The Construction of the Hostile Environment: A Temporal Analysis of the UK's Asylum and Immigration Legislation from 1900 to 2023

AMANDA BELL WHITFIELD

The Construction of the Hostile Environment:

A Temporal Analysis of the UK's Asylum and Immigration Legislation from 1900 to 2023

Amanda Whitfield

St Cuthbert's Society

Durham University

Thesis for the degree of Doctor of Philosophy

Submitted to the School of Government and International Affairs

Durham University

2025

Abstract

The contemporary asylum regime in the UK is a harsh reality for people attempting to seek refuge in this country. Today's so-called hostile environment has developed over many years: in fact, this thesis shows that hostile environment legislation has developed over more than a century from the start of restrictions in 1905 and the Aliens Act of that year, culminating as of 2023 in the 2023 Illegal Migration Act. The thesis maps the development of the legislation in conjunction with the socio-historic context in which legislation is introduced, both in terms of domestic factors and the geopolitical position of the UK. In particular, the 1971 Immigration Act is considered as a case study as this was a pivotal moment in the UK's asylum regime development when the UK effectively moved towards Europe and away from the Commonwealth.

In addition to the development of the legislation, aspects of the law-making process, in terms of parliamentary debates and election pledges, are examined to assess levels of hostility and other factors which decision-makers consider relevant in the development of the hostile environment. Not only does this look at the content of both, but it examines parliamentary and electoral discourse and compares the two, taking account of party politics and electioneering as a factor in the hostile environment's development. From the evidence presented, the thesis argues that the hostile environment has been incrementally constructed, and this has been facilitated by the negative discourse of elite decision-makers. The thesis adopts a theoretical approach of 'temporal constructivism', which emphasises the importance of small, incremental change, to help explain the development of the UK's hostile environment.

Dedication

To my lovely mum

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Declaration

This thesis is the result of my own work. Material from the published or unpublished work of others which is used in the thesis is credited to the author in question in the text.

Amanda Whitfield

February 2025

Statement of Copyright

Amanda Whitfield

February 2025

Acknowledgements

I would like to thank my three supervisors – Dr Olga Demetriou, Dr Kyriaki Nanou, and Dr Catherine Turner – for their unwavering support, enthusiasm and expertise throughout this project.

I would also like to extend my gratitude to my examiners, Dr Elisabeth Kirtsoglou and Professor Chris Dolan, who offered constructive advice and guidance on the thesis.

I also thank members of my immediate family, especially Tillie, who helped and encouraged me throughout, as well as extended family members. In particular, I would like to thank my mum who has instilled in me the importance of education and has always supported all my endeavours.

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Introduction and Conceptual Framework

1.1 Overview

This thesis is a study of the development of UK legislation with respect to, primarily, asylum, and, to a lesser extent, immigration. It is concerned with UK legislation regarding people who have been forcibly displaced from their homes, rather than those who have chosen to leave, although it does acknowledge that there is some crossover between forced and voluntary migration. People fleeing their homes and consequently seeking international protection is an important global issue which is likely to escalate in the foreseeable future: at the World Economic Forum in March 2024, the UN High Commissioner for Refugees, Filippo Grandi, said that the number of refugees could double in the next decade[1].

Asylum seeking is a political issue which stresses 'the interdependence between domestic and international politics'[2]: it is a truly global challenge which cannot be overcome by states working unilaterally. As Betts and Collier put it, 'displacement and survival migration will be a defining feature of the twenty-first century and beyond'[3]. The question this thesis seeks to address is how the UK has sought to regulate forced migration management throughout the last century to the present day through the legislative process. In doing so, it traces the development of a 'hostile environment' that is now widely viewed as defining the UK's asylum regime. Adopting a temporal approach, the thesis critically examines the relevant legislation, parliamentary debates, and election manifestos and evidences the increasing levels of hostility that have allowed an incremental construction of the UK's hostile environment.

The thesis finds that the UK's contemporary hostile environment has been incrementally constructed over many years by both Labour and Conservative governments and this construction has been facilitated by the fact that there has been no effective opposition to the introduction of hostile measures. Moreover, while asylum policy and legislation

[1] World Economic Forum, 'The number of refugees could double in the next decade, the head of UNHCR says why', accessed 02/05/24.
[2] Emma Haddad, *The Refugee in International Society: Between Sovereigns* (CUP 2008) 2.
[3] Alexander Betts and Paul Collier, *Refuge: Transforming a Broken Refugee System* (Penguin Books 2017) 134.

may have been underpinned by racialist assumptions in the past, it did not start out as the punitive policy it has become. Asylum policy has developed largely in tandem with the UK's international alliances, marked in particular by the shift from the colonial era to European membership. The increasingly restrictive policies have parallelled increases in hostile, nationalist, and intolerant public discourse that has found expression in parliament which often exceeded electoral pledges and positions in party manifestos. The results of this incremental hostility are today to be found in the normalisation of policies that are in clear conflict with international law such as the externalisation of asylum processing and asylum provision in Rwanda.

If today, humanitarians, lawyers, and policymakers are bewildered by some of the toughest suggestions proposed to restrict asylum (and migration more widely), the route to this normalisation needs to be traced to incremental changes in law, effected and aided by an incremental entrenchment of discourses against migration in parliament. This is not unique to the UK: far right electoral proposals across Europe and the US at the current moment attest to a wider build-up of hostile environments in the Global North. If these restrictions are to be effectively contested, they must be contextually understood as incremental processes.

1.2 Purpose of the Study

This thesis critically examines the development of the UK's asylum and immigration legislation in order to better understand the UK's current attitude to issues of asylum and refugeehood. By providing evidence of increasing levels of hostility, it shows that the UK's asylum regime has in fact become more hostile over time. Additionally, the scrutiny of parliamentary debates and election manifestos provides evidence of how and why the hostile environment has developed in the way it has. The temporal nature of the research from the start of the relevant legislation to the present day, and its socio-historic context, along with the discourse analysis of the debates and manifestos, provides a unique perspective that allows us to better situate current hostile environment policies. As well as demonstrating the incremental nature of this development, the thesis also identifies key moments in the creation and normalisation of hostility, including the UK's membership of the European Union. It traces discourses that have emerged through the

parliamentary debates and that have been important in cultivating the hostile environment.

There have been several studies covering various aspects of the discourse surrounding asylum and immigration in the UK, including research on the government's anti-asylum rhetoric[4], the use of immigration metaphors[5], representations of refugees and asylum seekers in the UK press[6], and analysis of language in policy documents on refugees[7]. However, none of these studies have traced the evolution of this discourse in conjunction with the evolution of the legislation over the length of time covered in this thesis (from the 1905 Aliens Act up to the 2023 Illegal Migration Act). The UK's hostile environment for asylum seekers is a dynamic phenomenon which has neither stood still at any point nor has it suddenly materialised in its present form. This thesis examines the development of the UK's hostile environment legislation. It is an interdisciplinary project which recognises the crossover between politics and the law, and provides an analysis which is historical, contextual, and thematic. Similar approaches have been undertaken by Charlesworth, who recognises historico-legal research which contextualises the law as a legitimate methodology within socio-legal studies[8], and Leyland, who adopts a thematic approach to his contextual analysis of the constitution of the UK[9].

Adopting a mixed methods approach – incorporating quantitative elements of a content analysis as well as a discourse historical analysis – allows the thesis to evidence the increasing hostility; to connect the discourse to the development of the law; and to trace these developments along three distinct Ages of Humanitarianism, Hesitancy and Hostility. A theoretical approach of 'temporal constructivism', emphasising the

[4] Paul Statham, 'Understanding Anti-Asylum Rhetoric: Restrictive Politics or Racist Publics?' (2003) 74(s1) The Political Quarterly 163-77.
[5] Jonathan Charteris-Black, 'Britain as a Container: Immigration metaphors in the 2005 election campaign' (2006) 17(5) Discourse and Society 563-81.
[6] Costas Gabrielatos and Paul Baker, 'Fleeing, sneaking, flooding: A corpus analysis of discursive constructions of refugees and asylum seekers in the UK press, 1996-2005' (2008) 36(1) Journal of English Linguistics 5-38.
[7] Samuel Parker, 'A proud history of protecting refugees: Ambivalent Responses to Refugee Integration in Government Policy Documents' (2019) 11(1) CADAAD 20-40.
[8] Lorie Charlesworth, 'On Historical Contextualisation: Some Critical Socio-Legal Reflections' (2007) 1(1) Crimes and Misdemeanours 1.
[9] Peter Leyland, *The Constitution of the United Kingdom: A Contextual Analysis* (Bloomsbury Publishing 2021).

importance of small, incremental changes helps to explain the development of the UK's hostile environment.

1.3 Focus of the Research

This thesis argues that the UK's hostile environment for asylum seekers and refugees has been incrementally constructed by successive Labour and Conservative governments, facilitated by the discourse of elite decision-makers. Many elites are involved in the decision-making of immigration and asylum policy, including UK MPs and political parties; regional (e.g., EU) and international (e.g., UNHCR) policymakers; think tanks; and NGOs. The focus of this research is the elite discourse of UK MPs and political parties because they are the main architects of legislation in the UK. In looking at how they debate legislation in parliament, this research examines what issues these elite decision-makers consider to be important and relevant to the construction of the UK's hostile environment. It finds that concerns over, e.g., the running of the Home Office and the scarcity of resources such as housing and GP appointments have become increasingly important and normalised, while other concerns such as race relations have waned over time. The thesis acknowledges that public opinion[10] and media coverage[11] are two important factors that feed into and shape both these parliamentary debates and the policies they relate to. However, a detailed correlation between these factors and the content of legislation and parliamentary debates is beyond the focus of this research. Instead, at the centre of the study is the parliamentary and electoral discourse as part of the law-making process.

The data sources that the thesis brings together (legislation, parliamentary debates, electoral manifestos) are related procedurally in the development of policy. Legislation evolves alongside and through the parliamentary debates whereas election pledges precede the legislation. By studying the three together we can gain an understanding as to how the contemporary hostile environment has come to exist in its present form. The extensive temporal context of the study ranges across periods of government of varying length (e.g., from a short period of a Labour government in 1924 to the eighteen years

[10] Gabrielatos and Baker (n6).

[11] Anthony Heath et al., 'Contested terrain: explaining divergent patterns of public opinion towards immigration within Europe' (2020) 46(3) Journal of Ethnic and Migration Studies 475-88.

when the Conservatives were in power from 1979 to 1997). This allows us to see that hostile measures have been introduced under both centre-left and centre-right parties, and that no legislation is repealed at the start of a new government.

The temporal context is an important aspect of this study. By adopting a temporal approach, we can see that 'apparently small choices in institutional arrangements can have remarkable consequences at a later date'[12]. Furthermore, this 'incrementalist logic'[13] applies to the development of the UK's hostile environment in that it can 'gradually produce significant change in policies given sufficient time in a consistent direction of change'[14].

The analysis is undertaken in two steps: a detailed historical examination of the development of the law, and an analysis of parliamentary debates and general election manifestos that accompanied this development. The combination of these two approaches allows us to discover evidence of increased hostility and possible explanations of how and why the hostile environment has developed as it has. A doctrinal analysis of the legislation (that is, an examination of the legal provisions included in relevant Acts of Parliament) provides a temporal account of the incremental construction of the UK's hostile environment and situating this in its socio-historic and geopolitical contexts seeks to provide explanations for this development. Additionally, the content and discourse analyses of the parliamentary debates and general election manifestos look for evidence of increasing hostility in the law-making process as well as other factors which elite decision-makers deem to be relevant to the development of immigration and asylum legislation.

The contemporary hostile environment cannot be considered in isolation from its history. To provide any explanation of today's hostile environment – to the extent that it is at all possible – necessitates a historical analysis of both the legislation and the social and political contexts in which it was introduced. An examination of the debates and manifestos aids the overall analysis by providing political contextualisation to the development of the legislation.

[12] B Guy Peters et al., 'The Politics of Path Dependency: Political Conflict in Historical Institutionalism' (2005) 67(4) The Journal of Politics 1290.
[13] ibid.
[14] ibid.

1.4 Relevance of the Thesis to the Current Situation

As part of her speech to the right-wing think tank, American Enterprise Institute (AEI), in Washington DC on 26 September 2023, Suella Braverman, the British Home Secretary at that time, described illegal migration as an 'epoch-defining challenge'[15] which, according to the World Economic Forum, would become 'one of the top five global risks in the next decade'[16]. She made general statements about the international system as a whole, linking illegal migration with the global asylum framework, and critically observing that 'if you are fleeing persecution somewhere, you are entitled to make a claim for asylum anywhere; and irrespective of whether you arrived illegally, or passed through multiple safe countries along the way, a country must consider it'[17]. In one of the most controversial points of this much-debated speech, she appeared to conflate illegal migration and asylum, suggesting that the 1951 Refugee Convention should be reformed and that 'the definition of who qualifies for protection must be tightened'[18]. With regard specifically to the UK, she summed up the new regime under the Illegal Migration Act 2023 thus: 'Anyone who enters the UK illegally will be deemed inadmissible to our asylum system, and following assessment, will be detained, and swiftly removed – to their home country if that's safe, or to a safe third country if not'[19]. These suggestions have been received with consternation from human rights organisations and practitioners, including the UNHCR: 'The effect of the Act is to deny a fair hearing and to deny protection to many genuine refugees in need of safety and asylum. This is a clear breach of the Refugee Convention and undermines the United Kingdom's longstanding humanitarian tradition'[20]. If a policy is so fundamentally at odds with human rights standards it begs the question of what makes it acceptable, and the answer is to be found in the incremental way in which the erosion of rights has been normalised.

At the time of this speech, the thinking by the Conservative government on the issue of asylum could be summed up in two headline policies: the imperative to 'stop the boats'

[15] Braverman's Speech in America: Full Text, accessed 28/09/23.
[16] ibid.
[17] ibid.
[18] ibid.
[19] ibid.
[20] UNHCR UK, 'The Illegal Migration Act', accessed 07/11/24.

– referring to stopping spontaneous asylum seekers arriving into the UK by small boat – and the 'Rwanda policy' – referring to the deportation to Rwanda for asylum processing and subsequent asylum provision of all asylum seekers arriving irregularly (that is, not as part of a government refugee scheme). The first policy, as of 2024, is deemed to be so important that it is one of the Conservative government's top five pledges, and, since 1 January 2018, the Home Office issues daily statistics on the numbers arriving by small boat (no other Home Office data are provided on a daily basis)[21]. This recent development is the latest incarnation of hostile environment measures which have developed over many years, with each new piece of legislation building on previous laws and becoming more and more restrictive. To understand where we are today with respect to asylum in the UK, a historic, temporal examination of the development of the legislation in this important issue area is required.

1.5 Conceptual Framework

1.5.1 Theoretical Propositions

This thesis proposes that the UK's contemporary hostile environment for asylum seekers has been gradually and incrementally constructed over a number of years. A review of the academic literature reveals that constructivist theory – which emphasises the importance of rules and norms, identity, and representation in the construction of issues such as 'national priorities', 'security threats', etc – can help to explain the development of asylum and immigration legislation in the UK. According to Onuf, 'we *make* the world what it is…by doing what we do with each other and saying what we say to each other'[22]. In the case of the UK asylum system, the process of fashioning the hostile environment has been based on constructing refugees as security threats and migration as a national priority, overshadowing international obligations to protect refugees and skirting other economic and social issues as national priorities. This thesis originates a theoretical approach of 'temporal constructivism', which stresses the importance of incremental change, to help explain the construction of the UK's hostile environment.

[21] gov.uk, 'Migrants detected crossing the English Channel in small boats – last 7 days', accessed 02/05/24.
[22] Nicholas Onuf, 'Constructivism: A User's Manual', V Kubálková et al. (eds), *International Relations in a Constructed World* (M E Sharpe 1998) 59.

Constructivism has been important in the study of the history of nations and nationalism[23] and to the analysis of security and the process of securitisation[24]. Both of these approaches are instructive for this study as both nationalism and securitisation have been major touchstones in the construction of the hostile environment in the UK, and this has been facilitated by the negative discourse of lawmakers. Nationalism cannot operate without historical narratives[25]. Rather, it has been socially constructed through invented traditions such as 'national flags, anthems, and code [sic] of arms'[26]. These are constructed symbols suggesting membership of a club which had previously never existed as such[27], and to which outsiders are not welcome or, at least, have to earn membership. The constructivist approach to security is based on the social construction of threats which can lead to rather different understandings of security [in terms of threats to, e.g., national identity, as opposed to military threats][28]. Indeed, the issues of asylum and immigration have been securitised in this way by the UK government linking them with such threats[29].

1.5.2 Epistemological Premises

In order to understand where we are today with the UK's asylum regime, this research maps the development of relevant legislation from the start of restrictions in 1905 to the present day. A doctrinal analysis of the legislation reveals increasingly restrictive laws and a consideration of the context in which these laws were introduced begins to look for reasons for the restrictive legislation. Delving further into the legislation, a case study highlights a specific key law and demonstrates how the current regime would not be possible without the accumulation of historic legislation. Furthermore, aspects of the law-making process are examined in order to document the progression of elite discourse and to look for possible reasons for increases in hostility. The data under examination comprises:

- Relevant legislation from 1905 to today;

[23] Christian Wicke, 'Constructivism in the History of Nationalism since 1945', S Berger and E Storm (eds), *Writing the History of Nationalism* (Bloomsbury Publishing 2019) 131.
[24] Barry Buzan et al., *Security: A New Framework for Analysis* (Lynne Rienner Publishers 1998).
[25] Wicke (n23) 137.
[26] ibid.
[27] ibid.
[28] Buzan et al. (n24).
[29] ibid.

- Parliamentary debates on Bills related to asylum, immigration, and border control;
- General election manifesto pledges in respect of asylum and immigration.

The analytic methods adopted take a historic, temporal perspective and comprise a qualitative content analysis and discourse historical analysis. These are discussed in more detail in chapter two.

1.5.3 Methodological Framing

The UK's asylum regime has incorporated increasingly restrictive rules and regulations over the years. This thesis investigates the development of relevant legislation and looks for reasons as to why it has developed in this way. It considers the socio-historic context, both domestic and geopolitical, in which various pieces of legislation are introduced, as well as the discourse of the political elite in their policymaking. By carrying out an archival search into the legislative processes, parliamentary debates, and election manifestos, this research takes a historic perspective in order to account for where we are today.

The central research question is:

- Why has the UK adopted increasingly restrictive measures in the governance of asylum and immigration throughout the period 1900 to 2023?

The supplementary research questions are:

- How has UK asylum and immigration legislation developed since the start of the twentieth century, and why has it developed in this way?
- How and why has the discourse of elite decision-makers facilitated the development of the UK's hostile environment legislation for asylum seekers and refugees?

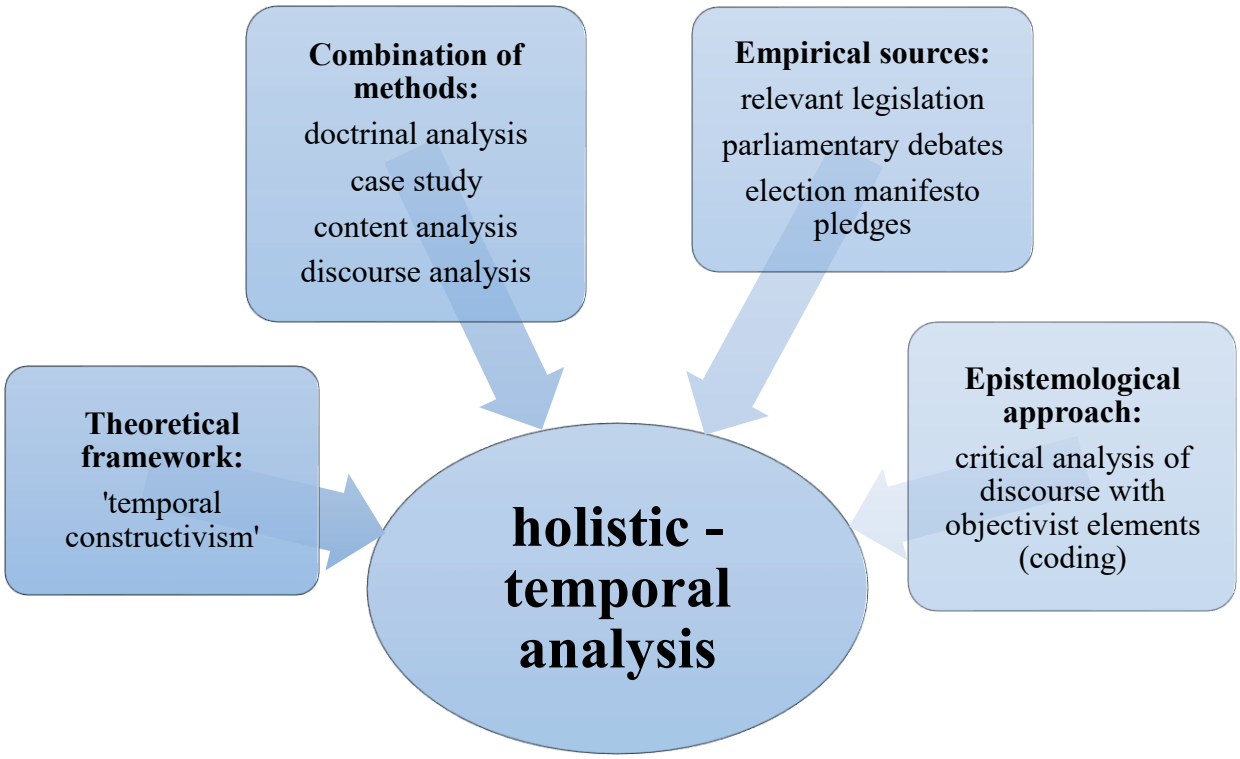
Adopting a temporal, historic approach, this research comprises the following methods:

- A doctrinal analysis of the legislation and a case study of one significant Act;
- A qualitative content analysis of parliamentary debates and manifesto pledges; and
- A discourse historical analysis of parliamentary debates and manifesto pledges.

Together, these methods allow us to assess increasing levels of hostility in the UK's asylum regime and to discover other factors which may have contributed to the temporal construction of the contemporary hostile environment. The methodology for the research is explained in detail in chapter two. Figure 1.1 below summarises the conceptual framework for this study.

Figure 1.1: Summary of the Conceptual Framework for this Study

Analysing the Incremental Development of the UK's Hostile Environment



1.6 The Hostile Environment

The notion of 'environment' in the context of the UK's hostile environment comprises both physical and social surroundings and takes account of culture, institutions, and the broader societal structures and circumstances in which a person finds themselves[30]. The terms hostile and hostility (e.g., increasing levels of hostility) are used throughout the thesis in relation to expressions of racism, xenophobia, and anti-immigration sentiment

[30] Elizabeth Barnett and Michele Casper, 'A Definition of "Social Environment"' (2001) 91(3) American Journal of Public Health 465.

as well as negative and derogatory language used to describe asylum seekers, refugees, and migrants. In accordance with the UK government's chosen terminology, the term hostile is defined here as unfriendly and/or opposing.

The first mention of the term 'hostile environment' was in 2007 when Liam Byrne, the Labour Minister for Borders and Immigration, announced, 'We are trying to create a much more hostile environment in this country if you are here illegally'[31]. However, it was in 2012 that Theresa May, the Conservative Home Secretary at the time, turned the phrase into Home Office policy when she announced her intention to create a 'hostile environment for illegal immigrants' in the UK[32]. The rationale was that conditions in the UK would be so unbearable for undocumented migrants and their families that they would leave[33]. Building on previous policies, this new hostile environment policy was enacted in the 2014 and 2016 Immigration Acts; secondary legislation (the Immigration Rules); and Home Office measures. It incorporated policies on housing (checks on 'right to rent'); health care (data sharing and checks on the immigration status of people attending for non-emergency treatment); work (increased penalties for employers who employed people without authorisation to work in the UK); social security and asylum support (introduction of no recourse to public funds, that is, no access to means-tested benefits); education (information sharing between the Department for Education (DfE) and the Home Office); data sharing (the NHS, DfE, banks, marriage registrars and local authorities having to share information with the Home Office); commercial fees (vast increases in fees for visas and their renewals); family (restrictions on entitlement to bring spouse or children); and police (joint police-immigration enforcement operations)[34].

The term 'hostile environment' has been widely used by politicians, the media and the public since May's use of the term in 2012. However, from my own research I have identified an Age of Hostility starting in the early 1990s. In fact, my overview of legislation and relevant literature has led me to divide the whole timeline under review into the following three broad periods defined by differing attitudes of both Labour and Conservative governments to the provision of asylum and the acceptance of asylum seekers:

[31] The Guardian, 'Officials launch drive to seek out illegal migrants at work' (2007), accessed 28/08/24.
[32] Frances Webber, 'On the creation of the UK's 'hostile environment'' (2019) 60(4) Race and Class 76.
[33] ibid.
[34] ibid 76-87.

- Age of Humanitarianism, 1900 to 1962;
- Age of Hesitancy, 1962 to 1993;
- Age of Hostility, 1993 to 2023.

These three ages epitomise the changing attitude of the UK government to the issues of asylum and, more generally, immigration. The first period, especially after the second world war, is characterised by an approach of benevolence and humanitarian spirit (as evidenced in the generosity of the 1948 British Nationality Act which allowed for the free movement into the UK of all citizens of the British Empire) amid an international agreement that such atrocities must never happen again. This changed somewhat in 1962 when Commonwealth immigration into the UK was considered to be too high and, the government believed, had to be controlled with new legislation[35]. The middle period, therefore, is defined by a tightening of immigration controls, the rationale being to reduce the number of Commonwealth immigrants. In the third period, the emphasis shifts to a control of asylum with increasingly harsh measures introduced to reduce the number of asylum seekers entering the UK and also to construct the UK as an unattractive destination for claiming asylum.

The thesis takes these three ages as its main temporal premise and proceeds to examine the development of UK policy within these three periods of differing governmental mindsets. Reflecting a growing reluctance to accept asylum seekers and provide asylum, my three identified ages are referred to throughout the thesis in the analyses of the development of the legislation and the related law- and policymaking.

1.7 Background Information: Legislation in the Socio-historic Context of Forced Migration

Comparatively, the UK has escaped the direct impact of forced displacement happening across the globe, as most refugee crises occur in the developing world, and the majority of people displaced remain in their immediate area, either in their own country or in neighbouring countries. Taking a broader historical perspective, however, the UK can

[35] D W Dean, 'Conservative Governments and the Restriction of Commonwealth Immigration in the 1950s: The Problems of Constraint' (1992) 35(1) The Historical Journal 192.

be seen to have been implicated, and at times caused, major forced migration movements such as the slave trade, the Irish Potato Famine, and the partition of India[36].

As a Global North state and one with a significant imperial past, the UK has been affected by displacements related to globalisation's exacerbation of global inequality. Failed or fragile states, dealing with a variety of matters such as civil wars, famine, dictatorships, or environmental disasters, generate the overwhelming majority of forced migrants today[37]. The Fragile States Index (FSI) ranks the fragility of states on a number of measures, including legitimacy, economic stability, and ability to police their own territory[38]. According to the FSI, as of 2023, 46% of states, that is, 82 states out of 179, were classified as on very high alert, high alert, alert, high warning, or elevated warning with regard to their fragility[39]. Thus, almost half of states globally are a cause for concern according to this measure, most certainly a factor in the creation of refugee situations worldwide. Most people who have been forcibly displaced travel to neighbouring countries, some travel to Europe and a very small number travel to the UK. Despite the global imbalance in state fortunes and the relatively low numbers arriving, the UK has increasingly adopted policies which restrict entry for forced migrants seeking asylum and protection.

These policies have largely been driven by a focus on numbers, which on examination, do not in fact conform to a situation of crisis, as their public presentation often alleges. According to the Home Office's own figures (from 1979 when official statistics began up to 2022), the UK is home to approximately 1% of the total refugees across the world[40]. Table 1.1 shows the top five origin countries for asylum seekers arriving in the UK for the year ended 30 June 2024.

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[36] Dariusz Stola, 'Forced Migrations in Central European History' 1992 26(2) International Migration Review 325-6; Colin Bundy, 'Migrants, Refugees, History and Precedents' (2016) 51 Forced Migration Review 5-6; Veronica Fynn Bruey and Heaven Crawley, 'The Enduring Impacts of Slavery: A Historical Perspective on South-South Migration', H Crawley and J K Teye (eds), *The Palgrave Handbook of South-South Migration and Inequality* (Palgrave Macmillan 2024) 25; Vazira Fazila-Yacoobali Zamindar, 'India-Pakistan Partition 1947 and Forced Migration' (2013) The Encyclopaedia of Global Human Migration.
[37] Alexander Betts and Paul Collier, *Refuge: Transforming a Broken Refugee System* (Penguin Books 2017) 9.
[38] Fragile States Index, 'Indicators', accessed 12/10/23.
[39] Fragile States Index, 'Annual Report 2023', accessed 12/10/23.
[40] Refugee Council, 'The Truth about Asylum', accessed 07/08/23.

Table 1.1: Top 5 Countries of Origin of Asylum Seekers in the UK, year ended 30 June 2024

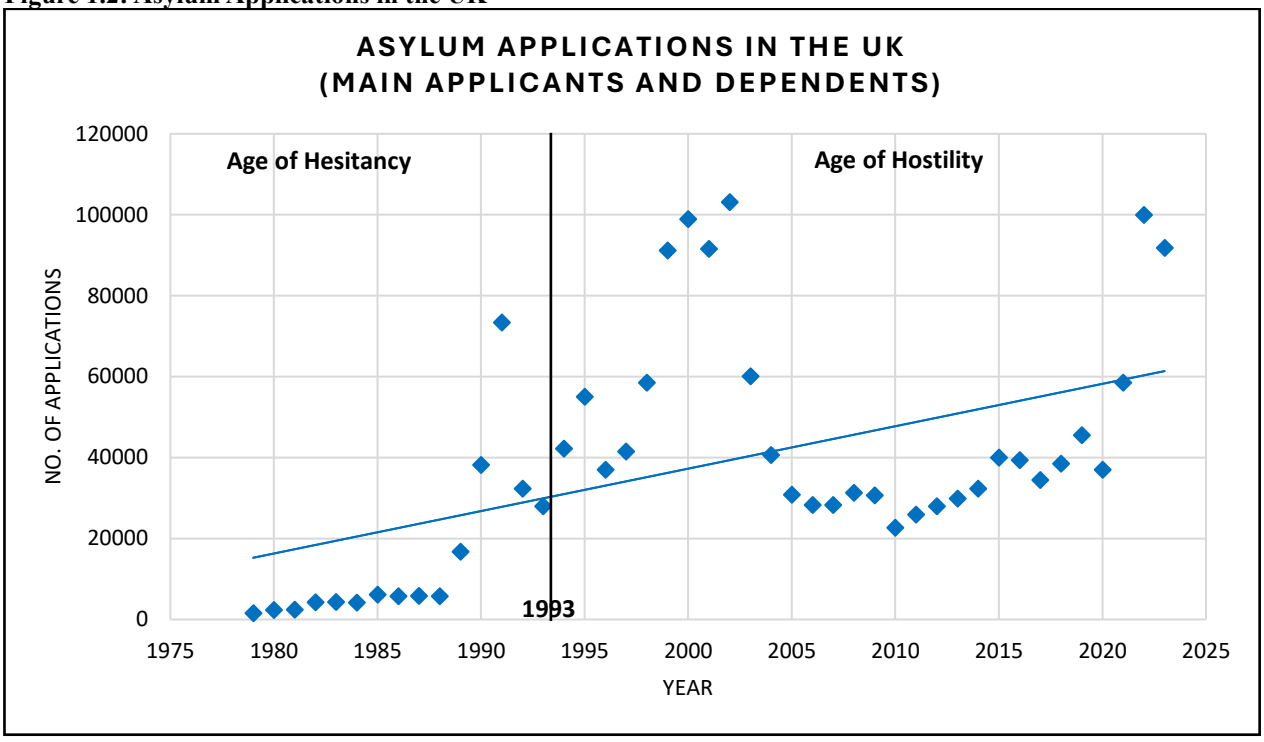
Country[41]	No. of Asylum Seekers (main applicants only)[42]	FSI Classification[43]
Afghanistan	7,479	high alert
Iran	6.014	high warning
Pakistan	5,960	high warning
Vietnam	4,368	stable
Bangladesh	4,147	high warning

In 2019, around 6% of all immigrants to the UK were asylum seekers[44]. This rose to 12% of immigrants in 2020, when overall immigration was lower than usual due to the Covid-19 pandemic[45]. In the year ending December 2022, asylum seekers and refugees, including those arriving under the Ukraine and Afghanistan schemes, made up approximately 21% of all immigrants to the UK[46]. If those arriving from Hong Kong under the British National (Overseas) Scheme are included, this increases to 26% of all immigration[47]. In 2022, there were around thirteen asylum applications for every 10,000 people living in the UK compared with twenty-two asylum applications for every 10,000 people across the EU27, ranking the UK nineteenth among the EU27+UK on this measure of asylum applications per head of population[48].

Figure 1.2 shows the number of asylum applications in the UK for main applicants plus dependents in each year from 1979 (when records began) to 2023.

[41] gov.uk. 'Asylum and resettlement summary tables, year ending June 2024', accessed 28/10/24.
[42] ibid.
[43] Fragile States Index, 'Annual Report 2023' (n39).
[44] House of Commons Library, 'Asylum Statistics', accessed 12/10/23.
[45] ibid.
[46] ibid.
[47] ibid.
[48] ibid.

