support the growth in our elderly population, with expensive care homes, medical care, pensions and transport facilities.

Last year the Government published proposals for a points-based migration system, which again raise justice questions. Migrants gain points for being active in the community, but lose points for what the Home Secretary has described as 'an active disregard for UK values'. The *Times* commented: 'It is

15 'Asylum-seekers put at risk by law, warns top judge', *The Independent*, 2 July 2008.

16 S Sedley 'No Ordinary Law', Vol 30 *London Review of Books*, 5 June 2008, 20–23.

17 *R (Limbuella) v Secretary of State for the Home Department*; *R (Tesema) v Same*; *R (Adam) v Same* [2005] *The Times*, 4 November.

not at all obvious what that means. It should go without saying that all legal forms of dissent should be upheld as very much an expression of British values'. But when asked on the BBC Today programme whether migrants who took part in anti-war demonstrations could jeopardise their chances of qualifying for citizenship: 'Are you effectively saying to people who want to have a British passport, 'You can have one, and when you've got one you can demonstrate as much as you like, but until then don't,' the Immigration Minister Phil Woolas replied 'In essence, yes.' There is no transparency yet on how phrases such as 'integrating into the British way of life' and 'showing an active disregard for British values' are to be judicially interpreted.

The central proposal of the points system is about how skills which potential migrants may bring fit the nation's economic requirements. As the *Times* commented: 'There is no real likelihood that government will predict the future needs of the economy with any great accuracy and it is likely that this proposal eases entry for skilled at the expense of unskilled labour'. That comment is particularly relevant to those seeking sanctuary. Many are people of intelligence, skill and ability, wishing to work hard and to establish homes for their families as committed British citizens. Not all come with the specific skills which this country is reckoned to need. Sanctuary should surely be assessed irrespective of what contribution the applicant may bring. It is a matter of compassion and of mercy.

Last year the Immigration Advisory Service studied the use of Country of Origin Information, both in the Reasons for Refusals letters issued by Home Office case-owners after appeals following initial refusals, and also by Immigration Judges in second instance decision-making. The second set of findings was presented to Senior Immigration Judges last October and the final form of the report takes account of the discussion with them. With both groups a high level of inconsistency was found in the way in which Country of Origin Information was accessed, and a lack of transparency in showing the evidence relied upon in reaching decisions. The Home Office case-owners particularly 'used the sources inaccurately on a significant number of occasions to support unfounded conclusions about the credibility of a claimant or the nature of the risk they might face'.

As to credibility, following our dossier to Charles Clarke and other representations, the Home Office issued instructions which repeatedly advised that where material claimed facts could not be corroborated but 'appears to be internally credible and the applicant is credible in relation to other material facts, the decision maker should consider giving the applicant the benefit of the doubt . . . It is not enough to simply say that the event could not have happened. Any decision not to apply the benefit of the doubt to a material claimed fact that is otherwise internally credible must be based on reasonably drawn, objectively justifiable inferences. Decision makers must never make adverse credibility findings by constructing their own theory of how a particular event may have

unfolded, or how they think the applicant, or a third party, ought to have behaved . . . Claims made by an applicant that appear implausible to a decision maker may nonetheless be true, and may be plausible when seen in the context of the attitudes and conditions of the applicant's country of origin'.

The research study on Country of Origin Information found it difficult to understand the process by which Immigration Judges chose to accept the reports of one organisation over those of another. They found still persisting a tendency for Home Office decision-makers frequently to make assumptions about how people would behave in certain situations, dismissing a claimant's entire account as incredible on the basis of cumulative speculative argument. There are dangers that information may be out of date, and that it may be misconstrued. Particularly where appellants are not represented, inappropriate use of Home Office Operational Guidance Notes may go unchallenged. Since Judges can only consider the information submitted to them, it is crucial that legal representatives select high quality material.

Why should we care? Why should Bishops and others get involved? Why should Church lawyers take an interest in these issues? Obviously the Churches have a direct concern for those who come to worship in their midst, those who claim to have become Christians, but is there not a wider theology? The Hebrew Scriptures repeatedly affirm care for the alien: 'you shall love the stranger, for you were strangers in the land of Egypt . . . when you set free a slave, you shall provide for him liberally out of your flock, your threshing floor and your wine press, thus giving to him some of the bounty with which the Lord your God has blessed you. Remember that you were a slave in the land of Egypt, and the Lord your God redeemed you'. 'You shall not withhold the wages of poor and needy labourers, whether other Israelites or aliens who reside in your land in one of your towns. You shall pay them their wages daily before sunset because they are poor and their livelihood depends on them' (Deuteronomy). Exodus (23,9) tells us: 'you shall not oppress a resident alien; you know the heart of an alien, for you were aliens in the land of Egypt'. Not only slavery in Egypt is the wellspring of this theology. The roots of Jewish, Christian and Muslim faiths lie in Abraham being called out of Ur and the Israelites crossing boundaries to find the Promised Land.