Figure 1.2: Asylum Applications in the UK[49]



There has been substantial variation in the number of people applying for asylum in the UK from a low of 1,563[50] in 1979 to a high of 103,081[51] in 2002. There is also an overall upward general trend, the trendline having a gradient of just over 1,000 meaning that over the whole time period from 1979 to 2023, there has been an increase of around 1.000 people applying for asylum in the UK per year. Applications were consistently low until 1989, at which point there were sharp annual increases over the next three years, most of which can be attributed to the fall of the Berlin Wall and the end of the Cold War. Annual applications fluctuated between 30,000 and 50,000 until 1998 when they again increased rapidly, reaching a peak of over 100,000 in 2002. This was partly due to the fallout from the ethnic conflicts following the breakup of the former Yugoslavia. Subsequently, there were sharp decreases until 2005, and from then until 2020, numbers have remained fairly steady between 30,000 and 40,000. The years 2021 and 2022 have seen sharp increases with applications in 2022 reaching nearly 100,000. These increases in applications followed a dip in 2020 due to the Covid-19 pandemic. Increases in the number of applications tend to be followed by the introduction of

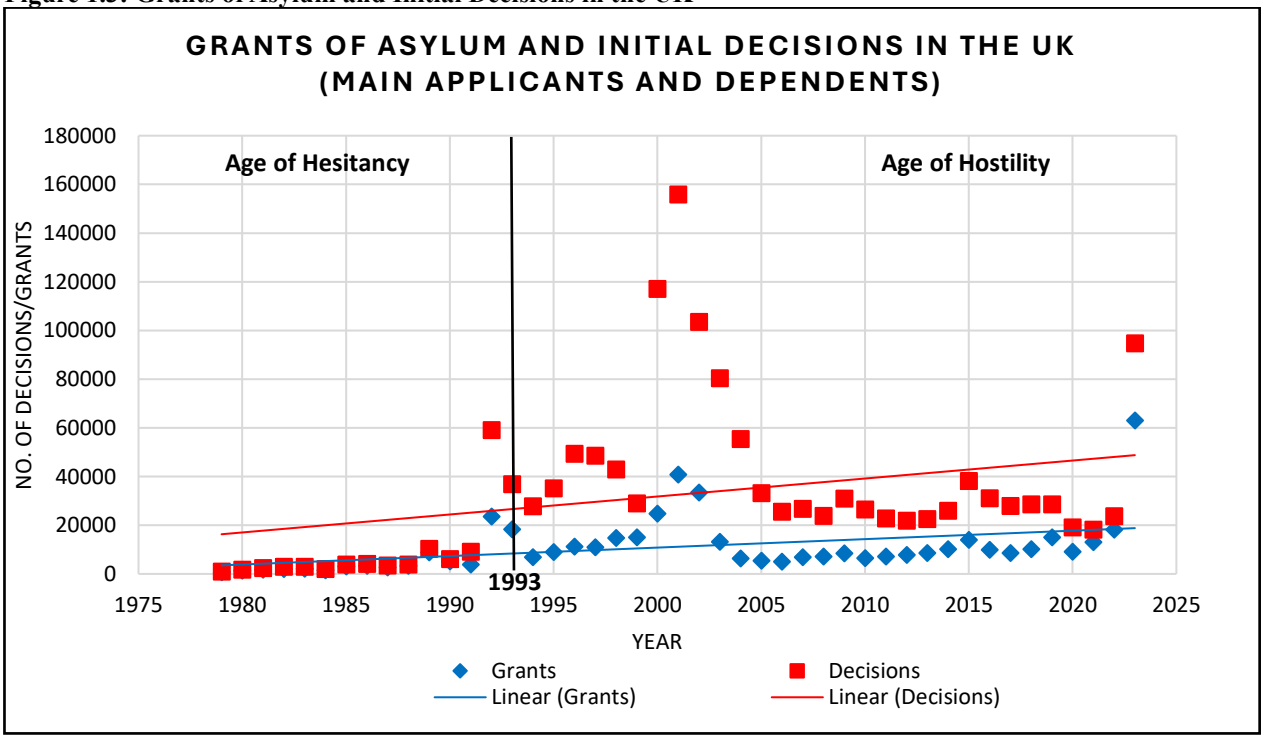
[49] gov.uk, 'Asylum and Resettlement Data Sets', accessed 29/10/24.
[50] ibid.
[51] ibid.

restrictive legislation, e.g., massive increases in 1990 and 1991 preceded the 1993 Asylum Act and similar increases in 1994 and 1995 were followed by the 1996 Act; the 2004 and 2006 Acts were preceded by a series of increases from 1997 to 2002; and the recent restrictive legislation introduced in 2022 and 2023 followed large increases in applications in 2021 and 2022. It should be noted, however, that the number of applications in recent years (2021 and 2022) cannot be described as 'unprecedented' because of the high numbers of applications in the four years from 1999 to 2002.

Figure 1.3 shows the number of grants of asylum and the number of initial decisions made in the UK each year. The grants of asylum include:

- 1979 to 2002: asylum or exceptional leave to remain (ELR);
- 2003: asylum, ELR, humanitarian protection (HP), or discretionary leave (DL);
- 2004 to 2022: asylum, HP, or DL.

Figure 1.3: Grants of Asylum and Initial Decisions in the UK[52]



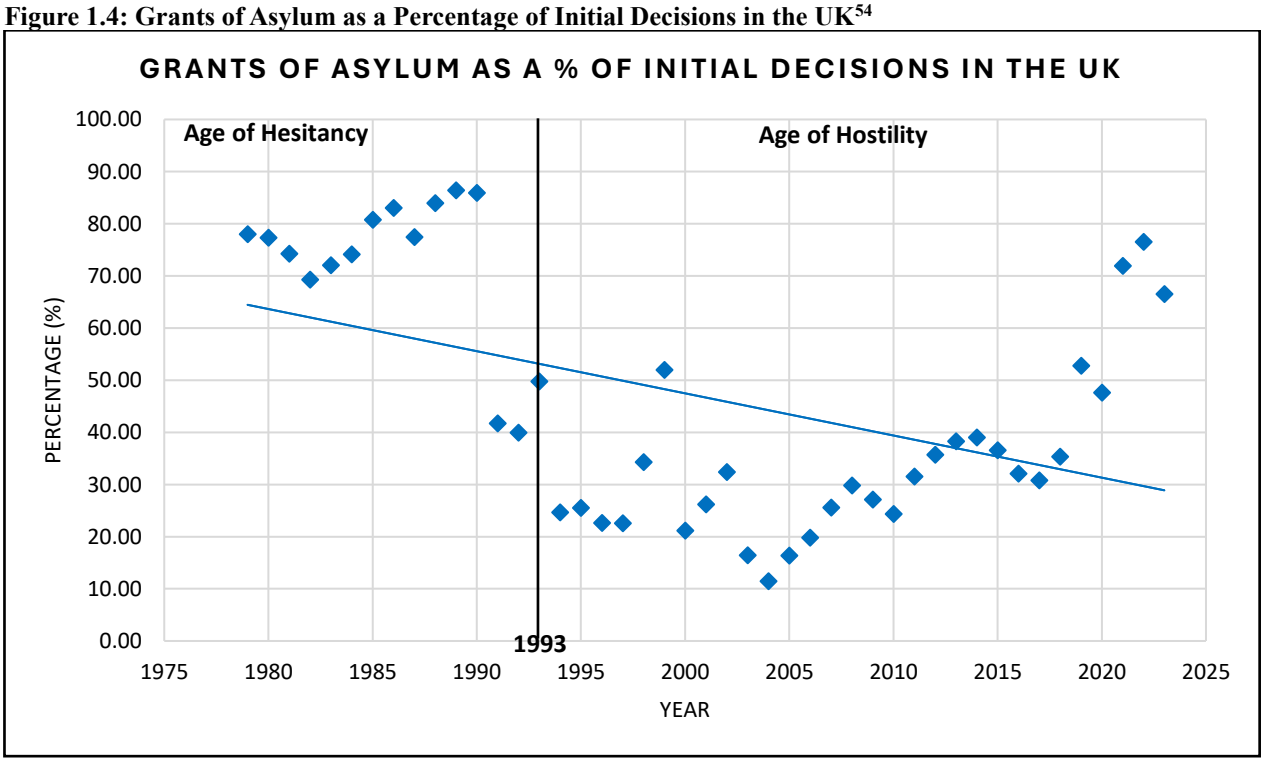
Over the whole time period, the number of grants of asylum or other protection have remained steady at around the 10,000 mark, except for small peaks in 1992, 1993, 2000, 2001, 2002 and 2023. The peak for grants of asylum in 1992/93 coincides with the aftermath of the end of the Cold War, and peaks at the start of the new Millennium

[52] ibid.

correspond with the Yugoslav wars. The trendline gradient is 350, indicating an average increase in grants of around 350 per year. The trend of initial decisions follows that of the grants of asylum, that is, reasonably steady with peaks in 1992, 2000 to 2004, and 2023. The trendline gradient is just over 700, that is, an average increase of around 700 initial decisions being made each year, although this overall trend is somewhat misleading as it does not reflect the actual picture of low decisions overall with peaks in the middle of the data and in 2023. There was a small dip in the number of initial decisions being made in 2020 due to the Covid-19 pandemic. The stark increase in grants and decisions in 2023 reflects a concerted effort by the government to reduce the asylum backlog with 'an increase in the number of asylum decision makers, and improvements in decision maker productivity[53]. Overall, what these numbers show is that those seeking asylum and those getting it have steadily risen over the years. To establish the extent to which the granting of asylum has become more restrictive, we need to look at the proportions of grants to decisions, which paint a different picture.

Figure 1.4 shows the number of grants of asylum in the UK as a percentage of the initial decisions.

Figure 1.4: Grants of Asylum as a Percentage of Initial Decisions in the UK[54]



[53] gov.uk, 'How many people do we grant protection to?', accessed 29/10/24.
[54] gov.uk, 'Asylum and Resettlement Data Sets' (n49).

The Home Office defines the asylum 'grant rate' as the 'proportion of initial decisions which resulted in a grant of protection or other leave'[55]. This is consistent with the UNHCR, which defines the global 'Total Protection Rate' as 'the percentage of substantive decisions that resulted in some form of international protection[56]. The UK's grant rate was fairly static at around 80% from 1979 to 1990. In 1991, this rate dramatically halved to 40% and fell again in 1994 to just 25%. From 1997 onwards, the number of grants as a percentage of initial decisions steadily increased except for dips in 2000, 2003, and 2004, from which point the rate has steadily increased to a current percentage of around 70%. There is a downward general trend over the whole time period with a gradient of approximately -1, meaning that there is a very slight decrease in the grant rate overall. However, this overall trend belies the reality of a fairly steady grant rate of around 80% up to 1990; a decline from then to 2004; and a steady increase thereafter. According to the Home Office:

> The overall grant rate can vary for a number of reasons, including the mix of nationalities applying for asylum, and the protection needs of those who claim asylum in the UK. It is also affected by operational resourcing and policy decisions, such as changes to the types of cases prioritised for decisions.[57]

The introduction of restrictive legislation is affected by fluctuations in asylum applications and decision-making. Rises in asylum applications in the Age of Hostility led to an asylum backlog which politicians tried to tackle with increasingly restrictive legislation. Also, a new computer system was introduced in 1998[58], which led to massive increases in initial decisions being made in 2000 and 2001. Big drops in the asylum grant rate in 1991 and 1994 could be as a result of restrictive legislation introduced in 1988 (Immigration Act) and 1993 (Asylum Act). Again, this is the cusp of a turning point – from hesitancy to hostility – in the development of the legislation. The introduction of a humane piece of legislation – the 1998 Human Rights Act – was followed by increases in the asylum grant rate in 1998 and 1999. A contributing factor to decreases in the rate in 2003 and 2004 could be 9/11 and the introduction of the 2001 Anti-terrorism, Crime and Security Act (which associated asylum seekers with anti-terrorism measures).

[55] gov.uk, 'How many people do we grant protection to?' (n53).
[56] UNHCR, *Global Trends: Forced Displacement in 2022* 35.
[57] gov.uk, 'How many people do we grant protection to? (second edition)', accessed 29/10/24.
[58] Parliamentary business, 'Government responses to the rise in applications', accessed 19/05/24.

1.8 Structure of the Thesis

The thesis comprises three parts.

- **Part I: Chapters 1 to 4: Methodology, Literature Review, and Theoretical Framework**

The introductory chapter (this chapter) sets the scene for the thesis by providing background and context, while chapter two, the methodology chapter, outlines the methods and discusses the suitability of the chosen methods. The third chapter, the literature review, considers scholarly work on UK asylum and immigration legislation, pointing to the gaps that this thesis seeks to fill. The theoretical framework chapter, chapter four, situates the work within the theory of constructivism and the examination of the development of the UK's hostile environment as proceeding from discourses on identity politics, security politics, and the politics of othering.

- **Part II: Chapters 5 and 6: Developing a Hostile Legislation**

The second part of the thesis considers the development of the legislation and its socio-historic context. Chapter five is a doctrinal analysis of UK legislation from the start of restrictions with the 1905 Aliens Act up to the current restrictive legislation that is the 2023 Illegal Migration Act. It shows how the legislation has developed incrementally over the years, thus providing evidence of increasing hostility in the legislative measures being introduced. Chapter six examines one significant law – the 1971 Immigration Act – as a case study. This was a key piece of legislation, which has been included as a case study because of its longevity in terms of the continued use of the Immigration Rules and the lasting discretion given to the Home Secretary, both of which were introduced in this Act. Chapter six demonstrates how today's restrictions would not have been possible without this historic repressive legislation.

- **Part III: Chapters 7 to 11: The Political Life of Law-making: Parliament and Elections**

The third part of the thesis focuses on the law- and policymaking through an examination of parliamentary debates on asylum and immigration Bills, and general election pledges related to asylum and immigration. As this part employs a mixed methods approach, it opens with an explanation of the coding schemes included in the iterative coding

method. Chapters eight and nine then use this scheme to examine the parliamentary debates and general election manifestos. The chapters code these documents using NVivo and a thematic coding scheme and analyse the coded data with a content analysis and a discourse analysis. Chapter ten carries out a summary temporal analysis of all the data presented in the thesis taken together, that is, the progression of the legislation, contextual information, parliamentary debates, and manifesto pledges. Evidence from all sources is brought together in this chapter. The final chapter, chapter eleven, offers conclusions about the increasing levels of hostility surrounding the UK's asylum regime as well as identifying other factors which have contributed to the temporal construction of the UK's hostile environment.

1.9 Motivations for Carrying Out This Research

My inspiration for carrying out this research came initially from a long-held interest in both British politics and foreign affairs. My academic interest in forced displacement stems from my master's degree in international policy and diplomacy: my final dissertation was entitled 'How effective is the global governance of forced migration?'. In addition, while I was reading about various aspects of the UK's contemporary asylum system, there seemed to be a lack of explanation as to how the current regime had been established. This not only piqued my interest further – I wanted to understand why the regime had developed in the way it had – but also influenced my methodology for the research.

I was aware, of course, of the UK's 'hostile environment' for asylum seekers but did not know *how* we ended up with these hostile policies and *why* this is the current state of affairs: this is what I wanted to understand. I wanted to know, not only why it has been termed the 'hostile environment' but also what it actually entails – what are these 'hostile' laws – and why is this the UK's current asylum regime. To this end, I decided that a historical investigation was the logical approach in order to determine how and why the legislation has progressed as it has. Therefore, I carried out a historical examination of the development of the legislation within its socio-historic context and with consideration of parliamentary and electoral contexts in order to understand the UK's hostile environment as it exists today. A temporal approach, showing how the legislation has developed over time, is combined with a critical analysis, which tries to

explain why the legislation has developed in this way, supplemented with an objectivist element, which considers changing levels of hostility over time.

I very much hope that the historical analysis in this thesis provides an understanding of the UK's contemporary hostile environment as an aid to a more humanitarian perspective in the future.

Chapter 2:

Methodology

2.1 Introduction

The methodology used in this research is a mixed method approach[59] which combines a critical analysis[60] – via constructivism – with objectivism[61] in the ways in which the parliamentary debates and general election manifestos are coded and analysed. This allows the research to not only make the best use of the textual material but also to take a broad perspective over a long temporal frame[62]. As such, it adopts a mixed methods approach which spans both the methodology and the analysis. Specifically, the methods used are archival research[63] (in collecting the documents), critical discourse analysis[64] (in reading the laws, debates, and manifestos), and coding-based discourse analysis[65] (in analysing the debates and manifestos in NVivo). This mixed methods approach feeds into the analysis which embraces critical approaches – discourse historical analysis[66] – as well as objectivist tools – a content analysis of changing frequencies over time[67] – to fully consider the wide range of data examined in this research. The discourse analysis considers both content and language to gauge the extent to which other factors have contributed to this construction. As the construction is based on levels of hostility, this thesis is also concerned with temporal levels of hostility in the discourse of elite

[59] Matthew J Phillips, 'Towards a social constructionist, criticalist, Foucauldian-informed qualitative research approach: Opportunities and challenges (2023) 3:175 SN Social Sciences; Johnny Saldaña, *The Coding Manual for Qualitative Researchers* (3rd edition) (Sage 2016).
[60] Elaine Barnett-Page and James Thomas, 'Methods for the synthesis of qualitative research: a critical review' (2009) 9:59 BMC Medical Research Methodology.
[61] Jane Forman and Laura Damschroder, 'Qualitative Content Analysis', L Jacoby and L A Siminoff (eds), *Empirical Methods for Bioethics: A Primer,* (JAI Press 2008) 39-62.
[62] Sandra Halperin and Oliver Heath, *Political Research Methods and Practical Skills* (2nd edition) (OUP 2017).
[63] Ishwara Bhat, *Idea and Methods of Legal Research* (OUP 2019); Halperin and Heath (n37).
[64] Norman Fairclough, *Analysing Discourse: Textual analysis for social research* (Routledge 2003); Teun A van Dijk, 'Discourse and Migration', R Zapata-Barrero and E Yalaz (eds), *Qualitative Research in European Migration Studies* (Springer 2018) 227-45.
[65] Barnett-Page and Thomas (n60); Saldaña (n59).
[66] Martin Reisigl and Ruth Wodak, 'The Discourse-Historical Approach (DHA)', J Flowerdew and J E Richardson (eds), *The Routledge Handbook of Critical Discourse Studies* (Routledge 2017) 87-121.
[67] Philipp Mayring, 'Qualitative Content Analysis' (2000) 1(2) Forum Qualitative Social Research Art.20; Daniel Turner, Qualitative Content Analysis (2021), accessed 26/09/23.

decision-makers. In order to measure this, an objectivist element was introduced into the analysis in the form of a content analysis, which quantifies hostile and non-hostile comments over time. This provides an added dimension to the study which would not have been possible with a purely qualitative analysis.

The thesis comprises an archival research, based on the analysis of historic texts[68]. The archives used in this research were all accessed online, viz., UK legislation and some EU directives via legislation.gov.uk; parliamentary debates via Hansard; and general election manifestos via online databases of party manifestos. Much of this data was accessed during the UK's Covid-19 pandemic lockdown in 2020 and 2021.

The research focuses on the progression of the legislation and two aspects of the law-making process, that is, parliamentary debates on the relevant Bills and general election pledges related to asylum and immigration. These sources allow the thesis to map the increases in hostility and restrictions in the legislation. An examination of one significant piece of legislation – the 1971 Immigration Act – emphasises the importance of historic legislation and how it has contributed to the contemporary asylum and refugee regimes. The UK's contemporary asylum regime would not be what it is without each piece of historic legislation, all of which has fed into today's hostile environment. The research then turns to the law-making process and studies debates and manifestos, examining the discourse surrounding MPs' discussions on asylum and immigration and election pledges on asylum and immigration. The focus is on both content – *what* is being discussed/pledged, and language – *how* the issue of asylum and asylum seekers are being described.

The overall research design has been chosen to provide a temporal appreciation of how UK legislation on asylum and immigration has evolved. The research methods used to facilitate this comprise a qualitative approach with quantitative elements, and the results from each part of the research contribute to a comprehensive overview of the evolution of UK asylum and immigration legislation. The temporal nature of the study from the start of the relevant legislation to the present day provides a unique perspective, and the temporality continues with the analysis of the discourse surrounding the debates and election manifestos.

[68] Bhat (n63); Mayring (n67); Halperin and Heath (n62).

Methodologically, the thesis builds on Flockhart's four key constructivist propositions that stress the importance of social facts; norms and rules; identity; and practice and action[69]. It consequently argues that the construction of the UK's hostile environment is premised on the constructions of the issue as a 'problem'; the external and internal borders; asylum seekers as undesirable 'others'; and the only viable 'solution' being the hostile environment. This assumes an approach of constructivism which is 'dependent on the formulation of substantive problems [in this case, the 'problem' of asylum provision] and on the critical reflection of posing the problem and of the "answer" [offered in the UK as the hostile environment]'[70]. Building on aspects of constructivism, which stresses the importance of change (e.g., Wendt's approach allows for a 'comprehensive analysis of change'[71]), the thesis advocates my own approach of 'temporal constructivism', emphasising the importance of small, incremental changes over a period of time, as an approach which helps to explain the development of the UK's hostile environment. This is explored further in the theoretical framework chapter.

The thesis attempts to bring three aspects – the law, the context, and the discourse – together by mapping the development of the legislation and the associated political discourse of elites in conjunction with the social domestic and geopolitical contexts. It is a critical approach which examines not only the legislation but also the law-making process. It is the amalgamation of these three aspects of the literature – the legislation, the context, and the discourse – that is the unique contribution of this thesis. In addition, the temporal nature of the study brings the analysis up to date, providing a combined historic and contemporary perspective which is lacking in the literature. Complementing the combination of different archival sources, the amalgamation of critical and objectivist approaches provides extensive evidence of increases in hostility over time. While there is the potential for tension between these two approaches, the stake of the thesis is to leverage objectivist methods in the content analysis towards the critical analysis of discourse, thus enabling the broad analytical perspective that this study provides.

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[69] Trine Flockhart, 'Constructivism and Foreign Policy', S Smith et al. (eds), *Foreign Policy: Theories, Actors, Cases* (3rd edition) (OUP 2016) 89.

[70] Friedrich Kratochwil, 'A Funny Thing Happened on the Way to the Forum: Ruminations concerning the disappearance of constructivism and its survival in the farcical mode' (2019) 3(3) European Review of International Studies 129.

[71] Friedrich Kratochwil, 'Constructing a New Orthodoxy? Wendt's 'Social Theory of International Politics' and the Constructivist Challenge' (2000) 29(1) Millennium 80.

The research utilises the following methods in its consideration of the three research questions:

- legislation: doctrinal analysis[72] and case study[73];
- parliamentary debates: content analysis[74] and discourse analysis[75];
- general election manifestos: content analysis[76] and discourse analysis[77].

The methodology has been chosen to provide a logical flow of argument in respect of the three research questions. It is a holistic approach which brings together the component parts of the overall hostile environment – that is, the legislation, the context, and the law-making – into a coherent whole. Analysis of these different elements of the hostile environment combine to provide a complete picture of its development through time. In addition, the combination of analytical methods in terms of both critical and objectivist approaches provides a robust analysis that better explains this development.

2.2 Analysis of the Development of the Legislation

Legal scholarship has historically followed two broad traditions, the first being doctrinal analysis or 'black-letter law'[78]. This method focuses heavily if not exclusively upon the law[79]: hence, this method was deemed to be most appropriate in mapping the progression of asylum and immigration legislation in the UK. While it should be noted that doctrinal legal research 'cannot provide a complete statement of the law in any given situation'[80], what it can do is answer the question 'what is the law?'. In other words, the doctrinal analysis defines and describes the legislation as it progresses over time. The second tradition, which emerged in the late 1960s, is 'law in context' which gives an extra

[72] Mike McConville and Wing Hong Chui, 'Introduction and Overview, M McConville and W H Chui (eds), *Research Methods for Law* (2nd edition) (Edinburgh University Press 2017) 1-17.
[73] Shiva Ebneyamini and Mohammad Reza Sadeghi Moghadam, 'Toward Developing a Framework for Conducting Case Study Research' (2018) 17(1) International Journal of Qualitative Methods 1-11.
[74] Mayring (n67).
[75] Ruth Breeze, 'Variations on a Theme: Party Manifesto Discourses in the UK 2010 Election' 9(2011) Culture, Language and Representation 9-30; Fairclough (n39); van Dijk (n39).
[76] Mayring (n67).
[77] Breeze (n75); Fairclough (n64); van Dijk (n64).
[78] McConville and Chui (n72) 1.
[79] ibid.
[80] Paul Chynoweth, 'Legal Research', A Knight and L Ruddock (eds), *Advanced Research Methods in the Built Environment* (Wiley & Blackwell 2008) 29.

dimension to legal studies[81]: 'In law-and-society theory, the phrase "law in context" points to the many ways legal norms and institutions are conditioned by culture and social organisation'[82]. The historical dimension of this research is equally important as 'historical legal research exposes the social transformation dimension of law and gives clues for understanding the present law'[83]. While the doctrinal analysis defines and describes the progression of the legislation, the case study of a historic law adds to the significance and consequence of historic legislation for the current law. Historical case study is regarded as a 'valuable research design suitable for addressing questions related to change, continuity, development, and evolution'[84].

In summary, the first part of the analysis examines the progression of the legislation through:

- Doctrinal Analysis: An examination of the development of UK legislation from 1905 to 2023.
- Case Study**:** An in-depth scrutiny of a key piece of legislation – the 1971 Immigration Act – and its lasting significance.

The doctrinal analysis of the legislation examines the progression of the main Acts adopted in the UK which are relevant to asylum, immigration, and border control. Doctrinal analysis shows how the legislation has progressed over time and how restrictive measures are introduced incrementally, building on previously introduced policies. By considering the development of the legislation in conjunction with the contextual information, we begin to see how and why the hostile environment has developed over time. Using the legislation.gov.uk website as a source, the doctrinal analysis examines the full texts of the original Acts. Based on shifts in governmental attitudes, a periodisation emerges in the development of restrictionism in the laws, which I have titled the Ages of Humanitarianism (1900 to 1962), Hesitancy (1962 to 1993), and Hostility (1993 to 2023). These periods are characterised by notable pieces of legislation, each one a turning point in the UK asylum and migration regimes. The descriptions and analyses of these laws also guide the analysis of the other data sources

[81] McConville and Chui (n72) 1.
[82] Philip Selznick, '"Law in Context" Revisited' (2003) 30(2) Journal of Law and Society 177.
[83] Bhat (n63) 206.
[84] Michael M Widdersheim, 'Historical case study: A research strategy for diachronic analysis' (2018) 40(2) Library and Information Science Research 151.

used (parliamentary debates and party manifestos), which furnish a more holistic understanding of political processes in these periods.

The doctrinal analysis of the laws across the entire time period is then applied in a more focused way to one key piece of legislation, the 1971 Immigration Act, which is used as a case study. This demonstrates how one important historic Act has influenced the current asylum regime. In keeping with my holistic approach, the case study is defined as 'an ideal methodology when a holistic, in-depth investigation is needed'[85]. The repercussions from the 1971 Act are still felt within the UK's asylum system today. As well as introducing significant measures such as the discretionary powers conferred on the Home Secretary, this Act was symbolic in that it marked the end of Commonwealth immigration and a move towards Europe. The detailed analysis of the content of this Act and its lasting legacy provide an important example of how historic repressive legislation has shaped the UK's contemporary asylum regime. Today's hostile environment would not be possible without the accumulation of all the historic restrictive legislation, including the highly significant 1971 Immigration Act.

In this sense, the analysis of law comprises methodological approaches which progressively focus the analysis: doctrinal analysis across the entirety of the period that enables an understanding of the long-term development of laws and case-study doctrinal analysis which focuses on a pivotal moment in this development of legislation.

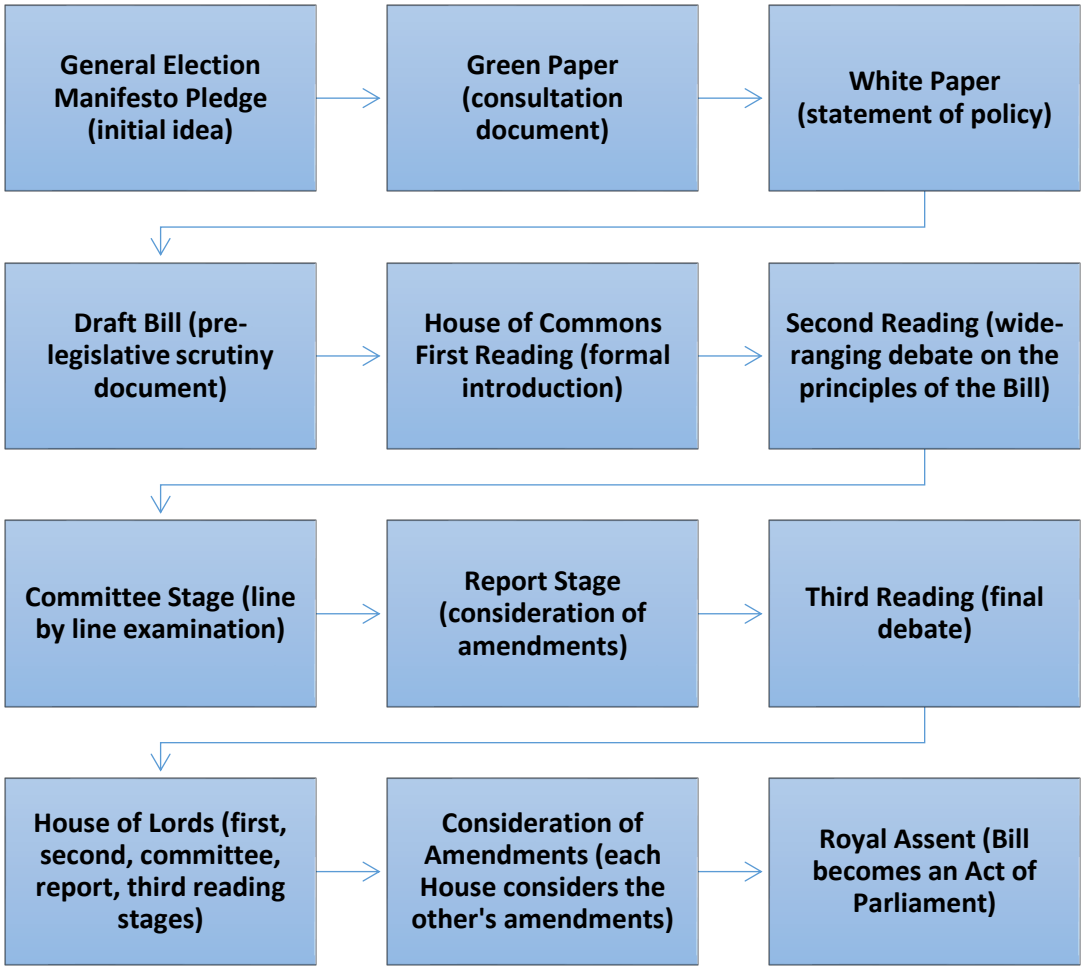
2.3 Parliamentary Debates and Party Manifestos

As part of the holistic approach, the analysis considers the entirety of the law-making process, which comprises parliamentary debates as well. It further considers electoral party manifestos as additional parts of this process, in the sense that they provide the wider policy aims that frame the law-making process (i.e., they may be considered the 'starting points' of law-making, see figure 2.1 below). In this sense, the analysis of parliamentary debates and party manifestos can be considered a continuation of the contextual analysis of laws: this part of the thesis turns its attention to internal factors driving politicians and political parties to introduce asylum and immigration policies. These internal factors are articulated well in the parliamentary debates on asylum and

[85] Ebneyamini and Moghadam (n73) 2.

immigration Bills and in the election manifesto pledges related to asylum and immigration. In addition to highlighting reasons for introducing restrictive measures, these two sources also highlight the discourse used by politicians and political parties in their debates[86] and election literature[87], which is an important aspect of this research.

Figure 2.1: Summary of UK Law-making from General Election Pledge to Royal Assent



Parliamentary debate is 'a fundamental part of democratic law-making'[88]. While debates can provide MPs with 'an opportunity to represent the views of constituents … and give voice to voters' concerns'[89], they can also be used for other purposes including party

[86] Teun A van Dijk, 'Political Discourse and Racism: Describing Others in Western Parliaments', S H Riggins (ed), *The Language and Politics of Exclusion: Others in Discourse* (Sage Publications 1997) 31-64; Helen Williams, '*Discourse Analysis: Studying Changing Discourse in British Parliamentary Debates*' (Sage Research Methods online 2014).

[87] Jonathan Charteris-Black, 'Britain as a Container: Immigration metaphors in the 2005 election campaign' (2006) 17(5) Discourse and Society 563-81; Gordon Dobson, 'The Textual Representation of a Political Paradigm Shift: A Critical Discourse Analysis of Two Election Manifestos' (2007) Vol.1 WoPaLP 99-124.

[88] Sven-Oliver Proksch and Jonathan B Slapin, *The Politics of Parliamentary Debate: Parties, Rebels and Representation* (CUP 2014) 1.

[89] ibid.

election politics: 'Rather than using floor speeches in an attempt to win political arguments, persuade opponents, or credibly signal voting intentions, … MPs use floor speeches primarily to communicate policy positions to other members within their own party, to members of other parties, and, most importantly, to their voters'[90]. This involves an element of what I refer to as 'pantomime politics', that is, politicians using ramped-up rhetoric and shock statistics to emphasise their policy positions. This incorporates, as a contributing factor, the notion of parliamentary discourse, which is an important element in the development of the legislation. As Goodman and Kirkwood point out, there are 'a range of argumentative strategies that are used to justify the harsh treatment and exclusion of refugees from the host nation'[91].

Associated with the parliamentary discourse is electoral discourse, which is examined as part of the analysis of election manifestos[92]. While election manifestos have conventionally been analysed through positivist methods, the approach here combines content analysis with the more critical version of discourse analysis. The electoral discourse, directed from political parties to the public, is significant as, according to Foucault, 'it is through discourse, that particular world views are constructed and perpetuated, and those who exert control over the discourse may determine what can be said in the public sphere and who can say it'[93].

There are many different notions and definitions of discourse in the literature, e.g., Fairclough defines a discourse as 'a particular way of representing some part of the (physical, social, psychological) world'[94], while van Dijk asserts that there are different properties of discourse including (but not limited to) language use, local and global meanings, social interaction, and political action[95]. This research draws on these different definitions and defines 'discourse' as context-relevant knowledge (text and talk) used by decision-makers in the social and political construction of a macro-topic. The macro-topic under discussion in this research is government legislation on asylum: this thesis is concerned with the discourse of asylum. However, other discourses, such as the discourses of immigration, security, or race relations, are inevitably included in

[90] ibid.
[91] Simon Goodman and Steve Kirkwood, 'Political and media discourses about integrating refugees in the UK' (2019) 49(7) European Journal of Social Psychology 1457.
[92] Charteris-Black (n87); Dobson (n87).
[93] Breeze (n75) 11.
[94] Fairclough (n64) 17.
[95] Van Dijk (n64) 228.

the research as, in practice, these discourses overlap, intertwine, and influence each other.

The discourse analysis undertaken in this research for both the parliamentary debates and the election manifestos is underpinned by the constructivist conviction that knowledge is assumed to be constructed and developed over a period of time. It is a critical-interpretive analysis that includes elements of content analysis derived through coding and thus considered more akin to objectivist perspectives, which involve an iterative approach, searching and selecting from the literature, and defining and applying codes and categories[96]. This mixed method and analysis approach coincides on the one hand with Foucault's approach, which enables a critical examination of social practices and also argues that knowledge from the past can help us understand the present reality and context[97]. At the same time, this critical-interpretivist discourse analysis is combined with an objectivist content analysis which considers frequencies of comments categorised as hostile and non-hostile. This allows a much wider breadth of data to be considered and analysed, thus furthering the scope of the holistic approach. To do so, the content analysis quantifies levels of hostility over time, adding an extra dimension to the qualitative evidence and analysis. An important result from this aspect of the analysis is the contrasting trends of hostility in the debates and manifestos, which suggest that the increasing hostility is driven more in parliament than in public. This is explored through the content analyses which quantify hostile and non-hostile comments and map levels of hostility in the debates and manifestos over time.

In pursuing the combination of methods approach, the analysis utilises Saldaña's *Coding Manual for Qualitative Researchers*[98], that allows it to straddle the tension between the more critical-interpretive and more objectivist elements. The initial coding, which further develops as the research progresses, is an important aspect of the overall method: 'the quality of research depends on the quality of its coding'[99] . The analysis develops the data through coding, categorisation, and identifying concepts to conclusions. This iterative process, progressing step-by-step and building on the results at each stage, has

[96] Barnett-Page and Thomas (n60).
[97] Phillips (n59).
[98] Saldaña (n59).
[99] Innocent Sigauke and Kenneth Swansi, '"Classic" Grounded Theory: An Extraction of Saldana's Coding Heuristics' (2020) 23(1) International Forum 5.

been used in other studies as a research method[100]: in their study, Williams and Moser summarise an iterative coding process as moving from many pages of text to segments of text to fewer and fewer codes and lastly to a handful of themes[101]. The purposes of coding, categorising, identifying concepts, and making conclusions are to provide evidence of increasing hostility over time; to show *how* the hostile environment has developed over time; and to search for evidence in the political discourse of the debates and manifestos of possible reasons for increases in hostility.

The data corpus for this part of the research is the House of Commons Second Reading debates and the election pledges in the general election manifestos of the three main UK political parties – Conservatives, Liberal and Labour – throughout the period 1900 to 2023. These two aspects comprise just a small part of the overall law-making process: Drewry identifies four stages in the UK legislative process as 'inspiration ['ideas' which may or may not be election pledges], deliberation and formulation [turning an idea into a policy document and/or a draft Bill], legitimation [the process of turning a Bill into a legally authoritative and binding Act], and execution and application [making the law work in practice]'[102]. Furthermore, each legislative stage fulfils a specific role in the process of scrutinising the content of a Bill. At First Reading, the Bill is simply presented before parliament by placing it on the Table, and if a Bill is given a Third Reading – not all pieces of legislation have a Third Reading – no further amendments can be proposed at this stage[103]. 'During the Second Reading the "principle" (also, "overall purpose" or "principles") of the Bill is discussed and voted on'[104]. The passage of a Bill through parliament from introduction (First Reading) to Royal Assent can be a very lengthy process (unless the Bill is deemed to be emergency legislation in which case it can be passed in a matter of days, see Appendix A, p.317). Consequently, I decided to limit scrutiny to the House of Commons Second Reading debates for each Bill as they are the main debate on the principles of the Bill, and they give a good 'flavour' of the parliamentary discourse surrounding the legislation. The House of Commons debate – rather than the House of Lords – was chosen as this is ultimately the decision-making

[100] Sharyn Roach Anleu and Kathy Mack, *Judging and Emotion: A Socio-Legal Analysis* (Routledge 2021).
[101] Michael Williams and Tami Moser, 'The Art of Coding and Thematic Exploration in Qualitative Research' (2019) 15(1) International Management Review 47.
[102] Gavin Drewry, 'Law-making Systems – How To Compare' (2008) 29(2) Statute Law Review 105.
[103] Constanza Ihnen, 'The analysis of pragmatic argumentation in law-making debates: second reading of the terrorism Bill in the British House of Commons' (2010) 7(1) Controversia 94-5.
[104] ibid.

House: the Parliament Act of 1911 removed from the House of Lords the power to veto a Bill, rather the Lords could merely delay a Bill by up to two years (reduced to one year under the Parliament Act 1949)[105].

General election pledges were included in the analysis to examine how the political parties were addressing the public, and how this differed from the discussions in parliament. The election manifesto data was limited to the three parties who had been in parliament throughout the whole time under consideration and who had been in government at some point in the period under review. The rationale for this was to focus analysis on the MPs/political parties who were actually introducing the legislation, excluding minority parties such as UKIP which, as a relatively recent anti-immigration party, would skew the results in an even more hostile direction in more recent elections.

For the purposes of analysing debates and manifestos, the verbatim debates were downloaded from Hansard and the manifestos in their original form were downloaded from online databases of Conservative, Labour, and Liberal manifestos. These texts were then analysed using QCA and DHA. For the **Qualitative Content Analysis (QCA)**, parliamentary debates and general election manifestos were coded and categorised in a thematic way. The data was categorised as hostile or non-hostile, and these categorisations were graphically represented. This is a broad-brush analysis which employs quantitative aspects of QCA by taking account of frequencies of data segments and looking into trends over time. For the **Discourse Historical Analysis (DHA**), the texts were analysed on a temporal basis. This qualitative analysis considered how the discourse has changed over the three identified periods, the Ages of Humanitarianism, Hesitancy, and Hostility. It involves a discourse historical analysis of the documents, incorporating considerations of textual and contextual features.

The analysis of the parliamentary and election documents comprises a content analysis and a discourse analysis, adopting the discourse historical approach. QCA has been defined as 'a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns'[106]; and 'an approach of empirical, methodological controlled analysis of texts

[105] UK Parliament, 'The Parliament Acts', accessed 24/10/24.
[106] Hsiu-Fang Hsieh and Sarah E Shannon, 'Three approaches to qualitative content analysis' (2005) 15(9) Qualitative Health Research 1278.

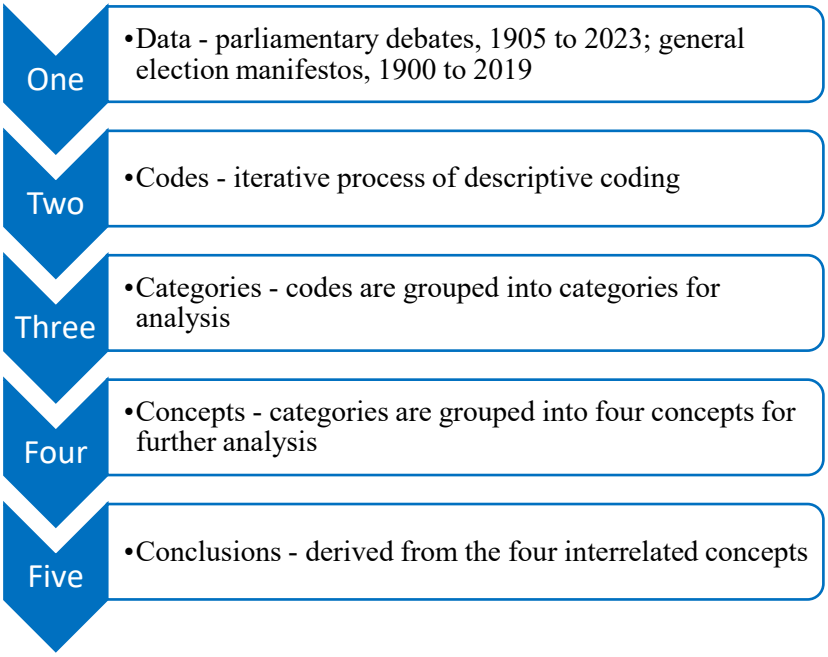
within their context of communication'[107]. The two techniques – QCA and DHA – are closely related: Hsieh and Shannon describe the analytical focus of QCA as being 'characteristics of language as communication with attention to the content or contextual meaning of the text'[108], which is similar to types of discourse analysis. In fact, both the content and the context of the data are important, and lines of definition between content analysis and other types of qualitative analysis such as discourse analysis are blurred[109]. Thus, content analysis and discourse analysis are two complementary techniques which, taken together, provide a comprehensive analysis of the parliamentary debates and election pledges.

2.4 Data Collection, Coding, and Analysis

Saldaña's cyclical approach to coding, categorising and analysis is a good fit for the analysis of the parliamentary debates and election manifestos. Categorising the coded data as 'hostile' or 'non-hostile' allowed a tracking of levels of hostility over time. This introduced a quantitative element to the analysis, which, as Saldaña says, supports the qualitative analytic results: 'Quantity corroborates quality, and vice versa'[110]. My coding scheme was simultaneously inductive and deductive in that I coded the data using codes which were derived and revised inductively from the data, then deductively assigned the hostile/non-hostile categories to the coded data. Adapted from Saldaña's streamlined codes-to-theory model for qualitative inquiry[111], the data collection, coding, and analysis of both the parliamentary debates and the general election manifesto pledges follow this step-by-step process:

[107] Mayring (n67).
[108] Hsieh and Shannon (n106).
[109] Turner (n67).
[110] Saldaña (n59) 27.
[111] ibid 14.

Figure 2.2: Step-by-Step Process of Data Collection, Coding, and Analysis of Parliamentary Debates and General Election Manifestos



Saldaña defines a code in qualitative research as 'most often a word or short phrase that symbolically assigns a summative, salient, essence-capturing, and/or evocative attribute for a portion of language-based or visual data'[112]. He goes on to propose that 'the portion of data coded during first cycle coding processes can range in magnitude from a single word to a full paragraph, an entire page of text or a stream of moving images'[113]. Vogt et al. expand on Saldaña's description with their definition of a code as a 'researcher-generated construct that symbolises or "translates" data[114], and Charmaz describes coding as the 'pivotal link between collecting data and developing an emergent theory to explain these data'[115]: 'through coding, you *define* what is happening in the data and begin to grapple with what it means'[116]. For this part of my research, I have used a descriptive thematic coding scheme based on recurrent language, ideas and issues running through the parliamentary debates. Saldaña proposes many different types of codes, including structural coding ('a content-based or conceptual phrase representing a topic or inquiry'[117]); in vivo coding (using the 'actual language found in the qualitative

[112] ibid 4.
[113] ibid.
[114] W Paul Vogt et al., *Selecting the Right Analyses for Your Data: Quantitative, Qualitative and Mixed Methods* (Guilford Press 2014) 13.
[115] Kathy Charmaz, *Constructing Grounded Theory* (2nd edition) (Sage Publications Ltd 2014) 113.
[116] ibid.
[117] Saldaña (n59) 84.

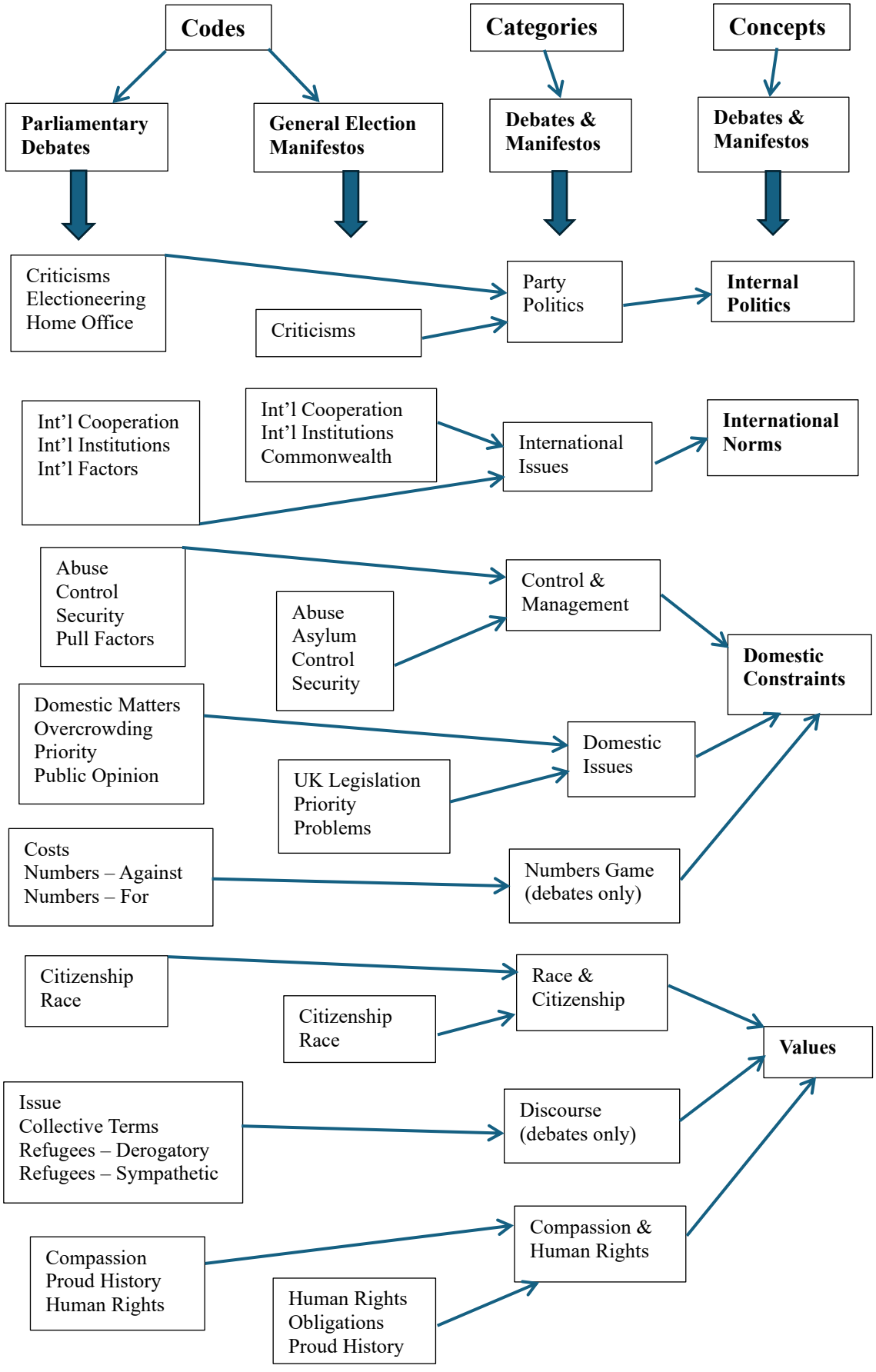
data record'[118]); process coding ('using gerunds ("-ing" words) exclusively to connote action in the data'[119]); and descriptive coding ('also called "topic coding" [which] summarizes in a word or short phrase the basic topic of a passage of qualitative data'[120]). With descriptive coding, the text is summarised using descriptive labels which in turn are categorised thematically into categories of related descriptive codes. Not only is 'description the foundation for qualitative inquiry'[121], but 'descriptive codes from data collected across various time periods and charted in matrices are essential for assessing longitudinal participant change'[122]. Descriptive codes can subsequently be further analysed with a thematic analysis[123].

This research identifies twenty-six codes for the parliamentary debates and seventeen for the election manifestos, which are within the range that Forman and Damschroder suggest as the norm[124]. They are descriptive codes, which not only give a flavour of the debates and the parties' election pledges with respect to asylum and immigration, but they also organise the debates and manifestos into a coherent order which takes account of the temporal nature of the data. The data segments coded in the parliamentary debates are verbatim quotes; the election pledge data segments are direct quotes from the manifestos. The coded data was then categorised by collecting together related codes to organise the data for further analysis. As Saldaña points out, descriptive coding – also called 'topic coding'[125] – is useful for longitudinal research[126]: this applies to this project where qualitative data is considered over a period of time. Moreover, 'each stage of the coding process progressively integrates the emergent themes acquired during data collection and continually refines the themes culminating in theory development and the creation of meaning'[127].

The coding tree below shows how the codes, categories, and concepts for both the parliamentary debates and the general election manifestos are related.

[118] ibid 91.
[119] ibid 96.
[120] ibid 88.
[121] ibid.
[122] ibid.
[123] ibid 90.
[124] Forman and Damschroder (n61) 53.
[125] Saldaña (n59) 102.
[126] ibid 105.
[127] Williams and Moser (n101) 54.

Figure 2.3: Coding Tree Showing the Relationship Between the Codes, Categories, and Concepts in the Parliamentary Debates and General Election Manifestos



Complementing the code-based content analysis, parliamentary debates and election manifestos are also analysed using discourse analysis. This allows the study to not only evidence incremental hostility, but to explain *why* this has been the case. What factors have influenced the development of the hostile environment? The examination of debates and manifestos considers internal factors in terms of what issues politicians and political parties associate with asylum and immigration.

The encompassing historical approach that guides the application of the various methods and their combination, allows a strong temporal dimension to be incorporated into the analyses. According to Halperin and Heath, 'analysis becomes *temporal* by situating events in their historical and cultural contexts, taking into account related series of events that unfold over time, and thinking explicitly about timing and sequence'[128]. They add that, 'there are two forms of temporality. Temporality can be understood in terms of 1) a broad historical (time as context); and 2) the sequential active unfolding of social action and events'[129]. The discourse analysis of the debates and manifestos takes account of temporality, both in terms of time as context (e.g., some descriptive language used to describe refugees in 1905 might be considered inappropriate language for 2023) and as a sequence of events (e.g., the build-up of restrictions in terms of access to welfare benefits over time).

The research carried out here is archival textual analysis: it studies verbatim accounts of parliamentary debates (downloaded from Hansard) and of general election manifestos, downloaded in full in their original format, whether that be a short statement of address or a multi-page document. Halperin and Heath state the advantages of carrying out textual analysis:

> Textual analysis is based on the analysis of archival data or documentary records, such as speeches, policy documents, or media reports, to do with what people or institutions or organisations have actually done (or produced).
>
> Researchers … can study past policy positions as they were recorded at the time. Once recorded, texts do not change.[130]

[128] Halperin and Heath (n62) 16.
[129] ibid.
[130] ibid 17.

2.5 Qualitative Content Analysis (QCA)

As a qualitative method, QCA is concerned with 'how people understand, experience, interpret, and construct the social world'[131]. It is a 'data reduction and sense-making effort that takes a volume of qualitative material and attempts to identify core consistencies and meanings'[132]. It undertakes 'subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns'[133]. It is, in short, a 'systematic text analysis' whereby the interpretation of results can include quantitative steps of analysis, such as looking at frequencies[134].

Mayring summarises QCA as:

> procedures of systematic text analysis which try to preserve the strengths of content analysis (e.g., step models, category led) to develop qualitative procedures (e.g., inductive category development, summarising) which are methodologically controlled, and can be combined with other qualitative procedures.[135]

Miles and Huberman also refer to QCA as 'systematically categorising textual data in order to make sense of it'[136]. They go on to say that 'there are many ways to go about interpreting data, but almost all will include re-organising it, writing descriptive and interpretive summaries, displaying key results, and drawing and verifying conclusions'[137]. In political science, QCA has been applied to the UK's political military discourse where it has been combined with quantitative analysis while acknowledging that in the coding process there is 'some amount of subjectivity'[138]. This mixed methods application of QCA has also been applied to investigate discursive legitimation strategies employed in State of the (European) Union Addresses[139]. This approach applies

[131] Tauhid Hossain Khan and Ellen MacEachen, 'Foucauldian Discourse Analysis: Moving Beyond a Social Constructionist Analytic' (2021) 20 International Journal of Qualitative Methods 1.
[132] Michael Q Patton, *Qualitative Research and Evaluation Methods* (Sage Publications 2002) 453.
[133] Hsieh and Shannon (n106).
[134] Mayring (n67).
[135] ibid.
[136] Forman and Damschroder (n61) 39.
[137] ibid 56.
[138] Silvie Janicatová and Petra Mlejnková, 'The ambiguity of hybrid warfare: A qualitative content analysis of the United Kingdom's political-military discourse on Russia's hostile activities' (2021) 42(3) Contemporary Security Policy 318.
[139] Pamela Pansardi and Franceso Battegazzorre, 'The discursive legitimation strategies of the president of the commission: a qualitative content analysis of the State of the Union Addresses (SOTEU)' (2018) 40(47) Journal of European Integration 1-19.

Mayring's definition of systematic analysis, whereby the qualitative and the quantitative aspects represent two distinct analytical steps: 'assignment of categories to text as qualitative step, working through many text passages and analysis of frequencies of categories as quantitative step'[140]. These studies have provided useful templates for the QCA analysis followed here consisting of the coding of the content of the speech transcripts, based on a coding scheme that involved both a deductive and an inductive process[141]. Specific categories resulted from the analysis and identification of significant recurrent elements in the speeches[142]. This is similar to the methodology used in the Manifesto Project [a comparative content analysis of parties' election manifestos covering over 1,000 parties from 1945 until today in over 50 countries on five continents[143]], the main difference being in the coding unit definitions. Unlike the Manifesto Project, which uses quasi-sentences in its study, the coded data segments in the latter example and here range from a single word to a complex sentence or short paragraph.

The content analysis of the parliamentary debates and election pledges accordingly takes a reductive approach where data segments are coded, according to a clearly defined codebook, and counted. The codes in the codebook are developed inductively from the data and describe, as well as summarise, the content of the data corpus. The coding scheme thus acts as a translation device that organises data into categories[144]. In this project, QCA is a rudimentary analytical tool providing a springboard to a more detailed DHA. The approach used accords with Hsieh and Shannon's 'conventional' method in that coding categories are derived from the data (as in an inductive approach)[145]. The codes are initiated from an initial read-through of the debates and manifestos and updated as the coding progresses. The coding process uses inductive reasoning as the codes emerge from a detailed examination of the debates and manifestos, and the purpose of the coding is to reorganise the data in order to facilitate analysis and interpretation. The advantage of adopting the conventional approach to content analysis

[140] Philipp Mayring, *Qualitative Content Analysis: Theoretical Foundation, Basic Procedures and Software Solution* (SSOAR 2014) 10.
[141] Pansardi and Battegazzorre (n139) 8.
[142] ibid 9.
[143] Manifesto Project, accessed 27/09/23.
[144] M Scott Poole and Joseph P Folger, 'Modes of Observation and the Validation of Interaction Analysis Schemes' (1981) 12(4) Small Group Behaviour 477.
[145] Hsieh and Shannon (n106) 1279-80.

is the ability to gather information without 'imposing preconceived ideas or theoretical perspectives'[146]. In accordance with this, the data corpus – second readings of parliamentary debates and general election pledges related to asylum and immigration – was coded according to detailed codebooks, incorporating a definition of each code, keywords, and examples of coded data segments. The coding breaks down the data into similar themes across the parliamentary debates and election manifestos and organises the data for further analysis. Creating and adhering to a rigorous coding scheme enhances the trustworthiness and validity of the study: 'The development of a good coding scheme is central to trustworthiness in research using content analysis'[147].

The coding thus proceeds as follows:

- Inductively code the data corpus, which is refined thorough subsequent iterations of coding;
- Categorise the coded data for further analysis (discourse analysis);
- Re-categorise the coded data as hostile or non-hostile to consider frequencies of these categories and trends over time; and
- Present these hostile/non-hostile categorisations graphically as actual frequencies, relative frequencies, and weighted averages to show trends with respect to tendency to hostility over time.

This sets the analytic ground for a more in-depth DHA.

2.6 Discourse Historical Analysis (DHA)

Current UK discourse is a 'continuation and recontextualization of existing discourses that have been present in the national public sphere for more than a century and that continue to this day'[148]. One example that fits this definition is the discourse surrounding the modern phenomenon that is the hostile environment. This has developed over time – more than a century, in fact – into today's discourse of hostility and animosity. Political discourse is deliberately constructed to portray the others, in this case, non-citizens, as a threat to the in-group's, that is, citizens', way of life, and this political discourse

[146] ibid 1279.
[147] ibid 1286.
[148] Samuel Bennett, 'New "Crises", Old Habits: Online Interdiscursivity and Intertextuality in UK Migration Policy Discourses' (2018) 16(1-2) Journal of Immigrant and Refugee Studies 140.

undergoes constant historical and social change as a result of political practices. Discourse analysis is an interpretive approach which tries to explain such historical and social change by recourse to political factors. It takes a constructivist perspective by trying to link an analysis of political discourse and public policy with historical shifts and the evolution of such policy. Policy discourses are inherently social, as policymakers constantly attempt to convince political opponents as well as the general public of the sense, morality, and legitimacy of their policies[149]. 'Discourse encompasses both a set of policy ideas and values and an interactive process of policy construction and communication'[150].

As an approach to understanding political phenomena, discourse analysis, as well as being interpretive, is also constructivist: it assumes that the meanings which people attach to their actions are socially and discursively constructed[151]. The aim of discourse analysis, therefore, is not only to search for meanings within discourse, but to 'uncover how discursive practices construct meanings through the production, dissemination, and consumption of various forms of texts'[152]. Moreover, the belief that meanings are discursively constructed is based on the fundamental constructivist assumption of discourse analysis: that the purpose of language and discourse is action and function in that 'when we speak (or write), we do so, not only in order to say something, but also to *do* something'[153].

DHA is a version of critical discourse analysis, which critically analyses the language use of those in power who have the means and opportunities to improve conditions.[154] Reisigl and Wodak – authors of the DHA – define their method as 'a context-sensitive theory that follows a complex concept of social critique and focuses on the historical and political dimension of discursive action'[155]. DHA was 'specifically devised for an interdisciplinary study [by Reisigl and Wodak] of post-war anti-Semitism'[156], and the distinctive feature of this approach is 'its attempt to integrate systematically all available

[149] Peter Burnham et al., *Research Methods in Politics* (2nd edition) (Palgrave Macmillan 2008) 257.
[150] Vivien A Schmidt, *The Futures of European Capitalism* (OUP 2002) 210.
[151] Halperin and Heath (n62) 336-7.
[152] ibid 337.
[153] ibid.
[154] Reisigl and Wodak (n66) 88.
[155] Martin Reisigl and Ruth Wodak, *Discourse and Discrimination: Rhetorics of Racism and Antisemitism* (Routledge 2001) xii.
[156] Norman Fairclough et al., 'Critical Discourse Analysis', T A van Dijk (ed), *Discourse Studies: A Multidisciplinary Introduction* (Sage Publications Ltd 2011) 364.

background information in the analysis and interpretation and of the many layers of a written or spoken text'[157]. Graham et al. take a discourse historical approach in their study of George W Bush's 'war on terror' in order to, they say, 'take account of generic similarities and particular differences [that] are expressed in Bush's (2001) declaration of a 'war on terror'; and the historical character of Bush's speech'[158].

According to Reisigl and Wodak, discourses are generated through a variety of 'genres' – the way language is used – and 'texts' such as debates, interviews, speeches, manifestos and so on[159]. As well as considering the intertextual and interdiscursive relationships between texts, genres, and discourses, most importantly, the DHA also takes account of how these texts, genres and discourses change in relation to socio-political change.[160] Intertextuality looks at how texts are linked to other texts, both in the present and in the past (e.g., one parliamentary debate might follow on from, be related to and refer to another). Intertextuality is an important concept in this research. The concept of intertextuality requires that 'we understand texts not as self-contained systems but as differential and historical, as traces and tracings of otherness, since they are shaped by the repetition and transformation of other textual structures'[161]: for this study, the difference and history manifest themselves in the incremental historical progression of hostility, which builds and expands on previous texts. Texts – in the form of laws, debates, and manifestos – are connected temporally, and this notion of texts building on previous texts supports the incremental nature of the construction of the hostile environment. Interdiscursivity considers how different discourses are linked to each other.[162] This has consequences for this research as, for example, the discourses on asylum or refugees will also refer to discourses on immigration, finances, home affairs, race relations, party politics, security, and so on. The significance of the socio-political and historical context is an important element of the DHA in relation to this examination of the development of the hostile environment.

[157] ibid.
[158] Phil Graham et al, 'A call to arms at the end of history: a discourse-historical analysis of George W Bush's declaration of war on Terror' (2004) 15(2-3) Discourse & Society 202.
[159] Reisigl and Wodak (n66) 90.
[160] ibid.
[161] Maria Jesús Martinez Alfaro, 'Intertextuality: Origins and Development of the Concept' (1996) 18(1/2) Atlantis 268.
[162] Reisigl and Wodak (n66) 90.

In this research, the main topics of the discourse are identified in the coding: the descriptive codes are the discourse topics. The results of coding the data are interpreted within the social, historical, and political contexts of the discourse(s) under consideration, and the overall interpretation derives from descriptions of the discourse on asylum in respect of:

- Political rhetoric of elite decision-makers, e.g., how the issue of asylum and asylum seekers themselves are represented;
- Contradictory claims made due to political or ideological orientation, e.g., the 'proud history' rhetoric versus the justification of repressive measures;
- Main topics of discussion, e.g., other factors that decision-makers associate with asylum provision;
- Aspects of historical change, such as change in language use over time or systematic and incremental change in restrictive measures; and
- Overlaps (contradictory or complementary) with other discourses, e.g., discourses on security, internationalisation, or human rights.

Different aspects and functions of political discourse can be distinguished, including legislating, self-presentation, manufacturing public opinion, developing internal party consent, advertising and vote-garnering, governing, controlling, and expressing oppositional (or internal) dissent[163]. Added to this might be the construction of collective desirable in-groups (e.g., citizens) and undesirable out-groups (e.g., refugees and asylum seekers, or, more generally, non-citizens). Construction of 'the other' can take place through prejudiced and discriminatory discourse, negative presentation, and exclusion. An analysis of political discourse in conjunction with other approaches – notably, for this project, the doctrinal analysis of the legislation – can also highlight gaps between what a society claims to be, such as considerate, caring, or compassionate, and what it actually is. For example, in the parliamentary debates there is a tendency to shift from expressing and declaring compassion with refugees and asylum seekers to attempts to justify increasingly restrictive measures. Similarly, depicting asylum seekers in

[163] Reisigl and Wodak (n66) 36.

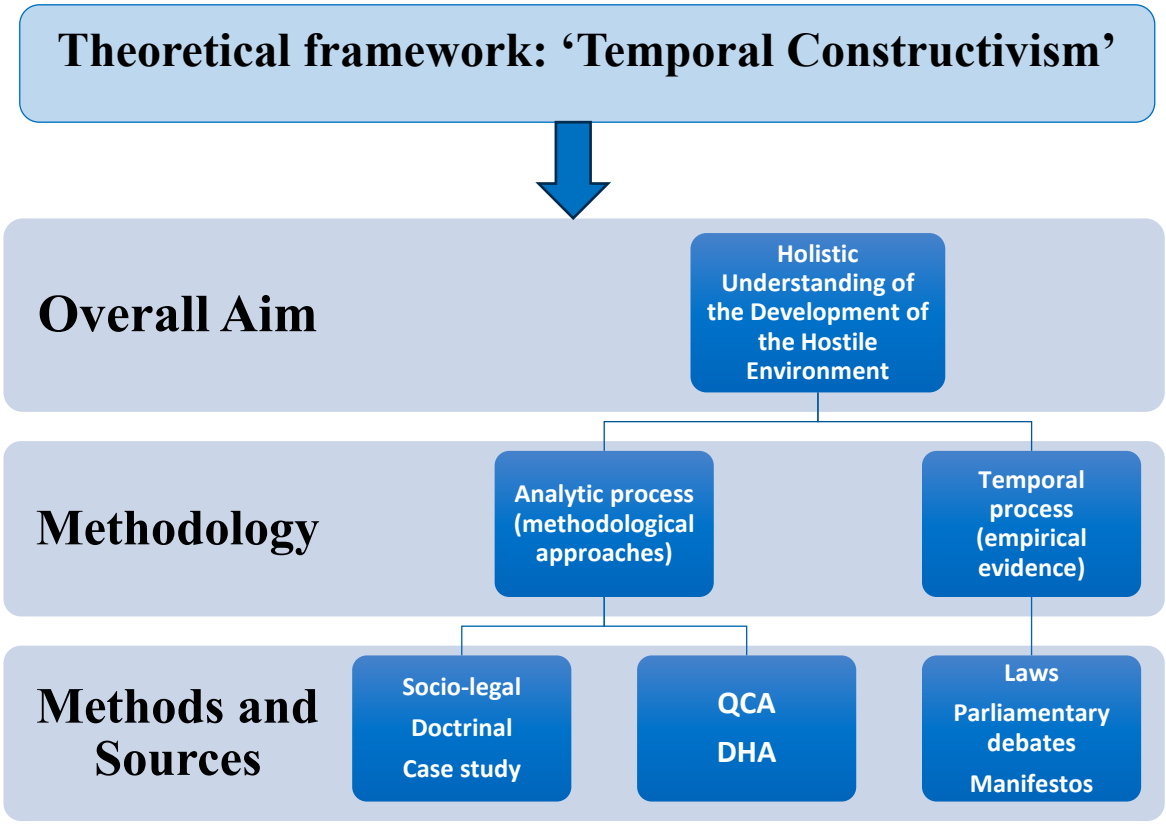
negative terms might give way to declaring economic reasons for rejecting asylum claims, such as costs or uncontrollable numbers of refugees.

In trying to establish *why* the legislation has become more hostile and restrictive over time, this part of the research considers how the political discourse surrounding refugees and asylum seekers has changed through time and how it has influenced law-making. Taking a historic approach, the discourse analysis studies the use of language, in particular, how this creates meaning, and observations are made in relation to time to provide a chronological account. It is a detailed analysis, examining how meaning is created through, e.g., use of assertions, metaphors, persuasions, and rhetoric. This part of the research employs aspects of the DHA, to firstly organise categories from the data corpus into four interrelated concepts (internal politics, international norms, domestic constraints, and values) for both the parliamentary debates and the general election manifestos. It then compiles the coded data into detailed descriptive chronological summaries and uses these to derive observations, interpretations, and conclusions. This then furnishes the thesis' overall conclusions obtained from the coding, categorising, and analysis.

2.7 Summary

A big stake in this research is the various methods it adopts, all of which contribute to the gathering of evidence required to answer the research questions. While there is the potential for tension within the methodological approaches – epistemologically, the different forms of analysis, including the critical analysis of discourse, are largely interpretive augmented with objectivist elements in the content analysis part – these aspects, in fact, contrast and leverage their complementarities to provide the overall holistic approach of this study. Indeed, the holistic approach adopted in this research effectively combines constructivist theory and discourse analysis with objectivist elements to offer a comprehensive holistic understanding of the incremental development of the UK's hostile environment. This is outlined in the schema in Figure 2.4 below.

Figure 2.4: Schematic Outline of Methodological Approach



Chapter 3:

Literature Review: Theoretical Background and Thematic Approaches

3.1 Introduction

This review identifies gaps in the literature in respect of the development of the UK's asylum and immigration regimes. The broad approach of this thesis means that it addresses a number of themes in the relevant literature associated with the history of UK policies on migration and asylum as well as the theoretical assumptions underpinning this development. These themes are shown to have had specific influence in the shaping of asylum over the years. The review identifies relevant literature in terms of: 1) theoretical framing (constructivism and discourses on refugees, and political discourse and rhetoric); 2) historical progression (overview of the development of the hostile environment, and the politics of the hostile environment); and 3) emerging themes (security and the international dimension, immigration and race, and UK party politics). The review considers the theoretical literatures that frame the holistic approach of the research and guide the way in which the different analyses and methodologies are combined to drive the overall conclusions. These are based on constructivism and, more specifically, discourse analysis.

3.2 Constructivism and Discourses on Refugees

Constructivism has been a key theoretical lens through which much of the study of the development of UK policy on asylum and immigration has been analysed, and the one this thesis adopts. Constructivism is an approach to social analysis that asserts the following:

> (a) human interaction is shaped primarily by ideational factors, not simply material ones; (b) the most important ideational factors are widely shared or "intersubjective" beliefs, which are not reducible to individuals; and (c) these shared beliefs construct the interests and identities of purposive actors.[164]

[164] Martha Finnemore and Kathryn Sikkink, 'Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics' (2001) Vol.4 Annual Review of Political Science 393.

Under this lens, identity politics and citizenship have emerged as two major concepts that define the construction of these policies. Within the politics of identity, not only do 'the historical, political, and cultural contexts provide the basis for recognizing certain classes of identities as valid political actors'[165], but this inevitably excludes others as invalid. In conjunction with this, asylum seekers and immigrants challenge traditional notions of citizenship, which can be defined as comprising 'three dimensions of legal status, rights, and identity'[166]. A dual study of identity and citizenship focuses on the significance of an 'us/them' distinction in the context of the politics of asylum and refugeehood, a classification which establishes a hierarchy of inclusion and exclusion upon which, in conjunction with borders, the whole premise of citizenship relies. 'Immigration and citizenship are so closely linked because, as much as the word immigrant denotes an outsider status, citizenship implies membership[167]. In fact, the 'refugee problem' is first and foremost one of categorisation, of making distinctions'[168]. It hinges, according to the constructivist perspective, on how the various terms – refugee, identity, citizenship – are understood and related, and how their meaning is constructed. Intertwined in this construction are the portrayal of the 'problem' of asylum seekers as a perpetual crisis or emergency; citizenship and the notion of the identity of the refugee as an outsider and less deserving than citizens; and the situation being so serious that the 'solution' requires radical hostile environment measures.