In the New Testament, Jesus' words in Matthew 25: 'I was hungry and you gave me no food, I was thirsty and you gave me nothing to drink, I was a stranger and you did not welcome me, naked and you did not give me clothing, sick and in prison and you did not visit me . . . in as much as you did not do it to one of the least of these, you did not do it to me' – those words apply as much to the stranger, if not more.

In Luke's gospel, Jesus' parable of the Good Samaritan has powerful resonance about crossing over perceived boundaries except that its thrust is about our ability to receive help *from* the hated stranger, to love the person who comes to be our neighbour.

Paul's words about there being neither Jew nor Greek should temper our emphasis on national identity, and his words about being members of One Body, suffering when other members suffer, should lift our eyes beyond narrow horizons.

The Epistle to the Hebrews draws from Abraham's travelling not knowing where he was going, to remind us that Abraham's crowds of descendants, all springing from an elderly man and wife, 'one as good as dead', confessed that they were 'strangers and foreigners on the earth ... seeking a homeland', not trying to return to the land they had left behind, but desiring 'a better country, that is, a heavenly one'.

Hebrews also tells us that in offering hospitality to strangers we may be 'entertaining angels unawares'; in that sense strangers are not merely human arrivals, but messengers of the divine word and will – people who help us see the divine will in new situations.

And the Book of Revelation gives the great vision of worship by 'the multitude that no one could count, from every nation, from all tribes and peoples and languages, standing before the throne and before the Lamb, robed in white, with palm branches in their hands'. Those robed in white are 'they who have come out of the great ordeal; they have washed their robes and made them white in the blood of the Lamb. For this reason they are before the throne of God ...'

Undergirding it all is the prophet Micah's rhetorical question: 'And what does the Lord require of you but to do justice, and to love kindness, and to walk humbly with your God?' The Authorised Version has 'to do justly, and to love mercy' but the Revised Standard Versions prefer 'to do justice, and to love kindness'. Justice, kindness and mercy are none of them conspicuous in our treatment of those seeking asylum. Justice is surely the least we should do.

All of that should caution our attitudes to those disdainfully termed 'economic migrants', as if it were wrong to seek a better country, and as if in the last two centuries large numbers of British people have not sought a better life elsewhere, from Australia to the Algarve. If the terrible floods which in recent years have made homeless so many millions in various parts of the world become a regular feature, far more in future will be seeking a better homeland. Too often we have seen the desperation of that search, off the coast of North Africa, as thousands have sought to reach Spain, many drowning in overloaded boats, or struggling through the Sahara. An Oxford report published last June by the United Nations recommends a new category – 'survival migrants' – for those fleeing a combination of state failure, severe environmental distress or widespread livelihood collapse.¹⁸ There is need for the nations collectively to work out a better solution rather than to vie in building ever higher fences.

18 A Betts and A Kaytaz, *National and International Responses to the Zimbabwean Exodus: implications for the refugee protection regime* (Geneva, 2009).

Comforting ourselves that many who reach Britain must have gifts of resourcefulness and endurance may be a human reaction, not marvellously charitable, but it is one we can rightly hold for many who come seeking sanctuary. Vulnerable and frightened people have a particular claim on our compassion; they also bring great treasures of personal gifts and valuable qualities such as courage and perseverance to the country where they come to live, as well as their trust in our values and justice. Some of their journeys defy belief. Borders are man-made. Nationality and citizenship are not absolute values: like other worldly goods, they are gifts not just for our personal enjoyment but for sharing with people in need, particularly those fleeing great persecution.

The Churches have been conspicuous in supporting asylum seekers¹⁹ – Christian worshippers and those not Christian – particularly supporting those who are destitute, but support groups have been hard hit by the recession while numbers needing support have risen. A Joseph Rowntree report on Leeds, *Still Destitute*, tells of a hardship fund which had been paying £26,000 a month in small weekly cash payments, and which had to close temporarily through lack of funds.²⁰ The Bishop of Ripon and Leeds commented ‘The New Asylum Model is not working. The Government’s assertion that it is needs to be challenged as often as we can’.

One area which particularly impacts upon Church of England clergy is the marriage of immigrants and a widespread concern about sham marriages. The *Daily Telegraph* claimed last year: ‘Official figures show that the number of bogus weddings performed by Anglican priests has risen by as much as 400% in some dioceses over the last four years’.²¹ The word ‘bogus’ usually begs the question. So do the words ‘official figures’. For many years Church of England policy has been for non-British citizens to be married by ‘Common Licence’ rather than by banns, and that before a Common Licence would be granted, applicants would be asked to produce a letter from their embassy confirming that they were not already married and so were free to marry here, and that a Church of England marriage would be recognised as valid in their country of origin. A charming letter from the embassy is not easily got by asylum-seekers. How long must couples wait to be married? Many have been together for years. Some Diocesan Registries are only issuing Common Licences on production of passports, visas and other reliable forms of identity. Where clergy insist on marriage by banns, perhaps for those in their congregations, Registrars rightly advise them for their own protection to see valid identification material and an embassy letter. Of course, clergy must

19 M Doney, ‘How strangers are starved out’, *Church Times*, 23 February 2007.

20 ‘Asylum-seeker campaigns squeezed’, *Church Times*, 11 September 2009.