When we refer to constructivism, it is discursive constructions that are more often at the heart of this analysis. In their 2003 study of the UK press, Lynn and Lea identified three discursive strategies used in the construction of the UK's asylum regime, which they have called 'the differentiation of the other' [bogus and genuine asylum seekers], 'the differentiation of the self' [UK citizens], and the 'enemy in our midst' [defined as the processing of asylum seekers and the consequences of this for both asylum seekers and UK citizens][169]. These three overlapping discourses construct a social hierarchy to ensure precedence is given to citizens over non-citizens[170]. As such, asylum seekers are

[165] Mary Bernstein, 'Identity Politics' (2005) Vol.31 Annual Review of Sociology 68.
[166] Irene Bloemraad, 'Citizenship and Immigration: A Current Review' (2000) Vol.1 Journal of International Migration and Integration 11.
[167] ibid.
[168] Emma Haddad, *The Refugee in International Society: Between Sovereigns* (CUP 2008) 23.
[169] Nick Lynn and Susan Lea, 'A phantom menace and the new Apartheid: the social construction of asylum seekers in the United Kingdom' (2003) 14(4) Discourse & Society 446.
[170] ibid 447.

established as 'a group of people who may be discriminated against, and dealt with unequally, through the way in which they are constructed in discourse'[171]. Consequently, 'it is in this way that power can function through discourse'[172]. In his 1973 lecture, themed on *the prison-form as social form; a knowledge-power,* Foucault acknowledges that 'discourse is always formed in the region of power, either to reinforce it or to undermine it'[173].

This discursive construction of 'refugees' is best understood as a process over time. In this vein, critical theory in refugee studies calls attention to the terminology around the 'refugee' as a categorisation which was socially constructed in the inter-war years through the discourse generated by the contemporary international refugee regime, as it developed around the UN Refugee Convention[174]. Building on Hannah Arendt's essay, *We Refugees,* Giorgio Agamben states that the refugee is 'nothing less than a border concept that radically calls into question the principles of the nation-state'[175]. The label 'asylum seeker', which has come to be closely related to the concept of 'refugee' is a further politicised category which confers a reduced status and diminished rights on an individual thus classified. Arendt's work has been instructive for how the constructions of refugeehood, statelessness, and citizenship are related and reliant on recognition by the state. Writing back in 1951 and in the aftermath of WW2, Arendt observed of displaced people:

> Once they had left their homeland, they remained homeless; once they had left their state, they became stateless; once they had been deprived of their human rights, they were rightless, the scum of the earth.[176]

She believed that migrants forced to flee, who are in effect stateless, are not only deprived of rights but are denied the right to have rights[177]. Moreover, people without the right to have rights have been rendered 'invisible and inaudible'[178].

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[171] Simon Goodman and Susan A Speer, 'Category Use in the Construction of Asylum Seekers' (2007) 4(2) Critical Discourse Studies 167.
[172] ibid.
[173] Michel Foucault, *The Punitive Society Lectures at the Collège de France, 1972-1973* (Palgrave Macmillan 2015) 240.
[174] Haddad (n168) 113.
[175] Giorgio Agamben, 'We Refugees' (1995) 49(2) Symposium 117.
[176] Hannah Arendt, *The Origins of Totalitarianism* (3rd edition) (Allen & Unwin 1967) 141.
[177] Heather Savigny, *Political Communication: A Critical Introduction* (Bloomsbury Publishing 2016) 52.
[178] Vicki Squire, *The Exclusionary Politics of Asylum* (Palgrave Macmillan 2009) 153.

Applying this critical perspective to policy work, Emma Haddad – academic and former Director General for Asylum and Protection at the Home Office (a role which was abolished after Haddad's resignation in October 2022) – described asylum seekers as being perceived as a 'pollutant' in that 'states claim they are being flooded with asylum seekers who bring crime and terrorism into their societies'[179]. If the movement of such individuals is not controlled, that is, if the pollutant is allowed in, the end result could be chaos, disorder, and a clash of civilisations[180]. Furthermore, if this movement is perceived to be 'illegal' or 'out of control', it is constructed as a danger or a threat[181]. Thus, we see in the literature the term 'refugee' as a socially constructed term which facilitates discrimination and is associated with chaos, disorder, and danger. Building on this assumption, the discourse analysis in this thesis examines the language used by elite policymakers in their references to asylum seekers and refugees to establish the degree to which these constructions are adopted.

In the UK, asylum seekers are increasingly constructed as unwanted 'others' who threaten the social order and national borders. Sarah Looney, writer and immigration solicitor at the Joint Council for the Welfare of Immigrants, claims that the politics of othering was used by the Conservative government to direct attention from the true causes of the economic and social issues faced by the country[182]. This politics of othering is characterised by aggressive political rhetoric, aimed at alienating and dehumanising entire groups, in this case, resulting in the UK's hostile environment policies[183]. Looney goes on to suggest that the effects of this 'othering' are twofold: it has facilitated the scapegoating of migrants for the failures of neoliberal policies, and it has given an air of legitimacy to the erosion of rights[184]. Scathing in her criticism, she states that Britain has continuously disregarded the rights and livelihoods of refugees to suit its own political agenda; it has shirked its international obligations under the 1951 Refugee

[179] Emma Haddad, 'Danger Happens at the Border', P K Rajaram and C Grundy-Warr (eds), *Borderscapes: Hidden Geographies and Politics at Territory's Edge* (University of Minnesota Press 2007) 126.
[180] Ayse Ceyhan and Anastassia Tsoukala, 'The Securitization of Migration in Western Societies: Ambivalent Discourses and Policies' (2002) 27(1) Alternatives: Global, Local, Political 22.
[181] ibid 24.
[182] Sarah Looney, 'Breaking Point? An Examination of the Politics of Othering in Brexit Britain' (2017) TLI Think! Paper 69/2017 2.
[183] ibid.
[184] ibid 3.

Convention, choosing instead to stoke the fires of fearmongering and othering[185]; it has blamed refugees and asylum seekers for its failing neoliberal policies of austerity[186]; and it has followed an anti-foreigner agenda to distract from consecutive governments' failures of policy[187]. In this negative assessment of current asylum governance, the UK government is accused of apportioning blame on refugees and asylum seekers for a variety of issues: this premise is examined further in this research as part of the analysis of the parliamentary discourse. Both Haddad and Looney are practitioners in the field who are able to bring a personal perspective to the criticism of the UK government's contemporary hostile environment, providing hands-on testament to the harsh realities of the situation for asylum seekers in the UK. Building on these critical examinations of current practices, this thesis considers the historic progression of the 'anti-asylum rhetoric' to try to explain how we have ended up where we are today.

This construction of the hostile environment is not exclusively confined to refugees and asylum but draws on racism and antisemitism as these have developed historically as political discourses[188]. These discourses have been used to construct national sameness on the one hand and differences on the other, leading to the political and social exclusion of specific outgroups[189]. In analysing the construction of the hostile environment, this thesis finds, for example, that positive self-presentation manifests in discourses about the 'proud history of looking after those in need' and is connected to negative portrayal of asylum seekers as 'illegal' or 'bogus'. Situating the analysis within a constructivist discourse analytic theoretical frame, makes such connections evident and thus advances the holistic understanding the thesis pursues, of how the hostile environment developed incrementally. It is in this holistic understanding that the thesis' contribution to the literature lies.

From within this overarching theoretical frame, a number of themes are addressed in the relevant literature reviewed below, which relate to (i) the empirical questions around UK migration and asylum; and (ii) methodological questions around the sources of information analysed in the thesis.

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[185] ibid 9.
[186] ibid 13.
[187] ibid 22.
[188] Martin Reisigl and Ruth Wodak, *Discourse and Discrimination: Rhetorics of Racism and Antisemitism* (Routledge 2001) 42-3.
[189] ibid.

3.3 Political Discourse and Rhetoric

There has been substantial research on the political discourse and rhetoric surrounding issues of asylum and immigration. Van Dijk examines the ways in which politicians speak about race and ethnic relations, immigrants, refugees, and other minorities through an analysis of fragments of parliamentary debates on ethnic affairs in Europe and North America[190]. He concludes that discourse plays an important role in the production and reproduction of prejudice and racism and that politicians participate in subtle forms of racism when they present refugees, immigrants, or minorities as problematic, threatening, or the cause of societal problems[191]. Politicians employ a variety of strategies, including positive self-presentation, negative other-presentation, denial of racism, apparent sympathy, the notion of 'firm but fair', justification, and blaming others, such as the far-right or even the 'ordinary' working man, of racism[192]. Cultural differences between "us" and "them" are exaggerated while differences *within* the in-group or the out-group are ignored[193].

The UK government and state actors have a strong role in shaping the public debate about immigration and asylum and do so in a way that promotes an anti-migrant/anti-immigration position[194]: 'British governments dominate and shape public discourse on asylum' such that 'the nature of the asylum debate – at present restrictive and stigmatising – to a large extent comes politically from the top down, rather than in response to mobilised public pressure'[195]. It is the government – rather than the public – that is driving the anti-asylum rhetoric, and 'government public hostility to asylum seekers simply legitimates xenophobic sentiments'[196]. Official policies influence how people talk about issues around refugees and asylum seekers and the public take their cues from politics and political elites[197], rather than the other way round. Acknowledging

[190] Teun A van Dijk, 'Political Discourse and Racism: Describing Others in Western Parliaments', S H Riggins (ed), *The Language and Politics of Exclusion: Others in Discourse* (Sage Publications 1997) 31.
[191] ibid.
[192] ibid 36.
[193] ibid 62.
[194] Paul Statham, 'Understanding Anti-Asylum Rhetoric: Restrictive Politics or Racist Publics?' (2003) 74(s1) The Political Quarterly 170.
[195] ibid 174.
[196] ibid 175.
[197] ibid 173.

this to be the case justifies a study of the political discourse of elites in the law-making process. Furthermore, there is a fine line between honestly acknowledging the existence of public fears and unintentionally reinforcing them. The tone of the British approach suggests that 'a single false move on issues of immigration, refugee status or citizenship could be fatal … It suggests that there is no margin for error … since the consequences of failure would be disastrous'[198]. The language used by the British political elite conveys the extreme gravity associated with asylum seekers in the UK, and the dramatic tone used by politicians serves to heighten public anxiety about the issues[199].

A 2006 study on the use of immigration metaphors used by centre-right (Conservatives) and far-right (BNP) political parties in the 2005 general election campaign – taking as its data corpus speeches on asylum and immigration by the Conservative party, election manifestos of the Conservatives and BNP, and articles from Migration Watch UK, a think tank which claims to be non-political but is described by the study's author as right-wing[200] – concludes that immigration shifted from being a marginal issue to a key election concern for both parties in the run up to the 2005 general election[201]. In addition to there being an 'absence of positive metaphors for immigrants'[202], there are two types of metaphor used throughout the campaign: metaphors of natural disaster, predominantly the behaviour of liquid; and container metaphors, especially those relating to the build-up of pressure[203]. 'Disaster' and 'container' metaphors both arouse fears, and both 'discourage empathy with immigrants by treating them as objects, rather than as the subjects of life stories'[204]. As well as this use of metaphors in the 2005 election, metaphors have also been used by politicians in the past: 'immigration is a disaster', by Enoch Powell in his 1968 Rivers of Blood speech; Britain becoming 'swamped by people of a different culture', by Margaret Thatcher in 1978; and 'some schools were being 'swamped' by children of asylum seekers', by David Blunkett in 2002[205]. This last example demonstrates that, by 2002, the negative language is not just

[198] Will Kymlicka, 'Immigration, Citizenship, Multiculturalism: Exploring the Links', S Spencer (ed), *The Politics of Migration: Managing Opportunity, Conflict and Change* (Blackwell Publishing 2003) 206.
[199] ibid.
[200] Jonathan Charteris-Black, 'Britain as a Container: Immigration metaphors in the 2005 election campaign' (2006) 17(5) Discourse and Society 567.
[201] ibid 563.
[202] ibid 566.
[203] ibid 569.
[204] ibid.
[205] ibid 570.

confined to politicians on the right as Blunkett was the Labour Home Secretary at that time.

Research a year later, on the language of race and prejudice, examining 'text and talk on issues pertaining to race, multiculturalism, immigration, and refugees and asylum seekers'[206], concluded that the political elite construct negative views of out-groups while at the same time constructing these views as 'justified, warranted and rational'[207]. Minorities are portrayed as 'criminals, deviants, passive, and culturally alien'[208] and 'positive self-presentation [e.g., the 'proud history' discourse] in public debates on immigration is an important strategic prelude to statements that support restrictions on immigration, particularly in debates on refugees and asylum seekers'[209]. The study identifies what it calls 'the "splitting" function'[210], a strategy used by the political elite to differentiate between 'good' and 'bad' migrants. This is a practice which is in place more recently with the UK government attempting to differentiate between 'legal' and 'illegal' asylum seekers in order to allocate different treatment to the two classifications. With regard to asylum seekers and refugees, 'discourse functions to negatively position minority out-groups and to rationalise their continued marginalisation and/or exclusion from mainstream society[211].

A 2008 critical analysis of the political discourse around asylum and immigration in the UK examined a speech by Conservative leader Michael Howard and noted that the speech located 'controlled immigration' between 'cleaner hospitals' and 'more police', thus associating 'immigration with lack of cleanliness, illness, and crime'[212]. The stance on immigration is constructed as a positive feature of 'Britishness', rooted in British values of fair play, tolerance, generosity, and hospitality[213]. As well as this positive self-presentation, the speech also used war imagery with respect to immigrants, with

[206] Martha Augoustinos and Danielle Every, 'The Language of "Race" and Prejudice: A Discourse of Denial, Reason, and Liberal-Practice Politics' (2007) 26(2) Journal of Language and Social Psychology 123.
[207] ibid 126.
[208] ibid 129.
[209] ibid.
[210] ibid 132.
[211] ibid 137.
[212] Rose Capdevila and Jane E M Callaghan, ''It's Not Racist. It's Common Sense.' A Critical Analysis of Political Discourse Around Asylum and Immigration in the UK' (2008) 18(1) Journal of Community and Applied Social Psychology 9.
[213] ibid 10.

language such as ‘under attack’, ‘fortress Britain’, ‘our defences have been breached’, and ‘the enemy within’[214]. Not only did the speech link immigrants discursively with crime and terrorism[215], but it also framed ‘the other’ as ‘a danger to the British way of life’[216] and claimed that Britain’s potential to be ‘the best country in the world’ had been undermined by ‘an influx of unwanted dangerous migrants’[217].

An analysis of the discursive constructions of refugees and asylum seekers in the UK press from 1996 to 2005, proposes that the ‘continued use of conflated and confused meanings of RASIM (refugees, asylum seekers, immigrants, and migrants) words, along with … negative metaphors suggests that the conservative and tabloid British press are responsible for creating and maintaining a moral panic around RASIM, which has increasingly become the dominant discourse in the UK press’[218]. Following on from this, a 2018 empirical study carried out a computer-assisted analysis of language immediately surrounding the terms ‘im/migrant(s)’ in the coverage of migration by selected British newspapers from 2011 to 2016[219]. This research found that representations of immigrants, both to the UK and elsewhere, have been negative in the media coverage, and that a perception has been created of large numbers of ‘illegal’, ‘unchecked’ and ‘uncontrolled’ RASIM[220]. Refugees, asylum seekers, immigrants, and migrants are portrayed as an economic burden, criminals, terrorists, and a threat to the national security of host countries[221], and, in the UK, immigrants and asylum seekers have been collectively presented as a threat to ‘UK security interests’ at three levels – physical; economic; and national identity and Britishness[222].

The following year, a discourse analytical study of UK, Scottish and Welsh governments’ policy documents on refugees concluded that both the UK government and the devolved governments like to ‘draw on the notion of the nation-state as a proud

[214] ibid 11.
[215] ibid 12.
[216] ibid 11.
[217] ibid 10.
[218] Costas Gabrielatos and Paul Baker, ‘Fleeing, sneaking, flooding: A corpus analysis of discursive constructions of refugees and asylum seekers in the UK press, 1996-2005’ (2008) 36(1) Journal of English Linguistics 33.
[219] Jingrong Tong and Landong Zuo, ‘Othering the European Union through constructing Moral Panics over ‘Im/migrant(s)’ in the Coverage of Migration in Three British Newspapers, 2011-2016’ (2018) 81(5) The International Communication Gazette 446.
[220] ibid 447.
[221] ibid.
[222] ibid 449.

protector'[223]. The study concluded that, contrary to the 'proud history' discourse of tolerance and inclusion, the discourse in these UK and devolved government documents actually 'functions to deny integration to asylum seekers and justifies the UK government's hostile environment approach'[224].

And in 2022, a comparative longitudinal analysis of the polarisation effects of immigration-related political elite discourses concluded that it is elite discourse, rather than public attitude, that drives a state's anti-immigration stance in that 'anti-immigrant attitudes increase when political elites express more exclusionary sentiments towards immigration and decrease when political elites express more inclusionary sentiments[225]. The research examined how both actual immigration and political discourses shape anti-immigration attitudes and concluded that 'the cause of threat perceptions is not the actual conditions, i.e., immigration itself, but rather how national political elites frame immigration'[226]. The study suggests that future research might want to use a more fine-grained measure of political rhetoric, perhaps by drawing upon parliamentary debates[227]. This research heeds this call, examining precisely these parliamentary debates.

There is, in short, a consensus in the literature of a negative discourse around refugees and asylum seekers, a discourse which employs a range of linguistic strategies, such as positive self-presentation and negative other-presentation, exaggerating differences between groups while simultaneously ignoring differences within groups, use of 'extreme' language, use of metaphors, and framing 'the other' as a threat or danger. This thesis builds on the research already carried out by analysing the political elite discourse in UK parliamentary debates and general election pledges on asylum and immigration on a temporal basis from the start of the twentieth century to the present day. The discourse analysis takes account of previous work in analysing the content and framing of the discourse of decision-makers and the law-making process. In regard to the first, the thesis looks to the *content* of the discourse to establish factors which decision-makers

[223] Samuel Parker, 'A proud history of protecting refugees: Ambivalent Responses to Refugee Integration in Government Policy Documents' (2019) 11(1) CADAAD Journal 21.other presentation
[224] ibid 30.
[225] Alexander W Schmidt-Catran and Christian S Czymara, 'Political elite discourses polarize attitudes toward immigration along ideological lines. A comparative longitudinal analysis of Europe in the twenty-first century' (2022) 49(1) Journal of Ethnic and Migration Studies 85.
[226] ibid 101.
[227] ibid 102.

perceive as relevant to the immigration and asylum law-making process. Some factors such as security, race relations, and party politics are identified in the literature, while additional factors, such as scarcity of resources (e.g., housing) and the running of the Home Office, are also identified. In regard to the second, the study looks at the *framing* of the discourse, to establish how decision-makers portray asylum seekers and the issue of asylum, and whether the language used seems to facilitate the harsh policies of the hostile environment. The literature identifies critical analyses on various aspects of the discourse but no temporal analysis of the parliamentary debates and general election manifestos, which is addressed in this research.

3.4 Overview of the Development of the Hostile Environment

Much of the literature reviewed here suggests that UK legislation on asylum and immigration *has* become increasingly hostile and more restrictive, from the 1905 Aliens Act up to the 2023 Illegal Migration Act.

The introduction of the 1905 Aliens Act marked the beginning of restrictions: 'After a long nineteenth century of liberal approaches to immigration, the Aliens Act of 1905 gave the Home Office powers to prevent the entry – and deportation – of several categories of alien nationals'[228]. Vigneswaran recognises this Act as the first tentative step towards any restrictions on human mobility, although the Act 'did not entail a claim by the UK government to a "monopoly" on movement as it did not give UK officials control over the migration of British subjects to the UK'[229].

In the post-war era, under general immigration law, the freedom to migrate 'enabled the unregulated and multiracial migration of Commonwealth citizens to the UK, such that by 1960, a multiracial community of nationals from Commonwealth countries had come to constitute some of the largest foreign migrant groups in the UK'[230]. It seems that 'the power of racial prejudices was permitted to more fully shape national migration policy[231], which contributed to the construction of a decidedly unequal global migration

[228] Darshan Vigneswaran, 'Europe has never been modern: Recasting historical narratives of migration control' (2020) 14(1) International Political Sociology 10.
[229] ibid.
[230] ibid 11.
[231] ibid 15.

regime[232]. According to Stevens, in the post-WW2 period from 1945 to 1993, there were two conflicting approaches to the role of asylum law in the UK. On the one hand, international law attempted to establish clear and generous principles of protection for refugees. On the other, the UK, while refusing to incorporate leading instruments, continued to treat asylum law as a branch of immigration law, proceeding for almost fifty years with a haphazard and piecemeal system of control.[233]

Here, Stevens acknowledges the UK's dichotomy in its approach to asylum in the aftermath of the second world war between its international humanitarian obligations on the one hand and its somewhat negligent attitude to asylum on the other. In fact, matters relating to asylum were contained within immigration law right up to the 1993 Asylum and Immigration Appeals Act. With regard specifically to asylum provision, the UK 'has tended increasingly towards exclusion and deterrence, with the introduction of more restrictive rules and criteria that cannot be said with confidence to distinguish between the 'genuine' and the 'bogus''[234]. Moreover, the series of hostile measures that have been introduced by successive UK governments apply equally to *all* asylum seekers, not just 'bogus' ones. In fact, both the 1993 Asylum and Immigration Appeals Act and the 1996 Asylum and Immigration Act, the first pieces of UK legislation to deal specifically with the issue of asylum, are completely devoid of the humanitarianism that should accompany asylum claims[235]. These two 'Asylum Acts' are merely the starting blocks for the hostile legislation to come and form the start of the period I term the Age of Hostility.

Between 1962 and 1988 – a period which forms most of what I have named the Age of Hesitancy – there was 'a succession of immigration Acts which have changed the citizenship rights of former colonial subjects and have brought virtually all primary migration to an end'[236]. Following on from this, the 'politics of asylum' began with the 1993 Asylum and Immigration Appeals Act, the first of many Acts designed to deter asylum seekers 'partly by making their lives even more miserable and partly by

[232] ibid 18.
[233] Dallal Stevens, *UK Asylum Law and Policy: Historical and Contemporary Perspectives* (Sweet & Maxwell Ltd 2004) 161.
[234] ibid 435.
[235] ibid 176.
[236] Alice Bloch, 'A New Era or More of the Same? Asylum Policy in the UK' (2000) 13(1) Journal of Refugee Studies 29.

punishing anyone who helped them'[237]. Joppke observes that, in the UK, 'asylum policy became infected with the racially loaded control mentality of British immigration law and practice'[238], and, according to Hassan, it has not since recovered[239]. Moving forward to the second half of the 1990s, New Labour continued and expanded the restrictionist Conservative asylum and immigration policies such that 'in the 1990s, both political parties introduced legislation that restricts entry to Britain and legislation that reduces the social citizenship rights of asylum seekers in the UK[240].

Today, the UK's contemporary hostile environment can be described as 'a system of laws and regulations requiring private citizens and public servants to carry out 'papers, please' immigration status checks on one another'[241]. This refers to the practice of 'outsourcing' immigration checks for individuals. This started in 1987 with the Immigration (Carriers' Liability) Act which introduced fines for airline companies carrying unauthorised passengers. Since then, the practice of identity checking has been systematically expanded so that, today, members of the British public – subject to increasingly hefty fines for non-compliance – are expected to carry out identity checks on individuals applying for a job, rented accommodation, a driving licence, or a bank account. This 'governmentality'[242] of identity checking is part of Rygiel's broader definition of citizenship as government[243]. Following Foucault, her approach of citizenship as government 'involves viewing citizenship as having to do with the practices, discourses, technologies, forms of power, and political subjectivities used in the governing of individuals and populations[244]. This increased status checking is part of the incremental development of hostile environment policy.

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[237] Robert Winder, *Bloody Foreigners: The Story of Immigration to Britain* (2nd edition) (Abacus 2013) 421.
[238] Christian Joppke, 'Asylum and State Sovereignty: A Comparison of the United States, Germany and Britain', C Joppke (ed) *Challenge to the Nation-State: Immigration in Western Europe and the United States* (OUP 1998) 133.
[239] Lisa Hassan, 'Deterrence measures and the prevention of asylum in the United Kingdom and United States' (2000) 13(2) Journal of Refugee Studies 187.
[240] Bloch (n236) 41.
[241] Colin Yeo, *Welcome to Britain: Fixing Our Broken Immigration System* (Biteback Publishing Ltd 2020) *xxiii.*
[242] Michel Foucault, 'Governmentality', G Burchell et al., (eds), *The Foucault Effect: Studies in Governmentality* (University of Chicago Press 1991).
[243] Kim Rygiel, *Globalizing Citizenship* (UBC Press 2010) 11.
[244] ibid.

Additionally, although politicians like to claim that they want to distinguish between 'genuine' or 'bogus' – or deserving and undeserving – refugees, in reality, hostile environment legislation attempts to exclude all refugees from entering the UK[245]. Over the years, both Amnesty International and Human Rights Watch have issued reports condemning aspects of the UK's asylum regime, e.g., criticism of the cruel, inhuman, or degrading treatment during forcible deportations of refused asylum seekers from the UK[246]; concerns about human rights violations in the UK, including allegations of ill-treatment, deaths in custody, and curtailing of rights of asylum seekers[247]; condemnation of the failure to investigate serious allegations of human rights violations[248]; denunciation of forced returns of asylum seekers to Afghanistan[249] and Iraq[250]; and criticising plans for extraterritorial processing of asylum claims[251], of detention of asylum seekers[252], of the fast-track asylum system[253], and of the inadequate housing and social support for families seeking asylum in the UK[254]. With the current asylum and immigration legislation, 'there is no attempt whatsoever … to distinguish between a genuine refugee and a bogus one. All these deterrent and security measures affect *all* refugees … it is now basically impossible for a refugee to lawfully reach the UK to claim asylum'[255]. This notion of a distinction between 'genuine' and 'bogus' asylum seekers has developed through the years since the arrival of the Tamils from Sri Lanka in 1985, who were the first asylum claimants to be branded as 'bogus'. There are two aspects to this 'genuine/bogus' categorisation which are relevant to today's hostile environment:

[245] Yeo (n241) 125.
[246] Amnesty International, 'United Kingdom: Cruel, inhuman or degrading treatment during forcible deportation' (1994) EUR45/005/1994.
[247] Amnesty International, 'United Kingdom: Summary of human rights concerns' (1995) EUR45/006/1995.
[248] Amnesty International, 'United Kingdom: An agenda for human rights protection' (1997) EUR45/012/1997.
[249] Amnesty International, 'UK/Afghanistan: Forced return of Afghan asylum seekers unacceptable' (2003) ASA11/012/2003.
[250] Amnesty International, 'UK: Forcible return to Iraq would be unlawful' (2005) EUR45/015/2005.
[251] Amnesty International, 'UK/EU/UNHCR: Unlawful and unworkable – extra-territorial processing of asylum claims' (2003) IOR61/004/2003.
[252] Amnesty International, 'UK: Seeking asylum is not a crime: Detention of people who have sought asylum' (2005) EUR45/015/2005; 'UK: Detention of asylum seekers must be the exception, not the rule' (2008) EUR45/002/2008.
[253] Human Rights Watch, 'Fast-Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK' (2010).
[254] Human Rights Watch, '"I Felt So Stuck": Inadequate Housing and Social Support for Families Seeking Asylum in the United Kingdom' (2023).
[255] Yeo (n241) 131.

- Assuming that everyone is entitled to claim asylum, notwithstanding that the claim might be unsuccessful, there is actually no such thing as a 'bogus' asylum seeker; and
- There now appears to be a presumption of 'bogusness', that is, asylum seekers are assumed to be bogus, and it is up to them to prove otherwise.

It seems that this genuine/bogus distinction has been used by politicians (e.g., 'clamping down on bogus asylum seekers') through the years to facilitate the development of the hostile environment legislation, and this is explored further in the thesis through the discourse analysis of the language used by the political elite in the parliamentary debates.

3.5 The Politics of the Hostile Environment

The literature also suggests that the restrictive practices of the contemporary hostile environment – including measures such as deterrence, detention, dispersal, and identity checks – are indications that the rules and regulations implemented by the UK government are more concerned with political ideology than with the protection of individuals in need. Furthermore, the UK's '"hostile environment" regimes of practices in a number of related areas of everyday life are Draconian, unlawful, inhumane, and have been conceived without consideration of human rights or international conventions, designed solely to assert the sovereign power of the state over its borders'[256]. Measures of 'deterrence' such as the 'stop the boats' policy and the Rwanda plan are not backed up with evidence that such measures will successfully deter asylum seekers from trying to enter the UK but, rather, are premised on a political ideology of 'exclusionary politics that is organised according to a rationality of deterrence'[257]. Although the term 'hostile environment' was not widely used before 2012, this thesis identifies an Age of Hostility beginning in the early 1990s which was when these deterrence measures increased 'in response to the rapid and unprecedented rise in the number of spontaneous asylum seekers arriving in the UK and across Europe'[258]. It was from this point on that practices

[256] Mano Candappa, 'Border politics, the "hostile environment" for migration, and education in the UK' (2019) 9(3) Hungarian Educational Research Journal 426.
[257] Squire (n178) 168.
[258] Roger Zetter et al., 'Social Capital or Social Exclusion? The impact of Asylum-Seeker Dispersal on UK Refugee Community Organizations' (2005) 40(2) Community Development Journal 170.

of deterrence and restrictionism became the 'dominant characteristics of the refugee policy framework'[259] in the UK. It would appear that, through the implementation of these restrictive policies and laws, 'asylum seekers are a group of people that the state has singled out as legitimate targets for hostility'[260]. The development of the hostile environment has meant that through 'restrictive legislation, … Britain's tradition of granting sanctuary to refugees is under serious threat and its people are apparently being encouraged to define themselves against those they wish to exclude, instead of as possessing a spirit of generosity which welcomes and protects those in need of refuge'[261].

In tracing the workings of the hostile environment, a significant section of the literature has focused on the UK's border control[262], both the physical border and internal border checks. In her 2011 study of the Calais refugee camp, Rygiel accuses the UK government of externalising its border controls into France[263] and also of using detention as a border control[264]. In contrast to this exporting of border control, Candappa points out that border control in the UK has also been internalised in that employers and landlords are in effect acting as 'proxy border officials'[265], and that 'border control [in the UK] is brutally enforced through financial penalties on its own citizens potentially threatening the livelihoods of employers and landlords'[266]. While many have acknowledged the negative effects of hostile environment policies on asylum seekers, this observation acknowledges the possible adverse effects on *UK citizens*. The 'deputisation' of UK border enforcement now encompasses 'a sweeping range of public servants, agencies, companies, private organisations, and members of the public [who] are obliged to check people's immigration status and enforce immigration-related restrictions'[267]. Not only

[259] ibid 171.
[260] Liza Schuster, 'Common Sense or Racism? The Treatment of Asylum Seekers in Europe' (2003) 37(3) Patterns of Prejudice 244.
[261] Louise Pirouet, *Whatever Happened to Asylum in Britain? A Tale of Two Walls* (Berghahn Books 2001) 7.
[262] Prem Kumar Rajaram and Carl Grundy-Warr (eds), *Borderscapes: Hidden Geographies and Politics at Territory's Edge* (University of Minnesota Press 2007); Duncan Breen, 'Abuses at Europe's borders' (2016) 51 Forced Migration Review 21-3.
[263] Kim Rygiel, 'Bordering Solidarities: Migrant Activism and the Politics of Movement and Camps at Calais' (2011) 15(1) Citizenship Studies 8.
[264] ibid 14.
[265] Mano Candappa (n256) 419.
[266] ibid 420.
[267] Melanie Griffiths and Colin Yeo, 'The UK's Hostile Environment: Deputising Immigration Control' (2021) 41(4) Critical Social Policy 525.

does this practice of deputisation undermine citizenship by encouraging a climate of fear and hostility[268], but it also reduces government accountability by abdicating its responsibility to others[269]. These examples from the literature mirror the temporal progression of elements of the contemporary hostile environment, from the 1991 Sangatte Protocol, concerning frontier controls and policing, between the governments of the UK and France[270] to internal immigration status checks, such as the 'right to work'[271] introduced in 1996 and the 'right to rent'[272] introduced in 2014. While the term 'hostile environment' has shifted 'in academic and media discourses to refer to a general stance of nastiness towards migrants'[273], the hostile environment as advocated by Theresa May in 2012 (when she was Home Secretary) has 'meant the diffusion of national borders and their enforcement away from the external edges of the polity and sole hands of trained state officials, into everyday spaces within the interior of state territories'[274]. 'In creating the hostile environment, Ministers introduced policy changes that dramatically diffused the immigration system across the breadth of society'[275].

One of the hostile environment policies introduced in the 1999 Immigration and Asylum Act was the dispersal of asylum seekers to housing in locations across the country. Under this Act, no account was taken of choice, overcrowding, or families being split up[276]. Moreover, Darling identifies dispersal as 'a violent system with harmful effects for those seeking asylum'[277] He concludes that the 'violence is manifest in the maintenance of a system that positions asylum seekers as unwelcome presences within social and spatial hierarchies of worth'[278]: 'it is a system that simply does not care'[279]. Since then, detention of asylum seekers has formed part of the deterrence measures and both main UK political parties have advocated increased use of detention[280]. In 2001, the late

[268] ibid 532.
[269] ibid 533.
[270] The Sangatte Protocol, Treaty Series No. 70 (1993), accessed 10/05/24.
[271] Asylum and Immigration Act 1996 s 8(1), accessed 18/12/20.
[272] Immigration Act 2014 s 21, accessed 26/02/21.
[273] Griffiths and Yeo (n267) 522.
[274] ibid 522-3.
[275] ibid 523.
[276] Pirouet (n261) 117.
[277] Jonathan Darling, *Systems of Suffering: Dispersal and the Denial of Asylum* (Pluto Press 2022) 184.
[278] ibid 184-5.
[279] ibid 184.
[280] Pirouet (n261) 164.

academic and refugee rights activist, Louise Pirouet[281] pointed out that 'the Conservatives would detain every asylum-seeker, though how they would do that is unclear as the cost of doing so, even if the spaces in detention centres were available, would be prohibitive. The Labour Party seems to be moving in the same direction'[282]. This is a policy which has gained traction in the intervening years to the extent that this 2001 prediction is now UK Home Office policy. The costs of such policies do not seem in any way prohibitive for such policies of 'deterrence', as was recognised over twenty years ago: 'no cost seems too great if it is thought it might deter people from coming to the UK'[283]. The thesis draws on these insights in the analysis of parliamentary debates to consider to what extent the cost of implementing measures of deterrence is a factor in the development of the hostile environment.

Another aspect of the discursive politics of asylum analysed in the literature is the concept of 'bogus'. The UK's hostile environment measures are supposedly designed to deter 'bogus' asylum seekers and as such there is a presumption of 'bogus' in the legislation[284]. For instance, the system of reception and accommodation in detention centres introduced in the 2002 Nationality, Immigration and Asylum Act was based on 'the suspicion that … many of these asylum seekers were 'bogus' and, as such, undeserving of welfare state benefits'[285]. Measures designed to distinguish the genuine from the bogus are bound by their nature to adversely affect *all* asylum seekers equally. It would seem that 'the need to detect evasion outweighs the interests of genuine applicants, and this is the price coolly paid for the sake of effective immigration control'[286]. In other words, hostile environment measures impinge on people who *are* fleeing persecution and are genuinely entitled to asylum. The presumption of 'bogusness' means that the effect the hostile environment has on those entitled to asylum is not a prominent aspect of either the legislation or the law-making process. Moreover, 'consecutive British governments since the 1990s have presented the genuine asylum

[281] Researchers working in a human rights field such as asylum often combine academia with activism as a mixed approach to inform 'progressive social change' and utilise academia as 'a valuable base for activism': see Michael Flood et al., 'Combining academia and activism: Common obstacles and useful tools' (2013) 55(1) Australian Universities Review 17.
[282] Pirouet (n261) 164.
[283] ibid 165.
[284] Christian Joppke, *Citizenship and Immigration* (Polity Press 2010) 115.
[285] Andrew Geddes, 'Migration and the Welfare State in Europe', S Spencer (ed), *The Politics of Migration: Managing Opportunity, Conflict and Change* (Blackwell Publishing 2003) 156.
[286] Joppke (n284).

seeker as the pinnacle of refuge; they will have particular experiences, adhere to certain modes of transport [most certainly not small boats] and be knowledgeable of the national asylum rules'[287]. Indeed, those who are unable to meet these increasingly stringent criteria of the 'genuine asylum seeker' are labelled as 'bogus, failed asylum seekers or simply, immigrants'[288].

Underpinning the notion of 'bogus' is the assumption that the UK's welfare state was some sort of 'pull factor' for people trying to reach the UK to claim asylum[289]. This assumption has driven laws introduced at the start of the Age of Hostility, that is, the 'Asylum Acts' of 1993, 1996, 1999, and 2002, which sought to eliminate this pull effect through restrictive measures and clamping down on welfare benefits, thus making the UK less attractive to asylum seekers. Not only does this legislation imply that welfare benefits and other social resources should only be available for UK citizens, but it also assumes that asylum seekers have knowledge both of the UK's welfare system and of the UK's deterrence legislation. However, there is no evidence in the literature that this is the case. In fact, asylum seekers arriving in the UK have little or no knowledge of these deterrence measures, and their destination for claiming asylum is 'usually constrained by economic and political factors, and structures and events over which the individual has little control'[290]. It would appear that politicians are proposing restrictive and hostile practices for which they are unable to offer any evidence of 'success', which suggests that 'the hostile environment may be better understood as an ideological stance, than an evidence-based, ends-driven policy approach'[291]. Politicians are introducing policies to clamp down on 'pull factors' which, they believe, make the UK attractive as a destination for asylum seekers. Building on this literature, the ways in which the discourse around 'pull factors' operates is examined further in the analysis of parliamentary debates and election manifestos.

The literature suggests that there are four goals of a deterrence policy, namely, to reduce the number of asylum applicants, regardless of whether they are 'bogus' or 'genuine'; to

[287] Gillian McFadyen, 'The language of labelling and the politics of hostipitality in the British asylum system' (2016) 18(3) The British Journal of Politics and International Relations 607.
[288] ibid.
[289] Geddes (n285) 157.
[290] Liza Schuster, *The Use and Abuse of Political Asylum in Britain and Germany* (Frank Cass Publishers 2003) 51.
[291] Griffiths and Yeo (n267) 530.

save the government money; to criminalise asylum seekers and discourage their permanent settlement; and to pander to public perceptions of asylum seekers, demonstrating to the public that the government has 'control' of a situation that has the potential to be out of control[292]. So, hostile environment policies are not merely to deter asylum seekers *per se.* While that is one of their aims, they are also used to stigmatise people claiming asylum and to appease the political elite and the British public. Harsh deterrence policies contribute to the negative construction of asylum seekers and the public perception of them as a 'problem': in fact, 'stigmatisation of asylum seekers is one of the chief aims of deterrence policies'[293]. Furthermore, asylum measures can go further than merely saving the government money in that they can be seen as a chance to make money: 'not only are asylum seekers portrayed as a burden on the state, but they are also a profit-making opportunity, a process by which private firms can profit from the most vulnerable at the margins of society'[294]. By portraying asylum seekers as a burden or a problem to be solved, the 'situation' is dehumanised and can be considered as a business opportunity rather than a humanitarian obligation.

The critical literature on asylum has clearly documented how the hostile environment has operated in the last two decades. Taking account of these insights, this thesis is concerned with how the UK has ended up with these harsh policies: what has driven and facilitated the development of the hostile environment over the many decades that followed the introduction of restrictions in 1905.

3.6 Security and the International Dimension

Another significant portion of the literature considers the UK's hostile environment legislation from a securitisation perspective, that is, in terms of how the issue of asylum and refugeehood has been linked with national and border security, international security, and terrorism. Hammerstad points out that securitisation is associated with asylum seekers and refugees in [western] states, and that the 'peak of securitization of

[292] Lisa Hassan, 'Deterrence measures and the preservation of asylum in the United Kingdom and United States' (2000) 13(2) Journal of Refugee Studies 192.
[293] ibid 196.
[294] Jonathan Darling,' Privatising Asylum: Neoliberalisation, depoliticization and the governance of forced migration' (2016) 41(3) Transactions of the Institute of British Geographers 238.

forced migration took place in the UK in the first couple of years after 9/11 [the terrorist attacks which took place on 11 September 2001]'[295].

The securitisation perspective arises within the international relations literature on asylum policy, which views this policy in the UK as influenced by the international state of affairs, and the events which lead people to seek asylum in the UK and elsewhere. Specific case studies of Polish refugees resettling in the UK after the second world war[296] and the resettlement of Hungarian refugees in 1956[297] provide positive examples in this literature of successful integration of refugees into the UK post-WW2. However, these examples constitute a divergence from the current norm, whereby the UK and other states of the Global North are perceived as restrictionist, and not taking their 'fair share' of refugees[298]. The literature in fact shows that the overwhelming majority of the world's refugees originate and remain in the Global South: this results in a significant asymmetry in the global refugee protection regimes between North and South[299], whereby 'northern states have few obligations or incentives to contribute to refugee protection in the South'[300]. From a global perspective, there is a growing non-compliance with refugee law worldwide and, today, the most generous host countries are non-signatories to the 1951 Convention[301]. While millions of refugees are looked after in poor countries, rich western states are 'devoting their energies to keeping refugees out'[302].

When it comes to UK asylum policy, 'international norms and instruments have exercised little if any constraining influence'[303]. UK governments feel particularly threatened by the arrivals of groups of people rather than individuals[304]. This was the

[295] Anne Hammerstad, 'UNHCR and the Securitization of Forced Migration', A Betts and G Loescher (eds), *Refugees in International Relations* (OUP 2011) 255.
[296] Agata Blaszczyk, 'The Resettlement of Polish Refugees after the Second World War' (2017) Forced Migration Review FMR 54 Resettlement 71-3.
[297] Amanda Cellini, 'The Resettlement of Hungarian Refugees in 1956' (2017) Forced Migration Review FMR 54 Resettlement 6-8.
[298] Matthew J Gibney, 'Refugees and justice between states' (2015) 14(4) European Journal of Political Theory; David Owen, 'Refugees, Fairness and Taking Up the Slack: On Justice and the International Refugee Regime' (2016) 3(2) Moral Philosophy and Politics.
[299] Alexander Betts, 'International Cooperation in the Refugee Regime', A Betts and G Loescher (eds), *Refugees in International Relations* (OUP 2011) 54.
[300] ibid 61.
[301] Alexander Betts and Paul Collier, *Refuge: Transforming a Broken Refugee System* (Penguin Books 2017) 209.
[302] Joseph Carens, *The Ethics of Immigration* (OUP 2013) 220.
[303] Randall Hansen, *Citizenship and Immigration in Post-War Britain: The Institutional Origins of a Multicultural Nation* (OUP 2000) 23.
[304] Pirouet (n261) 22.

case with the Tamil asylum seekers in the 1980s and continues to be the case today with groups arriving on small boats. It would appear that 'group arrivals' have resulted in a focus on control and management and a series of increasingly punitive measures rather than on measures of support and protection. In this frame, the UK, as a rich western state, appears to be pledging its commitment to meaningful refugee support (in December 2023, the UK made fifteen pledges at the Global Refugee Forum to support the implementation of the Global Compact on Refugees[305]) while simultaneously introducing new measures which 'undermine the former right to asylum, including sanctions on carriers, offshore processing, the use of 'safe third country' concepts, the denial of benefits or imprisonment of those seeking asylum, and limited access to appeals'[306]. As measures of 'deterrence', successive UK governments have introduced an almost constant stream of legislative and administrative measures, designed to limit the number of asylum applications received[307]. However, there is no evidence offered to suggest that these measures work, and it may be the case that asylum policies in the UK, rather than being measures of deterrence, are actually a proxy for a more general authoritarian political agenda[308]. These insights from the IR perspective on asylum are instructive for the question the thesis asks about the factors, domestic, political, and geopolitical, that contribute to the development of the hostile environment.

Refugees' rights are set out in the Refugee Convention and are supplemented by human rights law[309]. However, these rights are often threatened through the use of asylum as a political tool of international relations, which is not in fact a new phenomenon, as the literature makes clear. The admission of Hungarians into the UK following the 1956 Hungarian uprising was as much a political statement against Communism as an act of humanitarianism[310]. At this time, refugees became pawns in the superpower rivalry of the Cold War[311]: western governments considered refugees from Communist countries

[305] Global Compacts on Refugees and Migration Programme: Global Refugee Forum, accessed 10/05/24.
[306] Andrew Hurrell, 'Refugees, International Society and Global Order', A Betts and G Loescher (eds), *Refugees in International Relations* (OUP 2011) 94-5.
[307] Jeff Crisp, 'A New Asylum Paradigm? Globalisation, Migration and the Uncertain Future of the International Refugee Regime' (2005) 1(1) St Antony's International Review 47.
[308] ibid 48.
[309] Jane McAdam, 'Human Rights and Forced Migration', E Fiddian-Qasmiyeh et al (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (OUP 2014) 209.
[310] Stevens (n233) 73.
[311] Alexander Betts and Gil Loescher, 'Refugees in International Relations', A Betts and G Loescher (eds), *Refugees in International Relations* (OUP 2011) 9.

as acceptable and even to be encouraged[312]. With respect to refugees, the end of the Cold War was a historic global event for two reasons: (i) asylum became an issue in the 1990s as a result of refugee flows generated by the geopolitical reordering that followed the end of the Cold War[313]; and (ii) it led to western states rethinking their position toward refugees who had now lost their political value and were consequently regarded as a 'problem'. For these two reasons, asylum policies in the UK from the early 1990s onwards – the start of what I call the Age of Hostility – were based on restriction and exclusion. In the analysis of the parliamentary debates, this research examines how much credence politicians give to international situations in their discussions on asylum and immigration.

Another key historical event that has impacted the international politics of asylum was 9/11. After this event, western states resorted to a more traditional realist conception of national security, incorporating strict border controls and fears of asylum seekers as terrorists[314]. This applied to the UK, which used security issues, for example, following the London bombings on 7 July 2005 (7/7), as 'a rationale for further concern about asylum seekers'[315]. In fact, post-9/11, the UK was the only European country to declare that it was in a state of emergency 'threatening the life of the nation' within the meaning of Article 15(1) of the European Convention on Human Rights[316]. Following the 9/11 terrorist attacks, the discourse surrounding asylum in the UK shifted from a post-WW2 human rights discourse to a security discourse. Under this security discourse, individuals perceived as 'them' or 'the other' were viewed as a potential threat, and asylum seekers were associated with criminality, civil unrest, fundamentalist extremism, and terrorism. This is a tactic used by governments to demonstrate their competence to the public: 'depicting certain phenomena as security threats can confer legitimacy on the State, by portraying it as able to protect citizens from such threats. The State is able to expand its power through promoting a "politics of insecurity"'[317]. So, by declaring a state of emergency, not only was the UK government able to quickly introduce the emergency

[312] Stevens (n233) 219.
[313] Andrew Geddes, 'Getting the best of both worlds? Britain, the EU and migration policy' (2005) 81(4) International Affairs 727.
[314] Hammerstad (n295) 250-1.
[315] Gareth Mulvey, 'When Policy Creates Politics: The Problematizing of Immigration and the Consequences for Refugee Integration in the UK (2010) 23(4) Journal of Refugee Studies 448.
[316] Stevens (n233) 362.
[317] Christina Boswell, 'The Securitisation of Migration: A risky strategy for European states' (2007) Danish Institute for International Studies Brief 1.

legislation that was the 2001 Anti-Terrorism, Crime and Security Act (Part 4 of this Act is entitled 'Immigration and Asylum'), but it was able to demonstrate to the public that it was acting decisively and was in control of the situation. While the 2001 Act was not a pivotal Act in the evolution of the law, by introducing increased powers of detention and linking immigration and asylum with terrorism, it certainly contributed to the temporal progression of hostile measures.

Following this, migration has increasingly been linked with the national security agenda of the UK. The 2008 National Security Strategy (NSS) document stated that illegal migration was a transnational organised crime which was increasing across the world[318] and the 2010 NSS document said that there was a significant increase in the level of illegal immigrants trying to cross the border into the UK[319]. By 2015, migration was declared to be a global challenge [related to security] which had to be controlled[320]. The NSS document of that year pledged to tackle organised immigration crime[321] and the wider abuse of our immigration system[322]. In the 2021 Integrated Review of Security, Defence, Development and Foreign Policy, migratory flows were deemed to be a transnational challenge which would test resilience and international cooperation[323]. The 2021 document pledged to prevent illegal migration; remain sensitive to the plight of refugees and asylum seekers; address the issues that drive irregular migration in the first place; and end the dangerous, illegal and unnecessary small boat crossings[324]. There would appear to be increasing importance placed on migration as an issue associated with security in these NSS documents over time.

One of the major developments in the UK's international relations that affected asylum has in fact been its membership of the European Union:

> The UK has, through a frequently changing legislative framework, deterrence, restrictions in asylum appeal avenues, the use of expedited removals and

[318] 'The National Security Strategy of the United Kingdom: Security in an Interdependent World' (2008) 12.
[319] 'A Strong Britain in an Age of Uncertainty: The National Security Strategy' (2010) 27.
[320] 'National Security Strategy and Strategic Defence and Security Review 2015: A Secure and Prosperous United Kingdom' (2015) 17.
[321] ibid 65.
[322] Ibid 43.
[323] 'Global Britain in a Competitive Age: The Integrated Review of Security, Defence, Development and Foreign Policy' (2021) 31.
[324] ibid 95.

> decision-making targets, sought to attain a 'managed migration' system. As part of this struggle, international refugee law contrives to influence UK asylum law and policy, but increasingly this influence is coming from the EU rather than the UK's common law counterparts.[325]

Since joining the EU in 1973, UK domestic law has been impacted by EU policy[326], with examples of EU influence including a focus on process rather than protection; concepts such as 'safe third countries' and 'white-lists' of safe countries; and UK asylum cases declared to be 'without foundation' or 'manifestly unfounded'[327]. It seems that the EU, rather than constraining UK legislation, has actually legitimised restrictive UK policies[328], and that by selectively adopting certain policies and rejecting others, British governments have made strategic use of the EU[329]. This deliberate selection and rejection of certain European directives and protocols is the specific focus of the case study analysed in chapter six.

European influence is also seen in how issues of asylum and immigration have been portrayed in the UK, especially prior to the Brexit vote in June 2016. Two parallel trends have dominated the UK's immigration regime over the last fifty or so years in this regard. First, through its membership of the EU, the UK deepened its ties with continental Europe[330]. Europeans increasingly enjoyed free movement and exemption from UK immigration control, and this was the case until 31 December 2020 when these provisions ended as part of the implementation of Brexit[331]. The second trend in contrast with the first is the break-up of the British Empire and its consequences[332]. From the 1960s onwards, the UK's ties with its former colonies diminished and were replaced by closer linkages with Europe[333]. This began to wane in the 2000s, especially when eight Eastern European countries joined the European Union in May 2004: the UK allowing

[325] Maria O'Sullivan, 'The Intersection between the International, the Regional and the Domestic: Seeking Asylum in the UK', S Kneebone (ed), *Refugees, Asylum Seekers and the Rule of Law* (CUP 2009) 278-9.
[326] Stevens (n233) 367.
[327] ibid.
[328] ibid.
[329] Geddes (n313) 724.
[330] Will Somerville and Peter William Walsh, 'United Kingdom's Decades-Long Immigration Shift Interrupted by Brexit and the Pandemic' (2021).
[331] ibid.
[332] ibid.
[333] ibid.

their nationals to enter and work without restriction led to large increases in immigrants from Poland and other Eastern European countries[334]. Following this, pressure grew to restrict the free movement of EU citizens despite this being a fundamental right of membership of the Union[335]. Peaking with the referendum, freedom of movement featured prominently in Brexit debates and helped to drive the vote to leave the EU in 2016[336].

Finally, since early 2015, within the context of the wider refugee situation in Europe, migration has become increasingly politicised and mediatised in the UK[337]. Although this is increasingly the case, I would suggest that it is not a new phenomenon. This thesis shows how relations with Europe were part of a wider frame within which the UK's international relations became a terrain for asylum policy.

3.7 Immigration and Race

Critical literature on race in the UK shows how asylum and immigration challenge the twin principles of sovereignty and citizenship, and how in the UK, the legacy of Empire has afflicted British immigration policy with 'the enduring curse of racial discrimination'[338]. In the absence of a meaningful concept of citizenship, it has been argued, British immigration policy has had to operate on a proxy, and this proxy has been race[339]. Britain's race relations legislation has often been closely related to immigration policy and premised not on the protection of individual rights but rather on the protection of public order[340].

Much of the academic literature in this area concentrates on British race relations and immigration in the 1950s and 1960s. Spencer argues that the 1958 race riots in Nottingham and Notting Hill directly influenced the decision to legislate against

[334] ibid.
[335] ibid.
[336] ibid.
[337] Samuel Bennett, 'New "Crises", Old Habits: Online Interdiscursivity and Intertextuality in UK Migration Policy Discourses' (2018) 16(1-2) Journal of Immigrant and Refugee Studies 140.
[338] Joppke (n284) 101.
[339] ibid.
[340] ibid 226.

'coloured' migration[341], while Hansen, on the contrary, blames UK governments and their immigration controls for racism in the country. He maintains that 'throughout the 1950s, successive governments, independently of public pressure, defined migration as a question of 'colour', and 'colour' as a 'problem' to be addressed through the introduction of migration controls'[342]. The 'state' constructed racism where none, or perhaps less, would otherwise have existed, placing racism at the heart of British national identity, and using it to justify immigration controls[343]. In Hansen's view, the 1962 Commonwealth Immigrants Act marked the start of the institutionalisation of racism[344], and this racism continued with the 1968 Commonwealth Immigrants Act which was introduced primarily to prevent Kenyan Asians from travelling to the UK[345].

In his political analysis of 'race' and racism in Britain, Gilroy refers to the 'populist politics of 'race' and nation'[346], and notes that ''race' has to be socially and politically constructed'[347]. He believes that what he terms 'new racism' is 'primarily concerned with mechanisms of inclusion and exclusion, which accounts for the need to maintain strong and effective controls on who may enter Britain'[348]. I would suggest that this is not a new phenomenon: there has long been a relationship between race, national identity, and citizenship in the UK, and that this has been connected with immigration in the legislation since the Commonwealth Immigrants Act of 1962. Pirouet proposes that UK governments deliberately confuse asylum and immigration in order to play the 'race card'[349]. The effect of this 'illiberal legislation' is not only to make it 'progressively more difficult for anyone seeking asylum to find refuge in the UK, and life progressively more uncomfortable and uncertain for those who, against all the odds, manage to reach this country'[350], but it also misleads the public about asylum seekers and fuels racist fears[351]. From a social historical perspective, the issues of asylum and immigration to the UK are linked with issues of the Commonwealth, citizenship, decolonisation, and

[341] Ian R G Spencer, *British Immigration Policy since 1939: The Making of Multi-Racial Britain* (Routledge 1997) 100.
[342] Hansen (n303) 10.
[343] ibid 12.
[344] ibid 247.
[345] ibid 159.
[346] Paul Gilroy, *There Ain't No Black in the Union Jack* (2nd edition) (Routledge 2003) 21.
[347] ibid 35.
[348] ibid 45.
[349] Pirouet (n261) 25.
[350] ibid 4.
[351] ibid.

race relations, and this is widespread throughout the literature[352]. There are no social histories of immigration to the UK without a discussion of the 'Windrush generation' (a generation of British subjects who 'emigrated from the Caribbean to Britain between the arrival of the HMT Empire Windrush on 22 June 1948 and the Immigration Act 1971, including the passengers on the first ship'[353]) and the race relations and racial tensions of the 1950s, '60s and '70s. To deal with what was perceived as the 'problem of race'[354], the British government in the 1960s and '70s utilised the principal weapons of immigration control and legislation, 'both designed to promote good race relations'[355]. The relationships between race and asylum are a major point of analysis in political elite discourse and in the development of hostile environment legislation.

3.8 UK Party Politics

The politicisation of immigration and asylum has been heightened at various points on the platform of party politics and much of the political science literature has studied this[356]. This was the case in 1979 when the Conservatives won the general election on a manifesto of reducing asylum provision and immigration, an election pledge which proved to be problematic when it came to accepting Vietnamese boat people. The new UK government 'got round' the problem by implementing a scheme which kept the Vietnamese refugees completely detached from 'normal' immigration[357]. This was the start of a series of politically motivated resettlement schemes – e.g., of refugees from the former Yugoslavia, Syria, Afghanistan, Ukraine, and Hong Kong – introduced by subsequent UK governments while simultaneously attempting to clamp down on spontaneous asylum arrivals. This is just one illustration of how the granting of asylum is an issue which is caught up in party political decision-making.

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[352] Gilroy (n346); Hansen (n303); Christian Joppke, *Immigration and the Nation-State: The United States, Germany and Great Britain* (OUP 1999); Winder (n237).
[353] Haringey Council, London, 'Windrush Generation 1945-1960', accessed 11/05/24.
[354] M D A Freeman and Sarah Spencer, 'The State, the Law and Race Relations in Britain Today' (1979) 32(1) Current Legal Problems 117.
[355] ibid.
[356] Tim Bale and Rebecca Partos, 'Why mainstream parties change policy on migration: A UK case study – The Conservative Party, immigration and asylum, 1960-2010 (2014) Vol.12 Comparative European Politics 603-19; Benjamin Leruth and Peter Taylor-Gooby, 'Does political discourse matter? Comparing party positions and public attitudes on immigration in England' (2018) 39(2) Politics 154-69.
[357] Ronald Kaye, 'Defining the Agenda: British Refugee Policy and the Role of Parties' (1994) 7(2/3) Journal of Refugee Studies 147.

In analysing party politics, the literature acknowledges a link between public opinion and immigration policymaking. In their 2015 study, Ford et al. concluded that 'where the 'immigration mood' reaches a sufficiently negative level, it has been followed by policy reforms that are incremental and restrictive'[358]. They add that the salience of immigration as a policy issue depends on the type of immigration, e.g., skilled labour and students are regarded positively by the public while asylum seekers are seen as 'problematic'[359]. They also acknowledge that 'negative public views of a group may in part be a product of restrictive policy and rhetoric'[360]. Böhmelt's 2021 research concluded that 'governments react to the preferences of the public'[361], adding that 'in terms of future research, one avenue might be to strengthen our efforts to investigate what causes public opinion on migration in the first place'[362]. This thesis argues that both the general 'immigration mood' and the notion of asylum seekers as 'problematic' are influenced by the rhetoric of the political elite at party level.

In general, immigration policies are shaped by domestic politics in most Western European countries, and these policies focus on restricting rights of entry and access to welfare for new migrants[363]. National politics, backed up with anti-asylum rhetoric, has 'promoted and implemented a series of restrictive policy responses, erecting stronger external borders and more resistant internal rights regimes against potential asylum applicants'[364]. With regard to British refugee policy, ensuring that asylum is on the political agenda is vital, and all political parties, for one reason or another, are key actors in the agenda setting process[365]. Within their party literature, the main political parties tend to include asylum within either the immigration or anti-racism agendas'[366]. This coincides with asylum being subsumed within immigration legislation for almost all of the twentieth century.

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[358] Robert Ford et al., 'Public Opinion, Responsiveness and Constraint: Britain's Three Immigration Policy Regimes' (2015) 41(9) Journal of Ethnic and Migration Studies 1394.
[359] ibid 1403.
[360] ibid 1408.
[361] Tobias Böhmelt, 'How Public Opinion Steers National Immigration Policies' (2021) 9(3) Migration Studies 1475.
[362] ibid.
[363] Paul Statham, 'Understanding Anti-Asylum Rhetoric: Restrictive Politics or Racist Publics?' (2003) 74(s1) The Political Quarterly 166.
[364] ibid.
[365] Kaye (n357) 145.
[366] ibid 156.

Asylum seekers, refugees, and migrants, often muddled together as one, were perceived as one of the 'problems' or 'challenges' faced by post-war society[367]. Post-WW2, refugee policy in the UK has been a compromise between humanitarian duty and political reality with an increasing emphasis on the latter throughout the twentieth and twenty-first centuries. In a television interview in January 1978, Margaret Thatcher, then leader of the Opposition, said that the British people feared they would be 'swamped' by immigrants, and she anticipated that her policy of strict limits on immigration would win back support from the National Front[368]. This anti-immigration electioneering worked as the Conservatives won the 1979 general election and were in power for the next eighteen years. The thesis investigates the extent to which party politics and electioneering are a factor in the development of the UK's hostile environment legislation.

3.9 Conclusions

The literature review presented here has addressed the theoretical and thematic coverage of the study, following from the methodological literature review undertaken in the course of the previous chapter's discussion of the methodological approaches employed.

The literature review starts from the theoretical premise that a constructivist perspective can help to explain the development of the UK's hostile environment: this theory is developed further in this thesis which situates the hostile environment development within a constructivist framework, taking account of identity politics and citizenship, and incorporating both a political and a legal perspective. Rather than add to the critical discussion on the contemporary hostile environment measures, this thesis attempts to explain how and why the hostile environment has developed in the way it has, culminating in these repressive measures. In this quest, the literature review has identified a series of factors that are relevant to the development of the hostile environment legislation, namely, security, race, and party politics. This thesis – through the analysis of debates and manifestos – attempts to determine whether this is an exhaustive list or whether there are other factors which politicians associate with asylum

[367] Winder (n237) 1.
[368] Margaret Thatcher Foundation, TV Interview for Granada *World in Action* ("rather swamped"), accessed 04/10/23.

and immigration legislation in the UK. As a method of analysing these factors, the literature review identifies discourse analyses of specific aspects in the development of the legislation. In summary, the literature review identifies relevant literature over three themes, viz., theoretical framing (constructivism and discourses); historical progression in terms of the development and politics of the hostile environment; and factors related to this development, including security, international issues, and race. While the literature has so far covered a broad range of topics and themes, it has not included the holistic temporal analysis undertaken here, bringing data from parliamentary debates and election pledges from the start of the twentieth century to the present day to bear on the examination of the development of law and policy. This research carries out a comprehensive analysis – in the form of both a content analysis and a discourse analysis – of these sources over the long-term to evidence (i) increased hostility; and (ii) reasons and explanations, that is, related factors, for the increases in hostility and the development of the hostile environment.

Chapter 4:

Theoretical Framework

4.1 Introduction

Although the hostile environment is presented as inevitable, a *fait accompli*, this is not the case. It need not have transpired as it did, and it is not the only option for the governance of asylum. As we see with other countries such as Canada, Germany and the Nordics, it is possible for a state's asylum regime to be based around care, protection and integration rather than hostile measures of deterrence and detention. In the UK, the issue of asylum has been constructed as a policy problem and the hostile environment has been constructed to 'solve' this problem. The constructivist conviction that 'the world is of our making'[369] is undoubtedly applicable to the UK's asylum and refugee regimes.

A pivotal construct around which asylum, and migration policy more generally, turns is the term 'refugee' itself. Although this might be viewed as purely descriptive or merely as a means of classification as per legal definitions, its use, and relationship to the concepts of 'forced migrant' and 'asylum-seeker' are actually highly political. As Agamben, building on Arendt, puts it, although the refugee appears to be a figure at the margins of society, it is actually a political concept that is at the heart of nationhood, sovereignty, and identity[370]. Put simply, without political state borders, the concept of 'refugee' would not exist[371]. Thus, the concept of 'refugee', is a politically constructed concept based on the principles of inclusion and exclusion of a state supported by border control practices. Moreover, the construction of this concept has changed over time from, for example, the initial notion of an alien or non-citizen to a political exile to an 'illegal' asylum seeker.

The presence of 'aliens' or foreigners in a state's territory presents the government of that state with a political dilemma in terms of the governance or regulation of non-citizens. 'Aliens' or foreigners arriving at the border offer the state either a 'problem' or

[369] Nicholas Greenwood Onuf, *World of Our Making: Rules and Rule in Social Theory and International Relations* (Routledge 1989).
[370] Giorgio Agamben, 'We Refugees' (1995) 49(2) Symposium 117.
[371] Emma Haddad, *The Refugee in International Society: Between Sovereigns* (CUP 2008) 43.

an ‘opportunity’. The way in which states respond to asylum seekers involves a political decision on how to balance the rights of citizens against non-citizens based on a range of political motives[372]. How a state deals with such foreigners depends on many factors, including, but not limited to, the domestic position and political persuasion of the government in charge; the global situation and international relations between the receiving and origin states; and the numbers of people arriving. A liberal government will offer humanitarian solutions while a populist government may be more interested in public opinion and being seen to be ‘tough’ on immigration. The global picture can either encourage or discourage the acceptance of refugees. For example, political exiles during the Cold War were received by many western states as part of the global fight against Communism, while people fleeing civil war without money or belongings are more likely to be regarded as a ‘burden’. It was not until the 1990s, following the fall of the Berlin Wall, that asylum became a prominent issue for politicians in the UK and across Europe. Squire claims that ‘asylum is of declining political utility to the state in a post-Cold War context, and that is the reason (rather than because of an increase in the number of claimants) that asylum has come to be defined as a ‘problem’’[373]. She adds that it was the end of the Cold War that led to the emergence of the ‘exclusionary politics of asylum’[374]. This certainly would appear to be the case in the UK where numbers of asylum seekers are relatively low – especially compared with states neighbouring those generating high numbers of refugees – but are increasingly unwelcome. This is one aspect in which the hostile environment operates.

One point extensively discussed in the literature concerning the construction of the refugee concept is the role, and indeed value, of international legal frameworks (based on the Refugee Convention) that largely guide such conceptualisations. In their much-debated book, *Refuge: Transforming a Broken Refugee System,* Betts and Collier are extremely critical of the contemporary refugee regime, pointing out that ‘at no point has there been a major reform process to consider the ongoing relevance of the post-war

[372] Alexander Betts and Gil Loescher, ‘Refugees in International Relations’, A Betts and G Loescher (eds), *Refugees in International Relations* (OUP 2011) 18.
[373] Vicki Squire, *The Exclusionary Politics of Asylum* (Palgrave Macmillan 2009) 26.
[374] ibid.

framework in a radically different world'[375]. In fact, they conclude that the current global refugee regime is 'no longer fit for purpose'[376]. The book sets out four big new ideas:

> The right ethical focus is the duty to rescue the displaced from the disruption to normal life generated by their flight from home; the best places for safe havens are those that are easy for the displaced to reach, and rich countries should make it financially feasible for these haven countries to take them; the best way to restore normality is for refugees to be able to work, so jobs should be brought to the haven countries; and the economic support needed for refuge can be used for the dual purpose of incubating the post-conflict recovery.[377]

The first point has been criticised, as merely placing a '*duty* to rescue' on rich states does not necessarily give them any incentive to comply[378]. What is there to ensure states help rescue refugees other than a moral obligation to do so? Furthermore, Pascucci points out that the book is in fact based around global capitalism – 'refugees help global capitalism at least as much as global capitalism helps refugees[379] – in that, apart from the duty to rescue, the big new ideas are focused on employment and economics. While Betts and Collier present their solutions as 'a route out of limbo'[380] for refugees, Munro points out that a more optimistic proposal would be the 'rejection of the presentation of refugees as a problem to be fixed'[381]. What is clear from the book and the ensuing extensive debate is that the construction of 'refugees' as either a problem or part-solution to capitalist governance sits at the heart of political responses at both domestic and international levels.

The terms 'migrant', 'asylum seeker', 'refugee' or, rarely, 'forced migrant' are political categories which have developed over time to distinguish 'them' from 'us', and, in accordance with this, politics is where 'identities can be constructed, expressed and contested'[382]. And the distinction that 'they' are 'not us' is all they have in common as

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[375] Alexander Betts and Paul Collier, *Refuge: Transforming a Broken Refugee System* (Penguin Books 2017) 35.
[376] ibid.
[377] ibid 188-9.
[378] Shaun Hargreaves Heap, Refugee History, 'Refuge: Transforming a Broken Refugee System', accessed 18/05/24.
[379] Elisa Pascucci, 'Refuge: Transforming a Broken Refugee System' (2017) 195(2) Fennia 200.
[380] Betts and Collier (n375) 205.
[381] Gayle Munro, 'Refuge: Transforming a Broken refugee System', LSE Blogs, accessed 18/05/24.
[382] Heather Savigny, *Political Communication: A Critical Introduction* (Bloomsbury Publishing 2016) 161.

there does not exist an archetypal 'asylum seeker' in the same way as there does not exist an archetypal 'Brit' or 'engineer' or 'parent' or many other categories. The process of categorising and labelling is not merely a descriptive tool, it is used by states to construct the world in their interests, and these interests change over time. Zetter observes that the globalisation of migration (both forced and voluntary) has meant that 'the centre of gravity of the international refugee regime [has] fundamentally shifted to the 'north'[383]. This has resulted in labels now being allocated by government bureaucracies in the 'Global North' rather than by humanitarian agencies operating in the 'Global South', as in the past[384]. The upshot of this is that the refugee/asylum seeker labels have become more politicised: 'Language is inherently political, and the language used to describe migrants and refugees is politicised'[385]. Moreover, it stigmatises migrants and asylum seekers in a way which does not apply to other people on the move, e.g., words such as 'invasion' or 'swarm' have negative implications and instil fear among the resident population[386]. This 'language of invasion – being "besieged" by "swarms" or "floods" of migrants – has become increasingly mainstream as it trips off the tongue of populist political leaders'[387]. The process of categorising and differentiating refugees into, for example, 'genuine refugees' (implicitly different from refugees not labelled as genuine); 'clandestine', 'illegal', or 'bogus' asylum seekers (suggesting a range of criminality); or 'spontaneous' asylum seekers (implying a degree of irresponsibility and different from a planned asylum seeker) serves the interests of the state and thus forms part of the much larger apparatus of state power[388]. The language used by decision-makers is considered over time as part of the temporal discourse analysis of parliamentary debates and election pledges.

In discourses that construct refugees as a problem, the exclusion of others from resources and opportunity is based on the idea that the in-group – the state's citizens – should be protected regardless of how this might affect 'the other' and without questioning *why*

[383] Roger Zetter, 'More Labels, Fewer Refugees: Remaking the Refugee label In an Era of Globalization' (2007) 20(2) Journal of Refugee Studies 180.
[384] ibid 176.
[385] Adam Taylor, The Washington Post, 'Why the language we use to talk about refugees matters so much' (2015), accessed 18/05/24.
[386] ibid.
[387] Amnesty International, 'Why the language we use to talk about refugees matters' (2020), accessed 18/05/24.
[388] Zetter (n383) 188.

there should be a distinction between 'us' and 'them'[389]. Political discourse is deliberately constructed to portray the others – non-citizens and some 'lesser' groups of citizens such as the poor; ethnic minorities; and people with disabilities – as a threat to the in-group's way of life. In accordance with this, asylum seekers are increasingly represented by UK governments as a threat to the economic, cultural, and political security of the state and to the national identity of Britain and the British people. Nationalism, as a construct, has historically evolved and been shaped by the after-effects of Nazism, movements due to decolonisation, and the ethnic-nationalist revival which took place after the Cold War[390]. This forms part of a 'temporal constructivism' of the development of asylum provision in the UK. In modern times, this manifests itself as a territorial club, to which non-members (that is, asylum seekers, refugees and other non-citizens) have to earn a right to membership[391]. In constructivist terms, security is about what *is* [or is perceived to be or is constructed as] a threat[392], and there is a general securitisation of ever larger spheres of social life (including the asylum and migration regimes)[393]. Security issues are made security issues by acts of securitisation [such as associating asylum seekers with international terrorists][394]. The constructivist counterargument to associating asylum seekers and refugees with security is to engage in debates over factual matters relating to the securitisation of immigrants[395] [such as 'are projections for future immigrants realistic, do cultures lose coherence if they live together, or are they more likely to be strengthened'[396]].