21 J Wynne-Jones, ‘Illegal immigrants are exploiting a legal loophole to gain British citizenship by getting married in Church of England ceremonies’, *Daily Telegraph*, 24 August 2008.

be cautious as well as pastoral, and Southwark diocese, for instance, wisely urges clergy to check that addresses exist and that people live where they say they do.

Last August the House of Lords ruled that the Government's requirements for the marriage of illegal entrants or people subject to immigration control were incompatible with articles 12 and 14 of the European Convention on Human Rights. Lord Bingham said that the right to marry under article 12 was 'a strong right' and that Government restrictions about the length of time people might be here had no relevance to the central question of whether or not the marriage was a sham. Similarly fixing the government fee at a level which needy applicants could not afford infringed their human right to marry. For the Church of England there may be a separate challenge about the exemption of Church of England marriages from the Government rules; the Divisional Court ruled that the exemption made the statutory scheme discriminatory but were the Government to try to limit the Church of England's right to undertake marriages, constitutional issues could arise.

I have only scratched the surface of matters relating to Asylum Justice. For further study I commend two booklets issued by Churches Together in Britain and Ireland: *Migration Principles* and *Asylum Principles*, statements to guide churches working on these issues. They set out succinctly principles and basic facts to help Christians and churches look at the legal, ethical and theological questions about migration, and within that, the specific issues of asylum and how we do justice to those seeking sanctuary.

Bibliographical Timeline

2005: 'Faith in Asylum', the Westminster Abbey Gore lecture by Canon Nicholas Sagovsky

14 December 2006: House of Lords debate on 'Immigration and Asylum' (Hansard col 1667–1705)

2006/7: *Migration Principles* and *Asylum Principles*, statements for Churches working on these issues, produced by the Churches' Commission for Racial Justice and published by Churches Together in Britain and Ireland, Bastille Court, 2 Paris Garden, London SE1 8ND. <<http://www.ctbi.org.uk>> email: info@ctbi.org.uk

2007: *Altogether for Asylum Justice: asylum seekers' conversion to Christianity*, a report from the Evangelical Alliance. £5. info@eauk.org

September 2007: *Refusal Factory: women's experiences of the Detained Fast Track asylum process at Yarl's Wood Immigration Removal Centre*, published by Bail for Immigration Detainees, 28 Commercial Street, London E1 6LS, <<http://www.biduk.org>>

Summer 2008: Three reports by the Independent Asylum Commission: *Saving Sanctuary*; *Safe Return*; *Deserving Dignity*. <<http://www.independentasylum-commission.org.uk>>

- September 2008: Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visits to the United Kingdom on 5–8 February and 31 March – 2 April 2008, reviewing Asylum and Immigration, and the response by HM Government.
- December 2008: *Breakthrough Britain : asylum matters, restoring trust in the UK asylum system*, a report by the Centre for Social Justice's Asylum and Destitution Working Group. £15 <<http://www.centreforsocialjustice.org.uk>>
- 2009: *The Assault on Liberty: what went wrong with rights* by Dominic Raab. £8.99, published by Fourth Estate for HarperCollins.
- February 2009: General Synod Resolution, the full text of which appears at page 160 of this issue.
- February 2009: Convention on Modern Liberty. <<http://www.modernliberty.net>>
- May 2009: *The Use of Country of Origin Information in Refugee Status Determination: Critical Perspectives*, a report by the Immigration Advisory Service, the UK's largest charity providing representation and advice in immigration and asylum law. <<http://www.iasuk.org/contact-us.aspx>>
- 30 June 2009: House of Lords questions on 'Children in Detention Centres', (Hansard col. 114–116).
- July 2009: *Asylum in Britain: a question of conscience* by the Revd Dr Anthony Harvey, formerly Canon Theologian and Sub-Dean of Westminster and chair of the Churches' Refugee Network. £10 (inc.p&p) payable to the GEORGE BELL INSTITUTE from Dr Andrew Chandler, George Bell Institute, University of Chichester, College Lane, West Sussex PO19 6PE
- 11th September 2009: 'Asylum-seeker campaigns squeezed', an article in the *Church Times* referring also to a report by the Joseph Rowntree Charitable Trust on the situation in Leeds, *Still Destitute*.