In accordance with an approach of 'temporal constructivism', this thesis uses discourse analysis to assess to what extent the discourse of elite decision-makers has contributed to the construction of the hostile environment and how this has changed over time. The discourse analysis shows that the construction of hostility is centred around a number of concepts that together provide the analytical contours of the thesis, thus further refining the theoretical framing used. These concepts are explored in the rest of this chapter.

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[389] Reece Jones, *Violent Borders: Refugees and the Right to Move* (Verso 2016) 169.
[390] Christian Wicke, 'Constructivism in the History of Nationalism since 1945', S Berger and E Storm (eds), *Writing the History of Nationalism* (Bloomsbury Publishing 2019) 131.
[391] ibid.
[392] Barry Buzan et al., *Security: A New Framework for Analysis* (Lynne Rienner Publishers 1998) 207.
[393] ibid 204.
[394] ibid.
[395] ibid 206.
[396] ibid.

4.2 Theoretical Framework: A Constructivist Perspective

Constructivism prioritises the importance of institutions, agents, and norms. It maintains that the socio-political world is constructed by human practice and seeks to explain how this construction takes place[397]. The concept that the world as we know it is not inevitable but is socially constructed is at the heart of constructivism. Institutions, including states, are not merely acting in response to situations, but are political entities actively involved in shaping these situations. Under globalisation and regionalisation, the state as an autonomous geopolitical territory is not constant but is subject to change resulting from the influence of the international state system as a whole. Globalisation can be thought of as a widening, deepening, and speeding up of worldwide connectedness, in other words, a 'shrinking world'[398]. Theorists of globalisation have argued about 'the emergence of a borderless world'[399] in this regard.

While contemporary globalisation has meant more interdependence between states and, theoretically, less significance for borders and territoriality, this is not the case when it comes to human mobility. Globalisation has meant increased and faster movements of all things across borders, including people, ideas, capital, and goods, and this inevitably means more movement of both desirable and undesirable people[400]. Globalisation divides as much as it unites, and consequently, the freedom to move is a 'scarce and unequally distributed commodity'[401]. So-called 'globalising' processes, such as freedom of movement, apply increasingly to a select number of global and extraterritorial elites while simultaneously marginalising the majority of the world's population[402]. Globalisation has led to an increase in the numbers of asylum seekers and refugees which in turn has led to more restrictions on entry to rich western states including the UK. Consequently, changes in global circumstances over time have resulted in corresponding

[397] Vendulka Kubálková et al., 'Constructing Constructivism', V Kubálková et al. (eds), *International Relations in a Constructed World* (M E Sharpe 1998) 20.
[398] Anthony McGrew, 'Globalization and Global Politics', J Baylis et al. (eds), *The Globalization of World Politics: An Introduction to International Relations* (8th edition), (OUP 2020) 24.
[399] Chris Brown and Kirsten Ainley, *Understanding International Relations* (4th edition) (Palgrave Macmillan 2009) 215.
[400] Hastings Donnan and Thomas M Wilson, 'Ethnography, Security and the 'Frontier Effect' in Borderlands', H Donnan and T M Wilson (eds), *Borderlands: Ethnographic Approaches to Security, Power and Identity* (University Press of America 2010) 9.
[401] Zygmunt Baumann, *Globalization: The Human Consequences* (Polity Press 1998) 2.
[402] ibid 70.

changes in asylum governance. This can be seen in the way international issues appear to be a factor in the construction of the UK's hostile environment.

4.2.1 Sovereignty and Citizenship

The modern-day category of 'refugee' arguably goes back to the 1648 Treaties of Westphalia, which established the system of autonomous sovereign states that we are familiar with today. While the contemporary concept of sovereignty is widely recognised as originating from Westphalia, the notion of 1648 as a turning point has been disputed by some – most notably Krasner and Osiander – who point out that the Treaties make no reference to sovereignty, territoriality, or autonomy. Osiander observes that 'the process by which the single society of medieval Europe … evolved into neatly divided, "sovereign" states was a gradual one'[403], and that modern-day sovereignty owes more to nineteenth century industrialisation than 1648[404]. And Krasner reflects that, although the Westphalian model is a valid one, there have been recent infringements of Westphalian sovereignty, including the formation of the British Commonwealth and the European Union[405], and individual states signing up to international agreements such as the European Convention on Human Rights[406]. Westphalia should be considered as a reference point at most. That said, state sovereignty is still the predominant feature of international relations in that states are entitled to rule their people as they see fit and to decide who should be allowed to enter their country: 'The importance attached to sovereignty in the international system has meant that states must…be free to choose whom they will allow entry to their territory, and on what terms'[407]. Without this international system of autonomous states, there would be no notion of migrant, forced or voluntary. It is the existence of territorial – and political – borders that defines a person on the move as a migrant or refugee: 'as long as there are political borders constructing separate states and creating clear definitions of insiders and outsiders, there will be refugees'[408].

[403] Andreas Osiander, 'Sovereignty, International Relations, and the Westphalian Myth' (2001) 55(2) International Organization 281.
[404] ibid 282.
[405] Stephen D Krasner, 'Compromising Westphalia' (1996) 20(3) International Security 116.
[406] ibid 125.
[407] Sita Bali, 'Refugees and Asylum', D MacIver (ed), *Political Issues in the World Today* (Manchester University Press 2004) 73.
[408] Haddad (n371) 7.

Although asylum seekers and refugees appear to be on the margins of society, they are actually central to the politics of sovereignty, citizenship, and identity. Without asylum seekers and refugees, there would no issues around citizenship and sovereignty, and vice versa, without state citizenship and sovereignty, there would not be an issue around asylum and refugeehood. Sovereignty – much protected by individual nation-states – makes territory, rather than people, the basic reference point of rule[409], and it is from this starting point that control over access to and stay within a state's territory forms the basis of immigration policy[410]: 'Every state divides the world into 'nationals' who have a right of entry and stay, and 'aliens' to whom entry and stay may be denied'[411]. This inclusion/exclusion principle forms the foundation of citizenship: 'a set of rights and obligations bestowed equally on all members of the community, but also a mechanism of closure, separating members from non-members'[412]. Moreover, 'citizenship is a bounded concept'[413], and 'it is this boundedness of citizenship to the nation-state that has become problematic in the age of migration and globalization'[414]. According to Soguk and Whitehall, refugees problematise and defy the 'territorial imperative' of the sovereign state[415]. Human mobility contradicts 'modern attempts to permanently situate and fix people's identities within the spatial territorial boundaries of the state'[416]. In other words, the very existence of refugees or those seeking asylum is a threat to the concept of sovereignty and the system of territorial sovereign states each with their own political population of citizens. Nyers takes this one step further by claiming that refugees, as individuals who cannot claim to be members of a political community, act as a 'limit-concept', occupying the ambiguous zone between citizen and human[417]. Under this argument, Nyers claims that as the refugee is not a member of a political community then he/she can neither be considered to be a citizen nor even human.

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[409] Christian Joppke, *Immigration and the Nation-State: The United States, Germany and Great Britain* (OUP 1999) 5.
[410] ibid.
[411] ibid 6.
[412] ibid 8.
[413] Engin F Isin, *Citizens Without Frontiers* (Bloomsbury Publishing 2012) 5.
[414] ibid 6.
[415] Nevzat Soguk and Geoffrey Whitehall, 'Wandering Grounds: Transversality, Identity, Territoriality, and Movement' (1999) 28(3) Millennium 682.
[416] ibid 697.
[417] Peter Nyers, 'Emergency or Emerging Identities? Refugees and Transformations in World Order' (1999) 28(1) Millennium 4.

In conjunction with state sovereignty, citizenship, is a 'regime of inclusion/exclusion'[418], which is closely aligned with asylum, refugeehood and migration. Citizenship confers privilege on some through the exclusion of others[419]. Furthermore, citizenship and state borders are politically motivated concepts, and the privileges associated with citizenship of a state can only be maintained by excluding others[420]. At the same time, this exclusionary system is developed in a temporal fashion, often incrementally, and in a dynamic way. Citizenship, as a category of belonging, divides and organises states and people into insiders who belong and outsiders who do not[421]. From its early origins to the present day, citizenship has always been a two-sided concept, with the state guaranteeing rights for some people while excluding others from the right to have rights[422]. Access is restricted according to 'place-based categories of belonging'[423]. Today, this seems an archaic concept, and Walker suggests that it is becoming increasingly difficult to organise modern political life in terms of sovereign states and boundaries: he argues that there are 'spatiotemporal processes that are radically at odds with the resolution expressed by the principle of state sovereignty'[424]. He asserts that 'the trade-off between men and citizens built into the modern state need not always privilege the claims of citizens above the claims of humanity'[425]. Walker is suggesting that it should not be considered inevitable that modern international society is organised by the hierarchical binary positions that epitomise the sovereign state system. Indeed, the concept of state sovereignty based on a fixed exclusionary identity which privileges its own citizens to the detriment of others seems incompatible with contemporary levels of human mobility. This idea stems from constructivist thinking. The system of states is a constructed world in which sovereignty is not fixed and absolute but is a matter of degree[426]. The construction of the contemporary state system perpetuates the inclusion/exclusion binary of the autonomous nation-state. As part of this, the construction of modern-day measures such as border controls and visa requirements

[418] Squire (n373) 4.
[419] Costas Douzinas, 'The End(s) of Human Rights' (2002) 26(2) Melbourne University Law Review 449.
[420] ibid.
[421] Jones (n389) 79.
[422] ibid.
[423] ibid 85.
[424] R B J Walker, *Inside/Outside: International Relations as Political Theory* (CUP 1992) 155.
[425] R B J Walker, 'International Relations Theory and the Fate of the Political', M Ebata and B Neufeld (eds), *Confronting the Political in International Relations* (Palgrave Macmillan 2000) 231-2.
[426] Nicholas Onuf, 'Constructivism: A User's Manual', V Kubálková et al. (eds), *International Relations in a Constructed World* (M E Sharpe 1998) 65.

reinforce the privilege of citizenship over non-citizenship. Citizenship is closely related to the UK's governance of asylum and immigration and is identified as a relevant factor in the construction of the hostile environment.

4.2.2 Rules, Norms, and Social Facts

The UK government's asylum governance has developed through the years into an assortment of formal and informal rules, regulations, and practices. Policies and laws have been incrementally constructed over the years building on previous legislation and becoming more and more restrictive.

Constructivism stresses the role to be played by principles, norms, and rules, all of which are central to the UK's asylum and immigration regimes. Social norms are a standard of appropriate behaviour for actors with a given identity[427]. While many may consider the policies associated with the hostile environment as unduly tough and inappropriate for the protection of asylum seekers, these restrictive measures do indeed coincide with a state constructing and presenting itself as one where asylum seekers will not receive an 'easy ride'. In other words, current restrictive UK policies comply with the UK's contemporary identity as an unattractive destination for asylum seekers. In addition, a temporal examination of parliamentary debates and election manifestos provides an insight into how this modern day 'unattractive destination' identity has been constructed over the years.

Legal constructivism – applying constructivism to the law – assumes that the law is constructed rather than reconstructed[428]. Working within a legal system which is subject to doctrinal consistency, 'reactivist lawyers work well within the confines of doctrine and precedent and acknowledge facts and meaning to the extent that they fit into an existing body of law'[429]. In contrast, a legal constructivist lawyer attempts to make legal constructions reflect the social realities they represent[430]. Legal constructivism is subject to interpretation: 'a different legal construction may yield different results'[431]. Constructivism with respect to international law acknowledges that international norms

[427] Peter J Katzenstein, *The Culture of National Security: Norms and Identity in World Politics* (Columbia University Press 1996) 5.
[428] Jaap Hage, 'Legal Reasoning and the Construction of Law' (2012) 16 i-lex 95.
[429] Keith H Hirokawa, 'Dealing with Uncommon Ground: The Place of Legal Constructivism in the Social Construction of Nature (2003) 21(3) Virginia Environmental Law Journal 402-3.
[430] ibid 403.
[431] ibid.

are inevitably contested and may acquire different meanings in different national settings[432]. International legal norms can also help to create specific categories of actors, such as refugees[433]. In its temporal construction of domestic asylum law, the UK has increasingly challenged international human rights law, and this can be seen in the measures of the contemporary hostile environment.

The global governance of forced migration is based on the principle of *non-refoulement*; the norms codified in the 1951 Refugee Convention and 1967 Protocol; and the rules and procedures periodically issued by the UNHCR such as in the Handbook on Refugee Status Determination Procedures. The UK is one state within the society of states and its behaviour is shaped to some degree through interaction with other states and international institutions. While there is a certain obligation to comply with international rules, the UK as a well-established, well-regarded western state is not compelled to prove its legitimacy as a state. That is a given. Thus, there is no compulsion to comply with international legislation to acquire authority: the UK already has that. From a constructivist perspective, therefore, compliance with international legislation does not rely on rational calculation or imposed constraints; rather, it is a matter of identity and norms of what are perceived to be appropriate behaviour[434]. Over the period since the end of the Cold War and the fall of the Berlin Wall, UK asylum legislation has become increasingly restrictive in an effort to deter asylum seekers from travelling to the UK. The UK shows scant regard for international rules as the measures introduced are more about control rather than protection.

The constructivist perspective relies on social facts for the social construction of reality. These social facts can only be determined through public use, acceptance, and practice. Searle proposes that social reality depends on human agreement for its existence[435]. He goes on to give examples of social realities such as money, sovereignty, and diplomacy, all of which only exist because we agree that they do. Internal borders, and the hostile environment more generally, only exist because the general public agrees that this is the

[432] Jutta Brunnée and Stephen J Toope, 'Constructivism and International Law', J L Dunoff and M A Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (CUP 2012) 125.
[433] ibid 129.
[434] Kal Raustiala and Anne-Marie Slaughter, 'International Law, International Relations and Compliance', W Carlsnaes et al. (eds), *Handbook of International Relations* (2nd edition) (SAGE Publications Ltd 2012) 714.
[435] John Searle, *The Construction of Social Reality* (Free Press 1995) 26.

case. The successful operation of the hostile environment relies on public bureaucratisation, that is, internal political boundaries 'policed' by members of the public. The hostile environment could not survive in the way it has developed without the acceptance of internal border checks and without members of the public carrying out these checks. It relies on UK citizens conforming to the bureaucracy of the immigration regime. This 'governmentality-infused' agency, defined by Foucault as an 'ensemble formed by institutions, procedures, analyses and reflections…'[436], is used by the government to exercise power and delegate authority. Coercing members of the public to act as 'border officials' is part of the construction of the hostile environment as the 'solution' to the issue of asylum. As well as outsourcing governmental business, it acts to keep the public on the side of the government in the 'policing' of asylum and also abdicates a degree of responsibility. Starting with right to work checks, immigration status checks have been incrementally expanded throughout the years to include checks on right to rent, drive, and open a bank account: one element of the UK's hostile environment is the temporal construction of the internal border.

4.2.3 The Conceptualisation of 'Crisis' and Security

Constructivism acknowledges that change is inevitable, and transformative change often occurs following a disruptive event or so-called 'critical juncture'[437]. This could be the end of a war, notable examples being World War 2 and the Cold War or acts of terrorism such as 9/11 and 7/7. Other events which might be regarded as 'critical' to the issue of forced migration include the European migrant crisis, Brexit, and recent increases in numbers crossing the English Channel in small, flimsy boats. In the last three decades, asylum has been deliberately conflated with terrorism and security measures, which the state can use to demonstrate its 'competence' in dealing with a crisis. Particularly significant in the constructivist focus on ideas, change, and rules is the construction of crises or 'tipping points', which can be formulated in such a way as to be useful to a state[438]. For example, the construction of a state of emergency can enable a state to introduce any legislation it so wishes under the term 'emergency measures'. The

[436] Michel Foucault, 'Governmentality', G Burchell et al. (eds), *The Foucault Effect: Studies in Governmentality* (University of Chicago Press 1991) 102.
[437] Trine Flockhart, 'Constructivism and Foreign Policy', S Smith et al. (eds), *Foreign Policy: Theories, Actors, Cases* (3rd edition) (OUP 2016) 89.
[438] Wesley W Widmaier et al., 'Exogenous Shocks or Endogenous Constructions? The Meanings of Wars and Crises' (2007) 51(4) International Studies Quarterly 749.

construction of crises can contribute to state stability in that the government can demonstrate to its public how capable and efficient it is in the face of a crisis, and thus how competent it is as a government overall. This can apply to exaggerated or even manufactured crises as well as genuine ones. A crisis 'only becomes one when it is narrated as such'[439], e.g., 'if asylum is defined as a problem to be dealt with, subsequent policymaking takes on that problematized construction'[440]. In the UK, the issue of asylum has been temporally manufactured into a crisis. This has been exacerbated by the British media and tabloid press, but the blame does not lie at their door: the issue has been constructed as a crisis by the discourse of the UK government. While migration is subject to processes of securitisation, Diez and Squire acknowledge that these processes are more nuanced: it is specific groups of migrants [e.g., Muslim male migrants] who are constructed as 'threatening', and it is certain forms of cross-border activities [e.g., 'illegal migration' or arrivals of spontaneous asylum seekers] which are subject to securitisation processes[441]. In the UK, migration has been associated with a range of risks [not just terrorism], which, in political discourse terms, 'legitimise the development of selectively restrictive border controls, restrictive asylum practices, and deportation measures'[442]. Linking asylum and immigration legislation with anti-terrorism legislation specifically associates asylum seekers and refugees with terrorists.

Successive UK governments have manufactured a state of crisis or emergency when it comes to refugees and asylum seekers. In the latest incarnation of the crisis (as of 2023), it is the arrival of asylum seekers crossing the English Channel in small boats. These have been identified by the government as a particular problem and branded as 'illegal' with the threat of immediate deportation to Rwanda. Part of the issue, as far as the government is concerned, is what I term the 'visibility factor': asylum seekers arriving by small boats are clearly, visibly, and openly 'abusing' the UK's hospitality and generosity, unlike, say, visa overstayers who are abusing the system in a much less obvious fashion. Targeting asylum seekers in small boats forms part of what de Genova terms the 'Border Spectacle', that is, 'a spectacle of enforcement at 'the' border, whereby

[439] Gareth Mulvey, 'When Policy Creates Politics: The Problematizing of Immigration and the Consequences of Refugee Integration in the UK' (2010) 23(4) Journal of Refugee Studies 445.
[440] ibid 444.
[441] Thomas Diez and Vicki Squire, 'Traditions of Citizenship and the Securitisation of Migration in Germany and Britain' (2008) 12(6) Citizenship Studies 572.
[442] ibid 576.

migrant 'illegality' is rendered spectacularly visible'[443]. These arrivals, which we can all clearly observe, are branded a 'small boats crisis' and dealt with accordingly, employing punitive measures such as deportation and detention. It is a public display, a spectacle at the border[444] for all to witness, of state power, border policing, and immigration law enforcement. Furthermore, a declared state of emergency gives a government powers to introduce or amend legislation without the approval of parliament. In fact, although not actually declaring an emergency, UK governments have been implementing changes to immigration legislation without full parliamentary scrutiny through the many amendments to the Immigration Rules since they were first introduced in 1973. The analysis of legislation, as well as parliamentary debates, shows that the hostile environment has developed incrementally over more than a century but that this temporal development has been catalysed and accelerated at particular points constructed as ones of 'crisis' and 'emergency'.

Within the constructivist frame, securitisation theory, provides a theoretical perspective on the process whereby an issue is presented as an existential threat, requiring emergency measures and justifying actions outside the normal bounds of political procedure[445]. The conceptualisation of security involves much more than physical security and/or military threat. Constructivists have played a part in moving the understanding of threat away from purely material calculations towards more social and political understandings[446]. It is state sovereignty that is existentially threatened by anything that questions recognition, legitimacy, or governing authority[447]. In accordance with this construction, immigrants and refugees are portrayed as endangering a collective way of life that defines a community of people[448]. This relies on a negative representation of immigrants and refugees. For example, the use of metaphors such as 'flood' and 'invasion' enable securitisation of migration without specifically referring to numbers or increases in numbers[449]. Securitisation thus frames migration existentially in two interrelated ways:

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[443] Nicholas de Genova, 'Spectacles of Migrant 'Illegality': The Scene of Exclusion, The Obscene of Inclusion' (2013) 36(7) Ethnic and Racial Studies 1181.
[444] ibid.
[445] Barry Buzan et al., *Security: A New Framework for Analysis* (Lynne Rienner Publishers 1998) 23-4.
[446] ibid 272.
[447] ibid 22.
[448] Jef Huysmans, *The Politics of Insecurity: Fear, Migration and Asylum in the EU* (Routledge 2006) 46.
[449] ibid 48.

> (1) migration is transfigured into events and developments that existentially endanger the independent identity and functional autonomy of a political unit; and (2) in endangering the community it asserts and reiterates the very existence of the community as an autonomous political unity.[450]

A politics of fear, focusing on dangerous outsiders, administers trust by closing borders, controlling immigrants, deterring immigrants from entering, expulsing immigrants and so on[451]. As well as these measures of control and deterrence, this politics of fear is supported by a negative representation of asylum seekers and refugees, in which they are portrayed as a threat to Britain and the British way of life. This representation is an important part of the temporal construction of the hostile environment, and, as such, is examined in the discourse analysis of the parliamentary debates and election manifestos, two central aspects of the law-making process.

4.2.4 Representation as a Critical Factor

Representation is a highly important aspect of constructivism which is particularly relevant to the UK's governance of asylum. In his seminal 1966 work, through an analysis of many diverse subjects, ranging from Velázquez' painting, *Las Meninas,* to Cervantes' novel, *Don Quixote,* Foucault maps a history of labelling, classification, and representation. Through an extensive temporal examination of what he terms a 'theory of order'[452], he questions 'why order exists in general, what universal law it obeys, what principle can account for it, and why this particular order has been established and not some other'[453]. With time as a driving force – moving through the Classical age (starting halfway through the seventeenth century) into the modern age (from the beginning of the nineteenth century) – he considers forms of order, links between representation and things, and justifications for classifications. Foucault reminds us of the role of sameness or resemblance (as well as difference) in the order of things, establishing relations of identity or difference against the continuous background of similitudes[454]. As well as a general order of identities and difference, his analysis acknowledges the representative functions of discourse. For Foucault, all knowledge structures are socially and

[450] ibid 51.
[451] ibid 52.
[452] Michel Foucault, *The Order of Things: An archaeology of the human sciences'* (Routledge 2002) 205.
[453] ibid xxii.
[454] ibid 177.

historically constructed[455]. His constructivism appreciates the importance of history and context: he recognised that knowledge and categorisation are constructed in history and that the 'explanation of any event or process is dependent on its social, historical, or cultural location'[456]. In accordance with this thinking, this thesis acknowledges the importance of history and context in the construction of the UK's hostile environment.

The asylum seeker has been temporally constructed through their representation by the UK government to its public and this representation is used as a basis for the policies and solutions proposed to solve the 'problem'. This government discourse is evident in official documents and debates and is subsequently filtered to the public's attention via media interviews and articles. Political elites are able to exert influence on public discourse through the media and hence on public opinion. After years of anti-immigration government propaganda, the British electorate now 'does not believe that more migration is needed, and feels threatened by current levels, regardless of how high or low they actually are'[457]. Government discourse – based on concepts such as portraying asylum seekers as a threat rather than people needing protection and as scroungers rather than contributing to the economy – perpetuates an order based on hostility rather than any possible alternative order founded on compassion and protection. Peo Hansen highlights the contradictory goals of the EU with regard to the 2015/16 'refugee crisis': 'less migration as a resolution to the refugee crisis versus more migration as a resolution to the demographic crisis [that is, EU labour migration objectives]'[458]. This narrative correlates with today's situation in the UK where, at the end of June 2023, there were over 175,000[459] people awaiting an asylum decision (an all-time high) while, at the same time, in the year ended 30 June 2023, a record 321,000[460] work visas were issued. Paradoxically, in the UK, large numbers of asylum seekers are not allowed to work while simultaneously the UK workforce is being boosted by record numbers of workers from overseas. This forms part of the control and

[455] Mark Olssen, 'Wittgenstein and Foucault: The limits and possibilities of constructivism' (1995) 13(2) Access: Contemporary Issues in Education 101.
[456] ibid 100.
[457] Liza Schuster, 'Common Sense or Racism? The Treatment of Asylum Seekers in Europe' (2003) 37(3) Patterns of Prejudice 235.
[458] Peo Hansen, *A Modern Migration Theory: An Alternative Economic Approach to Failed EU Policy* (Agenda Publishing 2021) 130.
[459] gov.uk, 'National Statistics: How many people do we grant protection to?', accessed 09/10/23.
[460] gov.uk, 'National Statistics: Why do people come to the UK? To work', accessed 09/10/23.

management of asylum seekers, a factor which has more prominence than their protection. The discourse analysis considers how the representation of asylum seekers and refugees in parliament has contributed to the construction of the hostile environment.

4.3 Conceptual Constructs in the Hostile Environment Discourse

The construction of the UK's contemporary restrictive asylum regime has changed over time, building on previous structures, and becoming progressively harsher. But why has UK policy adapted in this way rather than taking a more a humanitarian route? The issue of asylum has been constructed in such a way as to ensure it is viewed as a problem requiring a solution rather than an alternative construction such as an opportunity to develop. Trine Flockhart identifies four key constructivist propositions, which are particularly helpful in applying a constructivist lens to UK asylum and immigration regimes:

1) A belief in the social construction of reality and the importance of social facts.
2) A focus on ideational as well as material structures and the importance of norms and rules.
3) A focus on the role of identity in shaping political action and the importance of the 'logics of action'.
4) A belief in the mutual constitutiveness of agents and structure and a focus on practice and action.[461]

Flockhart's first tenet states that reality is under constant construction and transformation in accordance with not just material facts but, more importantly, social facts. For example, regarding the UK's asylum policies, the hostile environment relies on the cooperation of members of the public carrying out 'internal border checks'. In contrast to the material fact of the physical external border, these internal borders are social facts which exist only through 'human agreement and shared knowledge reinforced through practice'[462]. In other words, without the tacit cooperation of the public, enforcement of

[461] Flockhart (n437) 83.
[462] ibid 84.

the hostile environment would be virtually impossible. The second strand acknowledges that while shared knowledge of material structures – such as language – is important, equally important are ideas, norms, and rules. UK legislation on forced migration has developed through a series of rules and regulations which have been borne out of ideas of inclusion and exclusion; citizen and non-citizen; us and them; good and bad. These binary concepts form the basis of the UK's asylum policies and legislation. Related to this is the third belief which highlights the importance of identity. Identities, which are based on historical, cultural, political, and social factors, strongly imply a certain choice of action. This is again a binary allocation with 'outsiders' as warranting somehow lesser action and 'insiders' entitled to a higher meaning. Under the hostile environment, this is assumed to be the appropriate logic of action. Related to identity are categorisation and labelling, which are important elements of the asylum process. An individual is categorised as a refugee, or not, because an institution has defined and labelled them as such. The fourth strand in terms of UK policy acknowledges the co-existence of structure and agents. There are many agents involved in the implementation of the hostile environment policies from the Home Secretary to border control officials, and airline personnel to employers. All operate with a shared knowledge of the UK hostile environment structure as a domestic institution operating in an international framework. This stresses the importance of routinised practice, something which is essential for the successful implementation of the hostile environment, which relies on checks carried out by non-governmental personnel. The implementation of internal border checks is one element of the hostile environment which has been extended over time.

4.3.1 Citizenship

Citizenship is a regime of inclusion and exclusion[463] where 'desirable' migrants are warmly welcomed while 'undesirables' are not[464], and, in conjunction with this, asylum has been constructed as a 'problem' or a 'threat' that demands 'intensified controls'[465]. Although UK governments have claimed that this problem/threat is based on an increase in the number of asylum seekers since the 1990s, there is no evidence of a trend which could reasonably be described as either threatening or problematic[466]. Citizenship is a

[463] Squire (n373) 4.
[464] ibid 10.
[465] ibid 9.
[466] ibid 31.

concept which traverses politics and the law and is fundamental to the development of the UK's immigration legislation. In terms of the legislation, the notion of citizenship formed the basis of the 1948 British Nationality Act, and citizenship and immigration became entwined from the 1962 Commonwealth Immigrants Act onwards. Citizenship of a state is 'not a legal status but a form of identification, a type of political identity: something to be constructed, not empirically given'[467]. In order 'to construct a "we", it must be distinguished from the "they" and that means establishing a frontier, defining an enemy. Consensus is by necessity based upon acts of exclusion'[468]. In fact, the privileges attributable to citizenship in a nation-state can only be maintained by the exclusion of others[469]. Furthermore, citizenship and state borders, which enable these privileges to be granted, are politically motivated concepts[470]. While these are general observations on citizenship, they are applicable to the increasingly restrictive measures introduced in the UK, initially with respect to Commonwealth citizens and later to 'undesirable' asylum seekers. The notion of UK citizenship and how it has changed over time is examined in the discourse analysis of parliamentary debates and election manifestos. Citizenship politics based on inclusion and entitlement versus exclusion and non-entitlement is one aspect in the construction of the hostile environment.

The concept of citizenship has changed throughout the period from 1900 to now. The UK had a relatively inclusive citizenship policy for members of the Commonwealth up until 1962 when the Commonwealth Immigrants Act of that year introduced some restrictions. Further restrictions were announced in the 1968 Act which constructed 'New Commonwealth' citizens as a 'problem' or a 'threat'. The decolonisation of the British Empire led the UK toward EU citizenship in 1973, and the 1971 Immigration Act and Rules began a long and systematic process of intensified exclusion. The 1981 British Nationality Act conflated citizenship rights and immigration rights, and by the late 1980s, security was starting to be an issue associated with refugees. The purpose of this succession of changes in legislation was to 'remove from certain categories of people a fundamental right of citizenship – that of entry to the state'[471]. In a House of

[467] Chantal Mouffe, 'Democratic Citizenship and the Political Community', Miami Theory Collective (eds), *Community at Loose Ends* (University of Minnesota Press 1991) 75.
[468] ibid 78.
[469] Douzinas (n419).
[470] ibid.
[471] Liza Schuster and John Solomos, 'Rights and Wrongs across European Borders: Migrants, Minorities and Citizenship' (2002) 6(1) Citizenship Studies 46.

Commons debate on immigration rules in 1990, Conservative MP, John Stokes, stated that 'British citizenship should be a most valuable prize for anyone, and it should not be granted to all and sundry'[472]. In the 1990s, asylum moved up the political agenda, and the 1993 Asylum and Immigration Appeals Act was the first UK law officially dedicated to the issue of asylum. From this point on, asylum seekers were regarded with increasing suspicion, and measures to deter, control, and manage them became increasingly repressive. Asylum was conflated with 'illegal migration' and asylum seekers were constructed as 'bogus'. Today, it seems that the UK political elite is united in opposition to asylum across the political spectrum[473]. Asylum seekers are constructed negatively as threatening, disruptive figures and no major political parties are offering an alternative positive representation. Their placement at the opposite end of citizenship seems solidified and entrenched, and this positioning has taken place over a period of time.

4.3.2 Asylum as a Policy Problem

Central to constructivism is the idea of rules or norms, whether they be rules of asylum or rules of external and internal borders. These rules have been developed to solve a problem which has been constructed in a certain way as such. The question is who has constructed the issue of asylum and refugeehood as a problem, and why? Bacchi proposes that ''problems' are 'created' or 'given shape' in the very policy proposals that are offered [by governments] as 'responses''[474]. By proposing solutions such as strict visa and border controls, detention, dispersal, and deportation, the issue of asylum is constructed as not just a problem but as a serious threat to be contained. As part of the construction of the refugee or asylum seeker as 'the other', refugees or individuals seeking asylum have been deliberately included within issues of security. Alongside this, the construction of a state of emergency has been utilised to introduce further draconian measures. By declaring a state of emergency after terrorist incidents such as the 9/11 attacks and the July 2005 bombings, the UK government has given itself *carte blanche* to introduce restrictive legislation. While such measures are justified following acts of terrorism, there is little justification or evidence for amalgamating legislation on

[472] John Stokes, Hansard col 842, 15 May 1990.
[473] Squire (n373) 69.
[474] Carol Bacchi, 'Policy as Discourse: What does it mean? Where does it get us?' (2000) 21(1) Discourse 48.

terrorism and security with asylum and refugeehood. Refugees and asylum seekers have been constructed, without any rationale, as part of the 'security problem'.

Following the 11 September attacks on the United States, the UK quickly introduced emergency legislation in the form of the 2001 Anti-terrorism, Crime and Security Act, which was much condemned by human rights NGOs at the time. Amnesty International released a briefing focusing on Part 4 of the Act entitled 'Immigration and Asylum', which lays out procedures for the indefinite detention and exclusion from asylum procedures of a person suspected of being an international terrorist and a risk to national security[475]. Amnesty International were concerned about the UK's proposed derogation from Article 5(1) of the ECHR in order to permit the indefinite detention without charge or trial of foreign nationals who allegedly pose a threat to national security[476]. They questioned whether there was actually a public emergency threatening the life of the nation[477] and pointed out that they were not aware of any other European government contemplating derogation from international human rights treaty obligations[478]. At the same time, Human Rights Watch also issued a report expressing their concerns about the legislation:

> While we understand the need to enhance internal security in the aftermath of the 11 September attacks in the United States and in the context of ongoing armed conflict in Afghanistan, we are dismayed by UK proposals that would permit the arbitrary detention of persons suspected of terrorist activity, as well as the denial of the right to seek asylum, the exclusion, and indefinite detention of certain individuals without adequate safeguards contrary to the 1951 Refugee Convention. Public statements by the Home Secretary suggest that a public emergency was declared in the UK to avoid compliance with certain human rights obligations – threatening basic rights in the UK and providing a dangerous model for other states.[479]

On a more general note, they added that 'the right to seek asylum has been increasingly at risk in recent years both in the UK and the EU as a whole. A range of border control measures – visa requirements, security checks, and other barriers to entry – often

[475] Amnesty International, 'United Kingdom: Creating a Shadow Criminal Justice System in the Name of "Fighting International Terrorism"' 1.
[476] ibid 2.
[477] ibid.
[478] ibid 3.
[479] Human Rights Watch, 'Concerning Measures in Anti-Terrorism, Crime and Security Bill'.

effectively prevent persons from applying for asylum'[480]. How the issue of asylum has been constructed, including the language used by the political elite, is a contributing factor in the temporal construction of the UK's hostile environment.

Concomitantly, asylum seekers have been portrayed as a threat, as outsiders to be feared, who will upset the normal order of things. Thus, refugees and asylum seekers are portrayed as anything from needy individuals who are a burden on the state to 'suspect' characters undeserving of assistance to illegal criminals who should be deported. Differences between political groups are exaggerated with positive traits of in-groups highlighted and negative aspects of out-groups emphasised. Squire points out that it is by constructing the ambiguous figure of the asylum seeker as a 'problem' or a 'threat' that the 'politics of asylum get entangled in a self-fulfilling cycle of restriction and control'[481]. The divisive politics of othering – using aggressive political rhetoric to construct refugees and asylum seekers as an inferior 'out-group' – has been used by recent UK governments to divert attention from failing neoliberal policies and to legitimise their restrictive, anti-human rights policies[482]. It is a tactic which has entered mainstream politics and was used as a political tool during the Brexit referendum to portray refugees and asylum seekers as undeserving scroungers and a drain on public resources.

As previously argued, the us/them distinction is at the crux of refugee and asylum politics: it establishes a hierarchy in which the 'us' is of higher importance than the 'them'[483], and 'those who do not belong to our in-group are viewed as somehow inferior, and clearly different from "normal people" like us'[484]. Demetriou points out that the very concept of refugeehood 'can provide the means for establishing, maintaining, and reproducing discrimination, both in law and in everyday life'[485]. It would seem that the privileges attributable to citizenship in a nation-state can only be maintained by the

[480] ibid.
[481] Squire (n373) 4.
[482] Sarah Looney 'Breaking Point? An Examination of the Politics of Othering in Brexit Britain' (2007) TLI Think! Paper 69/2017 3.
[483] Tracy B Strong, 'Foreword, The Sovereign and the Exception: Carl Schmitt, Politics, Theology, and Leadership' C Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (University of Chicago Press 2005) xv.
[484] William D Crano, 'Useful Strategies in the War of Words', M Hanne et al. (eds), *Warring with Words: Narrative and Metaphor in Politics* (Psychology Press 2015) 277.
[485] Olga Demetriou, *Refugeehood and the Post-conflict Subject: Reconsidering Minor Losses* (SUNY Press 2018) 24.

exclusion of others[486]. Sovereignty is an institution and there can be no sovereignty without the presence of the 'other'. The UK, as an autonomous sovereign state, reserves the right to admit or exclude non-citizens from its territory. That said, there are international and regional legal regimes for the protection of asylum seekers and refugees, and any liberal democracy such as the UK has a moral and legal obligation to incorporate policy on asylum into domestic law. The UK has done so, but successive British governments increasingly appear to be more concerned with control and management procedures rather than protection measures.

The way refugees and asylum seekers have been represented in the UK has changed, and these changing representations have contributed to their marginalisation[487]. This includes how individuals are labelled or categorised as refugee, asylum seeker, migrant, immigrant, or exile, and also how these labels are described, that is, what adjectives – such as bogus or illegal or political – are used in conjunction with these nouns to facilitate the construction of the 'problem'. Historically, the asylum seeker has, at various times, been constructed as an alien, réfugeé, émigré, political exile, immigrant, refugee or bogus asylum seeker, and the treatment afforded to her/him very much depends on the assigned label. For example, political exiles were encouraged to seek a safe haven in the west in the fight against Communism. More recently, however, asylum seekers constructed as 'bogus' or 'illegal' are regarded with a degree of scepticism. As Chimni points out, post-Cold War, 'the refugee no longer possessed ideological or geopolitical value'[488]. Today, the political discourse surrounding asylum constructs the asylum seeker as an outsider to be wary of. He/she is constructed not only as a figure on the periphery, but also as a terrorist and security threat. Asylum seekers are also constructed as scapegoats to 'take the flak' or merely to deflect attention from unpopular governmental policies such as austerity measures. The policy discourse surrounding the hostile environment has constructed asylum seekers as 'bogus, criminal and a drain on limited public resources'[489]. The construction of labelling also serves to reinforce the

[486] Douzinas (n419).
[487] Eleanor C Lamb, 'Resisting Marginalisation: Changing representations of migrants and refugees in UK text and talk since the 1960s' (2014) 13(3) Journal of Language and Politics 403.
[488] B S Chimni, 'The Geopolitics of Refugee Studies: A View from the South' (1998) 11(4) Journal of Refugee Studies 351.
[489] Samuel Bennett, 'New "Crises", Old Habits: Online Interdiscursivity and Intertextuality in UK Migration Policy Discourses' (2018) 16(1-2) Journal of Immigrant and Refugee Studies 142.

distinction between 'refugee' as deserving of protection and 'asylum seeker' as undeserving [until proven otherwise][490].

4.3.3 The Construction of the Border(s)

Central to the discourse that portrays refugees as security threats is an exclusionary discourse on borders. According to Devetak, 'violence, boundaries, and identity function to make possible the sovereign state'[491]. Borders can be construed as 'institutions that serve to mark the functioning barrier between states, to impose control over the flows of people and regulation of cross-border trade…'[492]. The capacity of the state as a self-serving autonomous entity is undermined by any trans-border activity, whether it be human displacement, telecommunications, trade, or terrorism, and since the end of the Cold War, 'there has been a gradual tightening of legal migration routes across the Global North, entailing harsher visa regimes and stricter border controls[493]. The Westphalian logic of 'border-as-line' is transformed in the contemporary system of states through 'techniques of inclusion and exclusion often distant from the state's geographical boundary'[494]. Such techniques form part of Foucault's 'governmentality', which outlined 'how people and things are organised in particular ways so as to make populations more manageable'[495], and are part of a border regime designed to decide 'who is or is not a citizen, a visa national, or an illegal'[496].

Although the UK as an island state has a clearly defined coastal border (apart from the island of Ireland), the border has changed throughout the period in question from the purely territorial boundary of the UK to a system of internal political borders in conjunction with the geographical external border. These internal political borders incorporate the use of internal border checks which rely on members of the public in

[490] Samuel Parker, ''A proud history of protecting refugees': Ambivalent Responses to Refugee Integration in Government Policy Documents' (2019) 11(1) CADAAD Journal 30.
[491] Richard Devetak, 'Post-structuralism', S Burchill and A Linklater (eds), *Theories of International Relations* (5th edition) (Palgrave Macmillan 2013) 207.
[492] Karen Hageman et al., *Creating and Crossing Borders: The State, Future and Quality of Border Studies* (University of Glamorgan 2004) *2.*
[493] Anne Hammerstad, 'Population Movement and Its Impact on World Politics', M Beeson and N Bisley (eds), *Issues in 21st Century World Politics* (Palgrave Macmillan 2013) 168.
[494] Madeleine Reeves, *Border Work: Spatial Lives of the State in Rural Central Asia* (Cornell University Press) 9.
[495] Olga Demetriou and Rozita Dimova, 'Introduction: Theorizing material and Non-material Mediations on the Border', O Demetriou and R Dimova (eds), *The Political Materialities of Borders: New Theoretical Directions* (Manchester University Press 2018) 8.
[496] ibid 9.

various different roles such as landlord, employer, medical receptionist, or bank clerk. UK citizens are co-opted into carrying out checks on individuals to ensure that they are who they say they are and that they are entitled to do what they are trying to do, whether it be get a job, a flat, a bank account or access to health services. In effect, UK citizens are being utilised, or coerced even, into acting as proxy border officials. These specific individuals have no option but to comply with the identity checking unless they wish to incur a fine: UK border control is strictly enforced through increasing fines on its own citizens[497]. Internal governmentalized borders 'function to subordinate people living within the borders of the nation-state'[498]. While the external border remains static, these internal political borders or boundaries are subject to change as the state constructs ever tighter controls. These increasing internal border checks form part of the temporal construction of the hostile environment.

So, not only do potential refugees to the UK have an external border to physically cross, but there are also various politically constructed internal borders to negotiate, and members of the public are increasingly being made to 'police' these borders. Securitisation theory frames state control of the external border. By constructing refugees and asylum seekers as an issue of security, the state legitimises any 'emergency action' it may need to take[499]. In addition, presenting asylum as a security issue warrants a 'solution' based around control rather than protection. Matters of protection are subsequently watered down in the debate. During the War on Terror, which followed the 9/11 attacks, many states in the west, including the UK, conflated asylum seekers with terrorists. Border security was stepped up during this time with states resorting to a more traditional realist conception of national security[500]. The construction of internal border checks forms part of the construction of the UK's contemporary hostile environment. These bureaucratic checks – on eligibility to work, rent a house, open a bank account, or obtain a driving licence – have become increasingly stringent in an attempt to make life as difficult as possible for those who have made it to the UK. They not only impinge

[497] Mano Candappa, 'Border Politics, the "Hostile Environment" for Migration, and Education in the UK' (2019) 9(3) Hungarian Educational Research Journal 420.
[498] Stephen D Krasner, *Sovereignty: Organized Hypocrisy* (Princeton University Press 1999) 228.
[499] Mark Neocleous, *Critique of Security* (Edinburgh University Press 2008) 42.
[500] Anne Hammerstad, 'UNHCR and the Securitization of Forced Migration', A Betts and G Loescher (eds), *Refugees in International Relations* (OUP 2011) 250.

on asylum seekers and refugees, but they also affect UK citizens who have no choice but to acquiesce or face increasing financial penalties for non-compliance.

4.3.4 The Hostile Environment as the Solution

All of the above – the construction of the 'problem' of forced migration, the construction of the asylum seeker, and the construction of the border(s) – contribute to the UK's solution to the issue of forced migration as the so-called hostile environment. This has been deliberately constructed to deal with an 'unwanted other' and to discourage such individuals from trying to enter the UK. According to Candappa, the hostile environment regime is designed solely to assert the sovereign power of the state over its borders[501]. It has been constructed by successive UK governments through the years via the construction of a series of increasingly restrictive measures and border controls designed to deal with the constructed threat of the asylum seeker as the outsider. The term 'hostile' was adopted by a Conservative-Liberal Democrat government in 2012 to refer to restrictive asylum policies, and the hostile environment coincides with a move away from welfare state politics meaning that life can be very difficult for those who do reach British shores seeking asylum. Not only does it assume that asylum seekers have some knowledge of UK asylum policy, but it also assumes that they have some degree of choice of destination in which to claim asylum. However, '…it is the existence of conflict in a country – including the repression of minorities, ethnic conflicts and civil war – that is the primary underlying cause of forced migration to the EU'[502]. Consequently, 'the choices that asylum seekers make are rarely the outcome of a rational decision-making process'[503]. 'The lives of those who flee conflict and human rights abuses are fundamentally shaped – and their possibilities limited – by the circumstances in which they find themselves'[504].

The hostile environment is partly formulated as solution in parliamentary debates on asylum- and immigration-related Bills. The debates, which comprise both content – what parliamentarians are discussing in relation to issues of asylum and immigration – and language – the parliamentary discourse surrounding asylum seekers and refugees – is

[501] Candappa (n497) 426.
[502] Stephen Castles et al., *States of Conflict: the causes of forced migration to the EU* (IPPR 2003) 27-8.
[503] Heaven Crawley, *Chance or Choice: Understanding why asylum seekers come to the UK* (Refugee Council 2010) 47.
[504] ibid.

where hostile legislation is developed incrementally. One aspect of this parliamentary discourse is what I call 'pantomime politics', that is, dramatic use of language for effect. This includes 'proud history' proclamations, use of 'shock statistics', automatic criticisms of opponents' policies, and extreme descriptions of the issue under debate (in terms of numbers of arrivals, adjectives used to describe refugees and asylum seekers, and terms used to portray the issue of asylum). Te Velde reminds us that:

> parliament is a political battlefield, but it still has a side that best could be explored by taking a cultural perspective' … that is 'not confined to outward appearances, to 'theatrical' superficialities, but could also include 'dramatic' functions of politics: agenda setting, 'staging' political differences, conferring meaning, binding people together, and 'moving' them.[505]

This 'pantomime' of parliamentary politics is a contributing factor in the construction of the UK's hostile environment.

4.4 Conclusion: A Theoretical Approach of 'Temporal Constructivism'

To some extent, the norms of the international system shape the social identity of the sovereign state. In the case of the UK and its asylum policy, it has been constrained by the norms of the 1951 Refugee Convention and 1967 Protocol, but only up to a point as hostile environment policies have pushed these to the limit. While staying within the law, the UK has enacted stricter and stricter legislation for foreigners entering and/or staying in the UK. UK proposals, in 2003, when New Labour proposed only allowing entry to 'genuine refugees' who had been through the asylum process in a Transit Zone, and in 2021, with the Conservative government's proposal of dragging boats carrying asylum seekers back to France, appear to be attempts to disallow the right to even seek asylum, never mind be granted it. What appears to be lacking in the hostile environment policy is the role of morality or ethics. A state, as an autonomous political community, has a duty to protect its own citizens, but there is also a moral obligation to respect the human rights of people from all political communities. This appears to be lacking in the

[505] Henk Te Velde, 'Parliamentary 'Theatre', Dignity and the Public Side of Parliaments' (2019) 22(1) Redescriptions: Political Thought, Conceptual History and Feminist Theory 36-7.

hostile environment legislation, which has been gradually constructed, facilitated by the unsympathetic discourse and anti-asylum rhetoric of successive UK governments.

Asylum seeking is portrayed as a 'problem for Britain rather than as an opportunity to provide safe haven for people fleeing persecution'[506]. Policies have become more about control and management rather than protection. The political elite is more interested in the control of the country's material goods such as health care, welfare, education, and housing; its abstract goods in terms of its national identity and culture; and being seen to be in control of its borders, both by its own citizens and by the international community[507]. Repressive measures such as dispersal and detention have become standard practice. The hostile environment has not 'just happened'. It has not evolved naturally but has been gradually and incrementally constructed by UK governments acting on behalf of the state. It has been developed through time via the construction of increasingly restrictive rules, regulations, and practices; through the negative portrayal of the figure of the asylum seeker; by the creation of the issue as a serious problem, threat, or crisis; through the construction of stricter and stricter internal borders; and by employing repressive solutions such as deportation, dispersal, and automatic and indefinite detention. These constructions combine to make the hostile environment what it is today.

A theory of constructivism helps to explain the development of the UK's hostile environment for the governance of asylum. Constructivism emphasises the importance of identity and interests; institutions and agents; rules and social facts; and change and representation, all of which are relevant to the hostile environment. The UK's asylum regime has changed over time and developed into the hostile environment of today. The UK has constructed itself, through successive governments acting as agents of the state, as an undesirable destination for people seeking asylum and, in accordance with this, has enacted increasingly restrictive rules and social facts such as internal borders. These internal borders are 'policed' by members of the public who are coerced into carrying out these border checks.

[506] Michael Welch and Liza Schuster, 'Detention of Asylum Seekers in the UK and the USA: Deciphering noisy and quiet constructions' (2005) 7(4) Punishment and Society 401.
[507] Schuster (n457) 241.

It is the *incremental* nature of the construction of the hostile environment that has made the contemporary hostile environment what it is today. There has been a continuous evolution of asylum and immigration policy, an evolution which has not had 'free rein' but has been manipulated and guided in a certain way over many years. This has been a path of increasingly restrictive and repressive measures introduced incrementally, building on previous policies, and extending them at each stage. Furthermore, at no point has a new government entered office and reversed any of these restrictive rules. It is this incremental construction – which I have termed 'temporal constructivism' – that explains the progression of the UK's hostile environment.

An approach of 'temporal constructivism' takes a historic perspective, inspecting a phenomenon retrospectively over time, to explain how this phenomenon – in this case, the UK's hostile environment – has manifested itself in the way it has. It takes a historical, temporal approach, considering change over time and how agents act to effect changes in society in relation to the topic under investigation. 'Temporal constructivism' runs in parallel alongside the discourse historical analysis employed in this research. 'Temporal constructivism' advocates incremental constructions, building on previous constructions to improve, change or further restrict previous measures. While this thesis recognises that 'big events' have had a strong influence on the development of the UK's asylum and immigration legislation, they have not resulted in a seismic reconfiguration or a complete overhaul of the asylum regime. Rather, it is the constant 'under the radar' construction which is the main contributing factor in this development. Considering detention as an example: following 9/11, the 2001 Anti-Terrorism, Crime and Security Act introduced indefinite detention without trial for suspected international terrorists (included in the Act in the section on Immigration and Asylum), but, while this is a significant development, it is the build-up of detention measures – from initial introduction of detention in the 1971 Immigration Act to the blanket detention of all asylum seekers arriving 'illegally' included in the 2023 Illegal Migration Act – that is more relevant as an explanation for where we are today. This is just one example of the importance of incremental constructions. There are many others, including the gradual decline in access to welfare benefits and housing, and the ongoing increases in powers of deportation. It is the gradual and incremental process of reconfiguring previous constructions that has shaped the UK's contemporary hostile environment. The next part

of the thesis explores this incremental construction through an analysis of legislation as both a gradual process and one marked by specific turning points.

Part II:

Developing a Hostile Legislation

Chapter 5:

Development of the Legislation

5.1 Introduction: The Main Legislative Instruments

Historically, restrictive and hostile legislation has been introduced in the UK under both main political parties. In the Age of Hesitancy, laws to control Commonwealth immigration were introduced by both the Conservatives (in 1962) and Labour (in 1968). This was followed by the immensely important Immigration Act introduced by a Conservative government in 1971. In the Age of Hostility, the two 'Asylum Acts' of 1993 and 1996 were brought in under the Conservatives. Following on from this, New Labour introduced a steady stream of increasingly restrictive Acts from when they came to office in 1997. In recent years, the Conservatives have introduced extremely hostile legislation in the form of the 2022 Nationality and Borders Act and the 2023 Illegal Migration Act.

This increasingly hostile asylum legislation is not repealed when a new government takes office; this has facilitated the continuous and incremental development of hostile legislation. A progressive erosion of the rights of asylum seekers and refugees is claimed to have taken place over the past twenty years [508]. I would suggest, based on the analysis undertaken in this second part of the thesis, that there has been a cumulative and incremental decline of the rights of aliens, immigrants, asylum seekers and refugees for over more than a century. The aim of the next two chapters is to map this decline of rights from the start of restrictions in the 1905 Aliens Act up to the present day and the 2023 Illegal Migration Act by analysing the content of key pieces of legislation (this chapter), and honing in through case study analysis of the Immigration Act of 1971, which constituted a turning point in the development of hostile legislation through the last 125 years (chapter six).

A thorough analysis of UK policy on forced migration would require scrutiny of a vast array of both domestic and international law, including legislation with respect to refugees and asylum; immigration; nationality and citizenship; human rights; security

[508] Emma Stewart and Gareth Mulvey, 'Seeking Safety beyond Refuge: The Impact of Immigration and Citizenship Policy upon Refugees in the UK' (2014) 40(7) Journal of Ethnic and Migration Studies 1024.

and counterterrorism; organised crime; employment; race relations; and border control. This chapter offers an account of the legislation most specifically relevant to asylum policy via a review of the main Acts concerned with immigration, nationality, and asylum throughout the twentieth and twenty-first centuries. It outlines the progression of refugee and asylum policy within UK domestic law and considers how these national laws have been influenced by international legislation, such as the 1951 Refugee Convention and its 1967 Protocol, the European Union's Dublin Regulations and relevant Directives, and the European Convention on Human Rights. This chapter provides a chronological summary of relevant UK legislation covering the period from 1900 to 2023 (see Appendix B, p.320 for a summary of this key legislation).

It was not until the turn of the twentieth century and the 1905 Aliens Act that there were any laws in place controlling the movement of people across British borders. Up until then, people could freely enter and leave the UK without any restrictions. Individuals crossed borders for many reasons including trade, employment, family, and even fleeing persecution or harassment – the modern concept of asylum can be traced back to medieval times and the practice of the church providing sanctuary[509] – and there was no legislation governing these movements. However, despite the relentless rhetoric of having a proud tradition of offering protection to refugees, historically the UK has a somewhat negative attitude towards allowing 'aliens' to cross its borders, and this has deteriorated throughout the twentieth century and, even more so, the twenty-first century. Issues of asylum and refugeehood have been included within general immigration law throughout much of the twentieth century, and it was not until the early 1990s when numbers of asylum seekers began to increase rapidly that the issue of asylum was prioritised.

Against a backdrop of a global increase in populism and right-wing politics, there has been a general decline in the protection offered to refugees and asylum seekers in the UK. In recent years, that is, throughout the Age of Hostility, immigration as an issue has been politicised throughout Western Europe due predominantly to two factors: 'a significant increase in immigration which is overstraining the capacities of national states to control their borders and to accommodate and integrate new migrants; and the

[509] T B Lambert, 'The Evolution of Sanctuary in Medieval England', P Dresch and H Skoda (eds), *Legalism: Anthropology and History* (Oxford Academic 2013) 115.

successful exploitation of these challenges by radical right populist parties'[510]. In the UK, the in-out referendum on membership of the EU can at least partly be attributed to the Conservatives trying to prevent their radical right-wing rivals, the UK Independence Party (UKIP), from 'stealing' their votes in marginal seats[511].

This chapter maps the development of the UK's legislation on asylum and immigration throughout the twentieth and twenty-first centuries. The incremental and haphazard manner in which UK asylum and immigration legislation has evolved has resulted in an extremely complicated collection of rules, acts, treaties, and international instruments which oversee immigration and asylum provision in the UK today. Moreover, 'immigration laws, rules, and procedures appear to have evolved chaotically in response to short-term political crises and economic pressures, with very little in the way of strategic planning'[512] In addition, the increasingly hostile legislation has been introduced by both main political parties: indeed, the 'political community is constructed in opposition to asylum across the political spectrum'[513].

There exists a paradox at the heart of UK asylum and immigration legislation in that, while the UK government is committed to the protection of human rights, it is also tending increasingly towards exclusion and deterrence, with the introduction of more restrictive rules and criteria, many of which do little to distinguish between the 'genuine' and the 'bogus'[514]. According to Carens, 'In practice…democratic states use techniques of exclusion that they know will prevent real refugees (as well as others) from arriving'[515]. While the vast majority of forced migrants are hosted in poor countries, the rich developed states have devoted their energies to keeping refugees out[516] and processes such as visa restrictions and carrier sanctions are *ad hoc* measures which are just as likely to exclude genuine refugees as those without legitimate claims[517].

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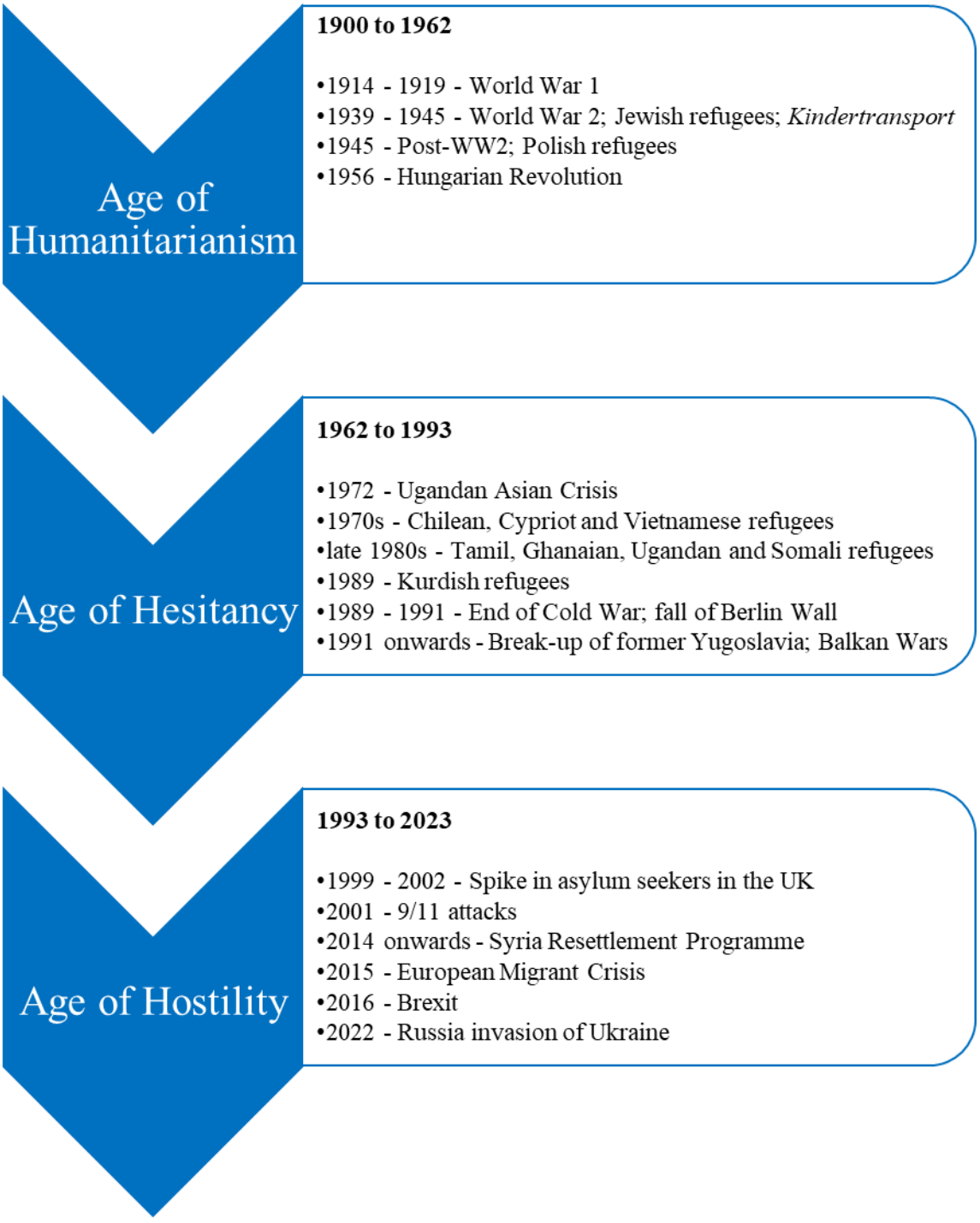
[510] Edgar Grande et al., 'Politicizing Immigration in Western Europe' (2019) 26(10) Journal of European Public Policy 1460.
[511] ibid.
[512] Colin Yeo, *Welcome to Britain: Fixing Our Broken Immigration System* (Biteback Publishing Ltd 2020) xvii.
[513] Vicki Squire, *The Exclusionary Politics of Asylum* (Palgrave Macmillan 2009) 69.
[514] Dallal Stevens, *UK Asylum Law and Policy: Historical and Contemporary Perspectives* (Sweet & Maxwell Ltd 2004) 435.
[515] Joseph Carens, *The Ethics of Immigration* (OUP 2015) 218.
[516] ibid 220.
[517] ibid 209.

The doctrinal analysis of the development of UK legislation throughout the twentieth and twenty-first centuries is split into my three identified ages of development. Figure 5.1 outlines key events related to migration in each of these three ages.

Figure 5.1: Timeline of Key Events, 1900 to 2023



The UK's geopolitical position in relation to these displacements has been a contributing factor in the construction of its asylum and immigration regimes. It has resulted in the retrospective introduction of certain laws running in conjunction with the incremental accumulation of repressive measures throughout the whole 124 years of development.

5.2 Doctrinal Analysis of the Legislation

5.2.1 Age of Humanitarianism, 1900 to 1962

The first half of the twentieth century was undoubtedly dominated by the two world wars, and the international consensus of humanitarianism stems from the atrocities of these wars and a determination to ensure these would not be repeated. In the UK, the century began with no immigration legislation at all, and British borders remained surprisingly open until 1962[518].

Prior to World War 1, however, the focus of British legislation was on the distinction between British subjects and 'aliens', that is, all non-British subjects, and the modern-day history of border enforcement begins with the 1905 Aliens Act. This Act was the first Act of Parliament to introduce measures designed to control and regulate the immigration of aliens. Following the arrivals of Jewish refugees fleeing pogroms in Russia and Eastern Europe alongside a period of economic decline and high unemployment which lessened the demand for foreign labour[519], the British government had started to be concerned about the impact of immigration on the British workforce, the result of which was the 1905 Aliens Act[520]. Under this Act, the Home Secretary was given the ultimate power to prevent the entry of 'undesirable immigrants'[521], and could issue 'expulsion orders for aliens already resident in the UK deemed to be destitute or criminals'[522]. An 'undesirable immigrant' was defined in the Act as 'someone who cannot support himself or his dependents; a lunatic, idiot or infirm who would be a liability to the public; someone who had been sentenced to an extradition crime overseas; or someone subject to an expulsion order under this Act'[523]. Paradoxically, although this

[518] Yeo (n512) xxii.
[519] Liza Schuster, *The Use and Abuse of Political Asylum in Britain and Germany* (Frank Cass Publishers 2003) 79.
[520] Roger Kershaw and Mark Pearsall, *Immigrants and Aliens: A Guide to Sources on UK Immigration and Citizenship* (2nd edition) (The National Archives 2004) 47.
[521] Aliens Act 1905, s1(1), accessed 12/12/20.
[522] ibid s3(1)(b).
[523] ibid s1(3).

legislation originated from the movement of Jews into the country, the 1905 Act did 'not apply to immigrants seeking to enter the UK in order to avoid persecution on religious or political grounds'[524]. In this respect, although the main provision of this Act was to distinguish between British and non-British, it did incorporate an obligation to protect people who had been forcibly displaced from their homes, albeit only those fleeing oppression because of religious or political beliefs. An additional consequence of the Act was in 'breaking the Victorian inhibition on the subject of restriction of immigration and familiarising the public mind with the idea that a country had the right to keep out unwanted migrants'[525]. Thus, the notion that people could be prevented from crossing the border into Britain was introduced for the first time in this 1905 legislation.

Following the outbreak of the first world war, the 1914 British Nationality and Status of Aliens Act ('Aliens Restriction Act') was quickly passed by parliament on 5 August 1914, the day after the UK declared war with Germany. This Act gave the British government powers in respect of aliens in addition to the restriction and expulsion powers of the 1905 Act. To deal with the fact that the nation was now at war, this 'crisis legislation' introduced restrictions, including 'powers of arrest, detention, and deportation, to be placed on aliens in a state of war, national danger, or great emergency'[526]. After the war, the 1919 Aliens Restriction (Amendment) Act continued and extended the emergency powers brought in under the 1914 Act from wartime to peacetime. It introduced further restrictions on aliens including 'exclusion from employment in the Civil Service'[527], 'participation in jury service'[528], or 'using a different name'[529]. This Act also decreed that 'every former enemy alien in the UK was to be deported'[530], and that 'no former enemy aliens were to be admitted to the UK throughout the following three years'[531]. A 'former enemy alien' was defined as an 'alien who is a subject or citizen of the German Empire or any component state thereof, or of Austria, Hungary, Bulgaria or Turkey'[532]. The 1914 and 1919 Acts were specifically

[524] ibid s1(3)(d).
[525] Becky Taylor, 'Immigration, Statecraft and Public Health: The 1920 Aliens Order, Medical Examinations and the Limitations of the State in England' (2016) 29(3) Social History of Medicine 517.
[526] Aliens Restriction Act 1914, s1(1), accessed 13/12/20.
[527] Aliens Restriction (Amendment) Act 1919, s6, accessed 13/12/20.
[528] ibid s8.
[529] ibid s7(1).
[530] ibid s9(1).
[531] ibid s10(1).
[532] ibid s15.

concerned with WW1 and its aftermath in terms of aliens and enemy aliens and no reference was made in either of these Acts to refugees or other categories of forced migrants. Prior to the Great War, the Balkan Wars from 1912 to 1913 generated numbers of refugees, and between 1914 and 1922, millions of people were forcibly displaced because of World War 1 and the Russian Revolution. In 1931, the British Commonwealth was founded: this would be the start of a period of Commonwealth immigration into the UK that lasted from the arrival of the Empire Windrush in 1948 until the 1970s.

In 1939, prior to the outbreak of the second world war, the UK accepted nearly 10,000 unaccompanied predominately Jewish children from Nazi Germany, Austria, Czechoslovakia, and Poland under the *Kindertransport* scheme[533]. This rescue effort took place in the nine months prior to WW2, and to facilitate it, the British National Government waived all visa immigration requirements[534]. There was also no number limit placed on the scheme[535]; it was the outbreak of the war which brought the rescue to an end. In sharp contrast to this, in 2020, the so-called 'Dubs Amendment' was removed from the withdrawal agreement between the UK and the EU following the Brexit vote. This amendment, which committed the UK government to accepting unaccompanied asylum-seeking children from Europe, had originally been included under Section 67 of the 2016 Immigration Act as part of the UK's response to the 2015 European migrant crisis[536]. The amendment – named after the Labour peer Lord Dubs who had originally come to the UK in 1939 under the *Kindertransport* scheme – was scrapped after just 480 children had been transferred to the UK under these arrangements[537]. These are two highly political and contrasting acts by UK governments, which illustrate a shift in attitude from the first half of the twentieth century to the present day. This progression of restrictive policy in relation to asylum-seeking children has subsequently continued, with the 2023 Illegal Migration Act giving the Secretary of State the power to remove an unaccompanied child from the UK[538].

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[533] Ujjwal Krishna et al., 'Exploring the integration of child refugees in the United Kingdom: the case of the Kindertransport' (2019) Vol.51 Jewish Historical Studies 119.
[534] ibid 120.
[535] ibid.
[536] UK Visas and Immigration, 'Factsheet: Section 67 of the Immigration Act 2016 ('Dubs amendment')', accessed 29/10/24.
[537] ibid.
[538] Illegal Migration Act 2023 s4(2), accessed 16/10/23.

By the end of WW2 in 1945, there were well over forty million forced migrants throughout Europe[539]. As well as a commitment to settle Polish soldiers and their families in the UK under the 1947 Polish Resettlement Act – the first piece of UK legislation directed towards immigration, under which around 150,000 Polish people settled in the UK[540] – the UK government also agreed to accept displaced persons under the European Volunteer Workers Scheme (EVWS). The EVWS ran from 1946 to 1951 and involved the recruitment of Eastern European refugees from the Displaced Persons camps in Germany and Austria to work in British industries which were experiencing labour shortages[541]. This had a twofold purpose as far as the UK government was concerned: it alleviated an acute labour shortage; and it allowed Britain to contribute towards reducing the displaced person population in Europe[542]. Although these people were refugees, their primary purpose for travelling to the UK was to work in undermanned industries, that is, they were brought to the UK for economic rather than humanitarian reasons. Approximately 91,000 workers were recruited to the UK under this scheme[543].

The end of the second world war heralded the start of the international refugee regime and marked the beginning of the contemporary era of human rights, with Article 15.1 of the 1948 United Nations Universal Declaration of Human Rights (UDHR) declaring that 'Everyone has the right to a nationality'[544]. Indeed, the year 1948 was a particularly important one both domestically and internationally as it was the year of the first British Nationality Act[545], the formation of the National Health Service[546], and the arrival of the Empire Windrush at Tilbury Docks on the River Thames[547], as well as the year of the UDHR[548]. However, it was not until the 1998 Human Rights Act that this Declaration –

[539] Colin Bundy, 'Migrants, Refugees, History and Precedents' (2016) 51 Forced Migration Review 5-6.
[540] Agata Blaszczyk, 'The Resettlement of Polish Refugees after the Second World War' (2017) 54 Forced Migration Review 72.
[541] Diana Kay and Robert Miles, 'Refugees or Migrant Workers? The Case of the European Volunteer Workers in Britain (1946-1951)' (1988) 1(3/4) Journal of Refugee Studies 215.
[542] ibid 219.
[543] ibid 217.
[544] Christian Joppke, *Citizenship and Immigration* (Polity Press 2010) 27.
[545] British Nationality Act 1948, accessed 14/12/20.
[546] History of Government, 'The founding of the NHS: 75 years on', accessed 29/10/24.
[547] Haringey Council, London, 'Windrush Generation 1945-1960', accessed 11/05/24.
[548] United Nations, 'History of the Declaration', accessed 29/10/24.

along with the European Convention on Human Rights (ECHR) – had any influence on domestic legislation in the UK[549].

To ensure the atrocities of the war were not repeated, the post-WW2 liberal world order established an international refugee protection regime premised on international cooperation and the 1948 UDHR, and comprising:

- International institutions such as the League of Nations High Commissioner for Refugees, the UN Relief and Rehabilitation Administration, the International Refugee Organisation, and, in 1951, the Office of the United Nations High Commissioner for Refugees;
- International legal instruments in the form of the 1951 Convention Relating to the Status of Refugees ('the Geneva Convention') and the 1967 Protocol Relating to the Status of Refugees ('the New York Protocol'); and
- International norms such as the right to leave one's own country, the right to seek and enjoy asylum in another state, and, most importantly, the principle of *non-refoulement*, that is, the premise that 'no one shall expel or return a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom'[550].

The 1951 Geneva Convention and its 1967 Protocol together form the cornerstone of international legislation for the protection of refugees. The Convention originally applied to persons fleeing events occurring within Europe before 1 January 1951. These temporal and geographic restrictions were lifted under the 1967 Protocol, giving the Convention universal coverage. Article 1 of the Geneva Convention gives a single definition of a refugee as a person, who:

> …owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a

[549] UK Parliament, 'The European Convention on Human Rights and the Human Rights Act 1998', accessed 29/10/24.
[550] UNHCR, Convention and Protocol relating to the Status of Refugees, Art33, accessed 14/12/20.

result of such events, is unable or, owing to such fear, is unwilling to return to it.[551]

Today, there are 149 States, including the United Kingdom, who are Parties to one or both of these instruments[552]. While the UK has ratified the Convention and its Protocol and acknowledges its obligations under this international legislation, it has not actually been incorporated into UK domestic law, and there are generally few references to the Convention within UK legislation. This international legislation has been supplemented by human rights law and regional treaties. In Europe, The Convention for the Protection of Human Rights and Fundamental Freedoms (the 'European Convention on Human Rights' or ECHR) was drafted in 1950, came into force in 1953, and has been amended and supplemented with additional rights many times since then. Although the Treaty does not refer specifically to refugees or asylum seekers[553], it does cover many basic human rights, including the 'right to life'[554]; the 'right to not be subjected to torture or to inhuman or degrading treatment or punishment'[555]; the 'prohibition of slavery and forced labour'[556]; the 'right to liberty and security'[557]; and the 'right to respect for private and family life'[558], all of which are applicable to people seeking asylum. The UK has been a Party to this Treaty since its inception, and the Convention forms the basis of the Human Rights Act 1998. However, there are sixteen additional Protocols to the Convention, some of which the UK has not ratified. The UK was not a Party to Protocol No. 4 which secured 'rights and freedoms not included in previous texts, including the prohibition of the collective expulsion of aliens'[559]; Protocol No. 7 which extended the list of rights to include, among others, the 'right of aliens to procedural guarantees in the event of expulsion from a State'[560]; and Protocol No. 12 which extended the definition

[551] ibid Art1.
[552] UNHCR, States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, accessed 04/01/21.
[553] Stevens (n514) 143.
[554] European Convention on Human Rights, Art2, accessed 14/12/20.
[555] ibid Art3.
[556] ibid Art4.
[557] ibid Art5.
[558] ibid Art8.
[559] Council of Europe, Search on Treaties: Human Rights (Convention and Protocols), accessed 25/02/21.
[560] ibid.

of discrimination in the Convention to guarantee that 'no-one shall be discriminated against on any ground by any public authority'[561].

Post-WW2, in the UK, the emphasis in legislation shifted from restrictions on aliens to defining British citizenship. In 1948, the Labour government introduced the first British Nationality Act, which laid out the conditions for British nationality by virtue of citizenship. It outlined the requirements for citizenship of the United Kingdom and Colonies, whether it be 'by birth'[562], 'by descent'[563], 'by registration'[564], or 'by naturalisation'[565]. The 1948 Act created the status of 'Citizen of the United Kingdom and Colonies (CUKC)'[566] which, in accordance with the 1948 UDHR and a general sense of humanitarianism and benevolence, granted all subjects of the British Empire the right to live and work in the UK. Although it made no reference to any form of migration, this Act led to mass migration of 'New Commonwealth' citizens to the UK, starting with the arrival of the Empire Windrush in June 1948 carrying 1,027 passengers from the Caribbean[567]. Initially viewed as a positive development to boost the workforce in post-war Britain, this became problematic in the early 1960s when the numbers from the 'New Commonwealth' (predominantly non-white and developing decolonised countries) began to exceed those from the 'Old Commonwealth' (mainly Canada, Australia, and New Zealand)[568]. There was no further UK legislation relevant to migration throughout the 1950s, but the rising numbers of New Commonwealth immigrants throughout this decade resulted in the restrictive Commonwealth Immigrants Act in 1962. It was not until the 1960s that legislative shifts can be said to have taken a different turn away from humanitarianism.

We see throughout this Age of Humanitarianism the introduction of a series of retrospective Acts to deal with various issues: 1905 and the Jewish pogroms; 1914, 1919 and WW1; 1947 and Polish immigrants; and 1948 and the aftermath of WW2. While

[561] Council of Europe, Search on Treaties: Details of Treaty No177, accessed 15/12/20.
[562] British Nationality Act 1948, s4, accessed 14/12/20.
[563] ibid s5(1).
[564] ibid s6(1).
[565] ibid s10(1).
[566] ibid s12.
[567] Shelene Gomes and Arthur Torrington, 'The Windrush Generation and British Citizenship Policy', E Shizha and E Makwarimba (eds), *Immigrant Lives: Intersectionality, Transnationality, and Global Perspectives* (OUP 2023) 179.
[568] Randall Hansen, *Citizenship and Immigration in Post-War Britain: The Institutional Origins of a Multicultural Nation* (OUP 2000) 29.

this thesis does recognise that restrictions were introduced in this period (notably the start of restrictions and the 1905 Aliens Act), it has been named an Age of Humanitarianism in acknowledgement of its recognition of international human rights instruments and its commitments and obligations to UK citizens across the Commonwealth.

5.2.2 Age of Hesitancy, 1962 to 1993

Commonwealth immigration, which had been encouraged after the second world war to boost the reduced male workforce, was deemed to be less necessary as time passed[569]. The decolonisation of the British Empire, which began in 1945 and lasted around thirty-five years, resulted in a tightening of immigration control[570]. The relatively *laissez-faire* period, when members of the Commonwealth enjoyed open access to the UK, ended with the 1962 Commonwealth Immigrants Act[571]. primarily because, by the end of 1961, 'a record 136,000 New Commonwealth immigrants had arrived in the country'[572]. Up until then, there had been no legislation to curtail colonial migration, but 'the net result of the large immigration of peoples who were culturally different to the British was the Commonwealth Immigrants Act of 1962'[573]. With the 1962 Commonwealth Immigrants Act, the focus shifted to different categories of British and Commonwealth citizens. This Act limited the right of entry to the UK such that 'Commonwealth citizens whose passports were not issued in Britain needed a work permit to secure entry'[574]. The 1962 Act included provisions for the 'refusal of admission or conditional admission'[575], and 'powers, penalties, and proceedings in respect of deportations'[576]. The first and second Schedules to the Act laid out the procedures for the detention and removal of immigrants who were refused admission or were subject to deportation orders.

Subsequently, there was a racist element to the immigration legislation of the 1960s and '70s: race, positioned alongside immigration, was a significant issue in the 1964 general

[569] Refugee History, Timeline, accessed 29/10/24.
[570] Evan Smith and Marinello Marmo, *Race, Gender and the Body in British Immigration Control* (Palgrave Macmillan 2014) 23.
[571] Hansen (n568) 247.
[572] ibid 118.
[573] Oscar Gish, 'Color and Skill: British Immigration, 1955-1968' (1968) 3(1) The International Migration Review 24.
[574] Kershaw and Pearsall (n520) 14.
[575] Commonwealth Immigrants Act 1962, s2(1)(a)(b), accessed 15/12/20.
[576] ibid ss7, 8 & 9.

election campaign, with the Labour Party's manifesto stating that 'the number of immigrants entering the UK must be limited'[577]. The racism worsened with the passing of the Commonwealth Immigrants Act in 1968, whose primary aim was to curtail the increasing numbers of East African Asians exercising their rights as British passport holders to enter the UK from Kenya[578]. Since 1965, more and more Kenyan Asians had been arriving in the UK, driven from their country by the 'Africanisation' policies of the Kenyan government[579]. With continuing high levels of immigration, the 1968 Commonwealth Immigrants Act was an amendment of the previous 1962 Act and brought in further restrictions on 'landing in the UK'[580], including the 'examination of individuals by immigration officers'[581]. This Act tightened immigration control in that potential immigrants now had to 'prove that they had been born in the UK or that their parents or grandparents had'[582]. There were no rules and regulations regarding asylum and refugee provision included in either of these 1960s Acts.

It was also in 1968 that the right-wing Conservative, Enoch Powell, delivered his infamous 'rivers of blood' speech, claimed by Webster to be 'the most well-known text in British immigration discourse'[583]. Under pressure from Powell and others, the ruling Labour government brought in the 1968 Act in order to restrict immigration of Kenyan Asians to the UK. Following six years of a Labour government, the Conservatives unexpectedly won the 1970 general election, and a year on from their election win, Edward Heath's Conservative government introduced the immensely important 1971 Immigration Act. The 1971 Act was a complete overhaul of previous legislation, its objective being to amend and replace the existing immigration laws and make related changes to citizenship law. This Act was a significant piece of legislation in the construction of the UK's hostile environment legislation and is examined in detail in the

[577] Robert Winder, *Bloody Foreigners: The Story of Immigration to Britain* (2nd edition) (Abacus 2013) 375.
[578] Alice Bloch, 'A New Era or More of the Same? Asylum Policy in the UK' (2000) 13(1) Journal of Refugee Studies 31-2.
[579] Randall Hansen, 'The Kenyan Asians, British Politics, and the Commonwealth Immigrants Act, 1968' (1999) 42(3) The Historical Journal 809.
[580] Commonwealth Immigrants Act 1968, s3, accessed 15/12/20.
[581] ibid s3(2).
[582] Kershaw and Pearsall (n520).
[583] Wendy Webster, '"There'll Always be an England": Representations of Colonial Wars and Immigration, 1948-1968' (2001) 40(4) Journal of British Studies 583.

following chapter. At the time, it was criticised as racist and opposed by MPs on both sides of the House.

In 1972, General Idi Amin ordered the immediate expulsion of all Asians from Uganda, a former British colony. Britain felt it had a moral and legal responsibility to take in British passport holders, especially after its harsh treatment of Kenyan Asians in the 1960s, and, of the 60,000 people expelled, around 28,000 travelled to the UK[584]. As these were UK passport holders, they were not strictly speaking refugees, although they were certainly forcibly displaced. In 1973, the UK accepted 3,000 Chilean refugees in the aftermath of the Pinochet coup[585]; 10,000 Cypriot refugees arrived in Britain following the coup and war in Cyprus in 1974[586]; and, starting in 1975, around 19,000 Vietnamese 'boat people' were resettled in the UK under the Vietnamese programme[587]. In 1973, the UK joined the European Community, and from then until the UK left the EU in 2020, domestic legislation on immigration and asylum has been influenced to a certain extent by EU policy.

When the Conservatives came to power in 1979, one of their election pledges which they were eager to uphold was the control of numbers of immigrants. However, this campaign promise was threatened by the fallout from the Vietnam War, a Cold War-era proxy war, which had ended in 1975. This war resulted in a mass exodus of refugees between 1975 and 1992, reaching a peak in 1978-79. In all, nearly two million 'Vietnamese boat people' are estimated to have fled Vietnam[588]. The plight of these desperate people fleeing the country in flimsy boats was broadcast internationally, and governments around the world felt compelled to act. The UK government, conscious of its election promise, dealt with the situation via a resettlement scheme which was kept separate from general immigration[589].

In 1981, the introduction of a second British Nationality Act was a direct result of the Conservatives' election promise to further restrict immigration to Britain[590]. The Labour

[584] Alyssa Girvan, '400 Years of Refugee Movement to the UK, Timeline Resource', accessed 11/02/21.
[585] ibid.
[586] ibid.
[587] Annabelle Wilkins, 'Vietnamese Refugees in Britain: Displacement, Home and Belonging', accessed 21/02/21.
[588] 'Vietnamese Boat People', accessed 04/06/21.
[589] Ronald Kaye, 'Defining the Agenda: British Refugee Policy and the Role of Parties' (1994) 7(2/3) Journal of Refugee Studies 147.
[590] refugeehistory.org, 'The History of British Immigration Policy (1905-2016)', accessed 04/06/21.

party offered no alternative proposals on immigration policy and the Act was passed with bipartisan support. The stated purpose of this Act was to update provisions on citizenship and nationality, and to modify the 1971 Immigration Act with respect to the right of abode in the UK. The certificates of patriality issued under the 1971 Act were replaced with 'certificates of entitlement'[591], and the 1981 Act abolished the category of CUKC and introduced a definition of citizenship exclusively for residents of the UK. Certain Commonwealth citizens became 'British Dependent Territories Citizens'[592] and others became 'British Overseas Citizens'[593]. The effect of this Act was to remove from British nationals in the Commonwealth and Hong Kong their historic rights to residency in the UK[594]. In contrast to the restrictions on citizenship introduced in this Act, it did also bring in conditions for 'reducing statelessness'[595], including 'not depriving an individual of British citizenship if this would mean that he [sic] became stateless'[596].

Forced migration to the UK continued in the mid and late 1980s, with substantial numbers of Tamil, Ghanaian, Ugandan and Somali asylum seekers arriving independently, and the British Government started to adopt measures to prevent them reaching British shores. Part of the UK's response to the increase in individual asylum claims was to impose new visa requirements on countries of origin. This started with the Tamils arriving from Sri Lanka in 1985 and has now become the norm[597]. With respect to Kurdish refugees in the late 1980s and early 1990s, although the British Government did accept Kurdish refugees in the UK, its preferred option was to support them in a safe haven or security zone in northern Iraq[598]. In 1987, the Immigration (Carriers' Liability) Act was the start of legislation imposing fines on airlines and shipping companies for transporting undocumented migrants into the UK. These penalties were extended in 1998 to include the Eurostar and haulage companies, and in 2001, the Eurotunnel[599]. The Immigration (Carriers' Liability) Act 1987 was the beginning of the government 'outsourcing' control of immigration to private companies, organisations and, later,

[591] British Nationality Act 1981, Sch4 s3, accessed 17/12/20.
[592] ibid s23.
[593] ibid s26.
[594] Imogen Tyler,' Designed to Fail: A Biopolitics of British Citizenship' (2010) 14(1) Citizenship Studies 62-3.
[595] British Nationality Act 1981, Sch2 (n639).
[596] ibid s40.
[597] Girvan (n584).
[598] ibid.
[599] Open University, 'Timeline: The Criminalisation of Asylum', accessed 12/01/21.

individuals. These checking and monitoring measures to be carried out by members of the public would be gradually extended in the following years.

A short Immigration Act in 1988 brought in a few amendments to the 1971 Act, most notably that 'a right of abode was to be proved either by a UK passport or by a certificate of entitlement which must have been issued by the UK Government'[600]. Also, there was to be 'no right of appeal in respect of right of abode unless a person held such a passport or certificate'[601]. This Act marked the end of nearly all immigration from Commonwealth countries[602], but there was still as yet no UK legislation dealing specifically with asylum and refugeehood. In 1989, after the fall of the Berlin Wall, there was a three-fold increase in asylum applications in the UK, from 3,998 in 1988 to 11,640 in 1989[603]. This figure more than doubled in 1990 and nearly doubled again in 1991[604]. The break-up of Yugoslavia in 1991 led to Europe's largest refugee crisis since WW2. The UK's response to this and the ensuing Balkan wars in Serbia and Montenegro, Bosnia and Herzegovina, Croatia and Kosovo can only be described as reluctant. In February 1993, the UNHCR reported that, since the start of the conflicts, the UK had accepted 4,400 applicants, compared with 73,000 in Austria, 80,000 in Switzerland and 250,000 in Germany[605].

The year 1991 was an important one internationally in that it marked the end of the Cold War, a global event which Chimni recognised as resulting in a 'paradigm shift' in the attitude to asylum in the west[606]: 'once the Cold War ended, and the refugee no longer possessed ideological or geopolitical value, the rethinking translated into a series of restrictive measures which…constitute today what has been called the *non-entrée* regime'[607]. This was certainly the case in the UK where asylum policies from the early 1990s onwards were based on restriction and exclusion. Joppke observes that 'states without internal constraints, such as the lack of a national constitution or a Bill of Rights, have a great deal of discretion to engage in egregiously restrictive practices towards

[600] Immigration Act 1988, s3(1), accessed 25/02/21.
[601] ibid s3(2).
[602] Bloch (n578) 32.
[603] gov.uk, 'Asylum and Resettlement Data Sets', accessed 29/10/24.
[604] ibid.
[605] Stevens (n514) 103.
[606] B S Chimni, 'The Geopolitics of Refugee Studies: A View from the South' (1998) 11(4) Journal of Refugee Studies 351.
[607] ibid.

asylum seekers and immigrants'[608] and sees the UK as a case in point[609]. As the numbers claiming asylum continued to increase throughout the 1980s and into the 1990s, asylum was on the verge of becoming a separate issue in its own right and the UK was about to properly enter the Age of Hostility.

Reacting to, and driven by, increases in 'New Commonwealth' immigration, the legislation in this middle period was very much influenced by issues around race and citizenship. This phase is named an Age of Hesitancy in acknowledgement that the UK government was increasingly hesitant to allow Commonwealth citizens into the country and began to introduce a series of increasingly restrictive legislation to ensure numbers of immigrants were limited. Contrary to the previous Age of Humanitarianism, this age now reacts to geopolitical issues, such as Kenyan Asians and decolonisation, in a negative way to reduce the number of immigrants.

5.2.3 Age of Hostility, 1993 to 2023

The end of the Cold War in 1991, the break-up of the Soviet bloc and the former Yugoslavia, and wars between western powers and Iraq and Afghanistan all contributed to a rise in the numbers of forced migrants trying to enter Europe in the 1990s[610]. In conjunction with these increases in asylum applications, legislation in the UK began to focus on issues of refugeehood and asylum. The 1993 Asylum and Immigration Appeals Act was the first British Act to specifically refer to 'asylum' in its title, and was, moreover, the first piece of UK legislation committed to the issue of asylum. The Act defined a 'claim for asylum' as a 'claim made by a person that it would be contrary to the UK's obligations under the Convention for him to be removed from, or required to leave, the UK'[611]. This Act introduced various stipulations for persons claiming asylum, including 'fingerprinting'[612], 'housing only to be provided on a temporary basis while claiming asylum'[613], and 'right of appeal against refusal to enter the UK in accordance with the UK's obligations under the Geneva Convention'[614]. In addition, it extended the

[608] Joppke (n544) 38.
[609] ibid 39.
[610] Bundy (n539).
[611] Asylum and Immigration Appeals Act 1993, s1, accessed 18/12/20.
[612] ibid s3(1).
[613] ibid s4(3).
[614] ibid s8(1).

carriers' liability introduced in the Immigration (Carriers' Liability) Act 1987 to also apply to 'transit passengers'[615].

To further clamp down on asylum applications, the 1996 Asylum and Immigration Act extended the regulations set out in the 1971 Immigration Act and 1993 Act. In particular, the 1996 Act included conditions for the 'removal of asylum claimants to safe third countries'[616]; 'penalties and powers of search and arrest for those obtaining leave by deception'[617]; 'restrictions on employment with employers being guilty of an offence if they knowingly employ an illegal immigrant'[618]; and restrictions on entitlement to 'housing'[619], 'child benefit'[620], and 'social security benefits, including income support, housing and council tax benefits, and jobseeker's allowance'[621]. This Act also brought in the 'fast-track procedures', under which applicants have just 'one opportunity to appeal to an adjudicator within ten days of an appeal being filed'[622], and the 'white-list of safe countries'[623], a list of countries declared safe for return by the UK government. This list of countries, where there was deemed to be 'in general no serious risk of persecution'[624], was contained in the Statutory Instrument No. 2671 'The Asylum (Designated Countries of Destination and Designated Safe Third Countries) Order 1996'[625]. The creation of a list of countries deemed to be safe contravenes the spirit of the 1951 Geneva Convention because the nationality of an asylum applicant should not be a factor in the determination process[626].

In the European Union, policy in this issue area has tended to focus on process rather than protection, and this is also reflected in UK policy. The original Dublin Convention, which came into force on 1 October 1997, was drawn up to 'establish the State responsible for asylum lodged in one of the Member States of the European

[615] ibid s11.
[616] Asylum and Immigration Act 1996, s2, accessed 18/12/20.
[617] ibid ss6 & 7.
[618] ibid s8(1).
[619] ibid s9(2).
[620] ibid s10(2).
[621] ibid s11(1).
[622] Hansen (n568) 235.
[623] Asylum and Immigration Act 1996, s1(2) (n616).
[624] ibid.
[625] Statutory Instrument No.2671, The Asylum (Designated Countries of Destination and Designated Safe Third Countries) Order 1996, 2, accessed 05/02/21.
[626] Bloch (n578) 36.

Communities'[627]. This was replaced by 'Dublin II' on 18 February 2003 which stated its purpose as 'establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national[628]. This regulation included proposals on establishing a Common European Asylum System (CEAS) based around the Geneva Convention and New York Protocol and concluded that 'all Member States were considered as safe countries for third-country nationals'[629]. It also mentioned the formation of Eurodac, the EU's 'fingerprinting database'[630]. The Dublin II Regulation was replaced by 'Dublin III' on 26 June 2013, 'establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person'[631]. This Directive included the right to appeal a country transfer and also gave more 'rights to unaccompanied asylum-seeking children'[632]. As Dublin III is the regulation that is currently in force and is published on the EUR-lex website, it would automatically follow, as per EU custom, that this EU legislation is also UK legislation. However, this has now ceased to apply since the UK left the European Union and the transition period of the Withdrawal Agreement ended on 31 December 2020. This means that the UK is no longer Party to the Dublin Regulations and no longer has access to the Eurodac database[633].

The importance of asylum as an issue warranting legislation in its own right only grew when the numbers of people seeking asylum in the UK began to increase, from 1998 onwards, at which point more draconian measures were introduced. New Labour came to power in 1997 on a manifesto of having 'firm control over immigration'[634], and to this end, the 1999 Immigration and Asylum Act was the first of many lengthy, comprehensive, and increasingly restrictive Acts to be introduced by the Labour Government throughout the decade 1999 to 2009. In August 1997, the new Labour

[627] Dublin Convention, Document 41997A0819(01), accessed 15/12/20.
[628] Dublin II Regulation, Document 32003R0343, accessed 15/12/20.
[629] ibid s2.
[630] ibid s10.
[631] Dublin III Regulation, Document 32013R0604, accessed 15/12/20.
[632] Girvan (n584).
[633] Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community 2019/C 384 1/01, Art8, accessed 13/12/20.
[634] Labour Manifesto 1997, 'New Labour, New Life for Britain'.

government announced a thorough review of asylum procedures, and one of the first promises of this new government was the integration of the ECHR into national legislation[635]. However, the publication of its 1998 White Paper, *Fairer, Faster and Firmer – a modern approach to immigration and asylum,* revealed that the policies of New Labour were to be a continuation of the constricting polices introduced by the Conservatives. Jack Straw, the first Home Secretary after the 1997 general election, questioned whether the 1951 Convention should still be valid[636] and the UK started to look into the feasibility of Transit Processing Centres (TPCs) and Refugee Protection Areas or safe havens outside the UK in an effort to prevent asylum seekers reaching British shores[637]. At European Summits between 2001 and 2003 – Laeken, Seville and Thessaloniki – the UK continued to propose the regionalisation of asylum and the creation of TPCs outside the EU[638]. At the same time, the new Home Secretary David Blunkett, continued to question the validity of the 1951 Geneva Convention for the modern world. On Newsnight in 2003, Prime Minister Tony Blair pledged that asylum applications in the UK would be halved within a year[639]. This was indeed a very rash pledge as the number of *applications*, as opposed to acceptances, is difficult for a government to control. Throughout its membership of the European Union, the UK participated selectively in EU policy on asylum and immigration, which Blair famously described, in a press conference on 25 October 2004, as giving the UK 'the best of both worlds'[640].

The 1999 Immigration and Asylum Act set out in much detail provisions for the 'treatment of overstayers'[641] and 'removal of persons unlawfully in the UK'[642]; 'removal of asylum seekers under existing arrangements with EU Member States'[643]; duty to report 'sham marriages'[644] (defined as 'a marriage entered into by a person who is not a

[635] Hansen (n568) 258.
[636] Gareth Mulvey, 'When Policy Creates Politics: The Problematizing of Immigration and the Consequences for Refugee Integration in the UK' (2010) 23(4) Journal of Refugee Studies 440.
[637] ibid 448.
[638] Stevens (n514) 420.
[639] Eleanor C Lamb, 'Resisting Marginalisation: changing representations of migrants and refugees in UK text and talk since the 1960s' (2014) 13(3) Journal of Language and Politics 404.
[640] Andrew Geddes, 'Getting the Best of Both Worlds? Britain, the EU and Migration policy' (2005) 81(4) International Affairs 723.
[641] Immigration and Asylum Act 1999, s9, accessed 19/12/20.
[642] ibid s10(1).
[643] ibid s11(1).
[644] ibid s24(1).

British citizen or EEA (European Economic Area) State national and another person in order to avoid UK immigration law'[645]); penalties for carriers transporting 'clandestine entrants'[646] (those 'arriving in the UK concealed in a vehicle, ship or aircraft or by rail'[647] and 'attempting to evade immigration control'[648]) or 'passengers without proper documentation'[649]; and 'powers of immigration officers to arrest without warrant'[650]. In order to reduce the number of unnecessary appeals, an amendment to this Act brought in the 'one stop appeals procedure' in October 2000[651], a measure to ensure that all grounds for appeal are considered in one appeal hearing. The 1999 Act created thirty-five new immigration related offences[652] and, according to Joppke, this Act 'made Britain by far the most restrictive country in Europe with respect to immigrants' access to welfare'[653].

In December 2000, the Charter of Fundamental Rights of the European Union was drawn up, bringing together 'all the personal, civic, political, economic and social rights enjoyed by people within the EU in a single text'[654]. The Charter covered all the rights in case law from the Court of Justice of the EU; all rights and freedoms in the European Convention on Human Rights; and other rights and principles from international instruments and common constitutional arrangements of EU countries. This became legally binding on EU Member States with entry into force of the Treaty of Lisbon in December 2009[655]. However, the UK (and Poland) opted out of this Charter and secured a Protocol limiting the extent to which European courts could rule on issues in the Charter if they were brought before courts in the UK (or Poland)[656]. Throughout its membership of the EU, the UK has selected EU legislation to suit its agenda, and, in addition to this Charter, the UK, pre-Brexit, had also opted out of the Schengen Agreement that abolished internal border controls across most of the EU (although it did

[645] ibid s24(5).
[646] ibid s32(1).
[647] ibid s39.
[648] ibid s32(1).
[649] ibid s40.
[650] ibid s128(3).
[651] The Immigration and Asylum Appeals (One-Stop Procedure) Regulations 2000 No.2244, accessed 04/01/21.
[652] Open University (n599).
[653] Joppke (n544) 90.
[654] EU Charter of Fundamental Rights, 'Why do we need the Charter? Background', accessed 26/02/21.
[655] ibid.
[656] Protocol (No30) 12008E/PRO/30, accessed 22/02/21.

participate in the policing and security aspects of Schengen[657]); the Economic and Monetary Union; and the Area of Freedom, Security and Justice[658], more opt-outs than any other EU Member State. The UK opted in to the Eurodac (fingerprinting) Regulation, out of Eurosur (the European Border Surveillance System), and only had observer status on the Frontex (the European Border and Coastguard Agency) Management Board[659]. In addition, the UK has opted out of a number of EU Directives including those on family reunification, seasonal workers, and long-term residents[660]. Throughout its membership of the EU, the UK has carefully selected which EU Directives to adopt and which to reject. According to Fletcher, 'Britain has tended to participate in coercive measures that curtail the ability of migrants to enter the EU while opting out of protective measures [such as] on family reunion and the rights of long-term residents…'[661].

In 2001, following the 9/11 bombings, the UK was the only European country to declare that it was in a state of emergency. In the wake of these terrorist acts and the 7/7 London bombings, the UK government associated the risk of terrorism and increased security measures with issues of refugeehood and asylum. This had the effect of creating an atmosphere of fear and insecurity as well as a negative perception and mistrust of asylum seekers and refugees and led to a series of increasingly restrictive measures to deter asylum seekers coming to the country, with a focus on control, management, and security. In the wake of 9/11, the Anti-Terrorism, Crime and Security Act 2001 was quickly rushed through parliament. Although the purpose of this emergency legislation was to deal with issues of terrorism and security, part 4 sections 21 to 36 of this Act covered 'Immigration and Asylum'[662], an indication of the UK government's linkage of immigrants and asylum seekers to its anti-terrorism measures.

The trend of increasingly restrictive legislation continued throughout the 2000s, to the extent that, in 2010, O'Neill observed that 'the plethora of asylum and immigration Acts

[657] The Migration Observatory, 'The UK, the Common European Asylum System and EU Immigration Law', accessed 23/02/21.
[658] Eur-lex, 'Glossary of Summaries, Opting Out', accessed 22/02/21.
[659] The Migration Observatory (n657).
[660] ibid.
[661] Maria Fletcher, 'Schengen, the European Court of Justice and Flexibility under the Lisbon Treaty: Balancing the United Kingdom's "ins" and "outs"' (2009) 5(1) European Constitutional Law Review 81.
[662] Anti-Terrorism, Crime and Security Act 2001, part 4, accessed 26/02/21.

produced in the last decade make it very difficult to gain asylum in the UK'[663]. Building on the 1999 Act, the Nationality, Immigration and Asylum Act 2002 created further restrictions on asylum claimants in the UK. Specifically, the 2002 Act introduced a requirement for applicants for naturalisation to have 'knowledge of the UK'[664] and of the 'English language'[665] and to participate in a 'citizenship ceremony, oath, and pledge'[666]. This Act also included rules on 'accommodation centres'[667] and extensive detail on 'detention and removal of asylum seekers'[668]. It removed support for 'failed asylum seekers'[669] and for those who had not claimed asylum 'as soon as reasonably practicable'[670], which, in practice, was interpreted to mean 'immediately on arrival'[671]. This Act also made it an offence to assist unlawful immigration, including helping asylum seekers to enter the UK[672].

Although the Conservative Government's self-named 'hostile environment' officially began with the then Home Secretary Theresa May's speech in 2012, open hostility towards refugees and asylum seekers had started to spread through UK policy many years before this. As far back as 2001, the European Commission against Racism and Intolerance (ECRI), in its *Second Report on the United Kingdom*, stated that:

> …problems of xenophobia, racism and discrimination persist and are particularly acute vis-à-vis asylum seekers and refugees. This is reflected in the xenophobic and intolerant coverage of these groups of persons in the media, but also in the tone of the discourse resorted to by politicians in support of the adoption and enforcement of increasingly restrictive asylum and immigration laws[673].

In 2004, further measures were introduced in the Asylum and Immigration (Treatment of Claimants) Act of that year, including penalties for offences such as 'assisting unlawful immigration'[674], 'entering the UK without a passport'[675], 'forgery of

[663] Maggie O'Neill, *Asylum, Migration and Community* (Policy Press 2010) 5.
[664] Nationality, Immigration and Asylum Act 2002, s1(1), accessed 19/12/20.
[665] ibid s1(3).
[666] ibid s3.
[667] ibid s17(1).
[668] ibid ss62-80.
[669] ibid s54.
[670] ibid s55.
[671] Stevens (n514) 257.
[672] Nationality, Immigration and Asylum Act 2002, s143 (n664).
[673] ECRI, 'Second Report on the United Kingdom' 4, accessed 23/11/20.
[674] Asylum and Immigration (Treatment of Claimants, etc) Act 2004, s1, accessed 19/12/20.
[675] ibid s2.

immigration documents'[676], and 'trafficking people for exploitation'[677]. There were also further conditions on assessing a 'claimant's credibility'[678]; powers of immigration officers to 'arrest without warrant'[679]; and electronic monitoring of claimants, which could incorporate 'residence or reporting restrictions'[680]. The 'credibility' stipulation has become a major factor in the assessment of status of an asylum seeker. In fact, the proof of refugeehood relies on two elements – whether the claimant's story is 'credible' and whether he/she meets the Convention definition of a refugee. This is highly controversial as it is subjective and there is an 'institutional culture of disbelief'[681] at the Home Office. As far back as 1998, the government of the day stated in a White Paper that 'There is no doubt that the asylum system is being abused by those seeking to migrate for purely economic reasons. Many claims are simply a tissue of lies'[682]. This White Paper, which preceded the extensive restrictions brought in under the 1999 Immigration and Asylum Act, also proposed an Immigration Enforcement Hotline, 'to enable members of the public to report immigration abuse'[683], which is still in place today.

Among the detail of the rules and regulations contained in the 2006 Immigration, Asylum and Nationality Act, the main provision brought in was the reference made to the Refugee Convention that 'any acts contrary to the purposes and principles of the United Nations should include acts of terrorism or encouraging terrorism'[684] and 'an asylum seeker may not be entitled to protection under the Convention on the grounds of national security'[685]. This was a further example of the UK government associating issues of terrorism and security with asylum seekers and refugees, and was, in part, a response to the 7/7 terrorist bombings in London. In 2007, the UK Borders Act stepped up border control with the introduction of procedures for 'detention at ports, including airports'[686], 'biometric immigration documents'[687], and the establishment of the 'Border

[676] ibid s3.
[677] ibid s4.
[678] ibid s8.
[679] ibid s14(1).
[680] ibid s36(2)(3).
[681] Yeo (n512) 116.
[682] 'Fairer, Faster and Firmer: A Modern Approach to Immigration and Asylum' White Paper (The Stationery Office 1998) 1.14.
[683] ibid 4.73.
[684] Immigration, Asylum and Nationality Act 2006, s54(1), accessed 19/12/20.
[685] ibid s55(1)(b).
[686] UK Borders Act 2007, s2(1), accessed 28/12/20.
[687] ibid s5(1).

and Immigration Inspectorate'[688]. Part 10 of the Criminal Justice and Immigration Act 2008 outlined 'discretionary powers given to the Home Secretary to designate Special Immigration Status to foreign criminals'[689]. Conditions relating to 'residence, employment, and reporting to the police could be imposed on individuals with this designated status'[690]. Amalgamating provisions in the previous Immigration Acts, the 2009 Borders, Citizenship and Immigration Act attempted to associate different departments dealing with asylum and immigration by increasing cooperation and coordination between the UK Border Agency, Revenue and Customs, and the police[691].

In the continued effort to decrease net migration figures, the Immigration Act 2014 was a lengthy series of amendments to previous Acts relating to immigration, border control and asylum. These amendments included increased 'powers of removal and detention'[692], restrictions on the 'right to rent'[693], and 'charges for health services'[694]. One of the key components of the hostile environment was the piecemeal introduction of immigration status checks by service providers and members of the public. The UK government required British citizens to check documentation regarding employment, housing, banking, driving, healthcare, marriage, and more[695]. It would seem that the Home Office was 'outsourcing' its responsibilities to the British public in terms of creating and maintaining internal immigration border checks within the UK. In effect, there has been a gradual 'governmentalisation'[696] of the UK's immigration and asylum regimes in the Foucauldian sense. Governance of asylum and immigration has become incorporated into the practices of everyday life in that borders have begun to 'emerge locally within spaces of service provision and municipal institutions'[697]. The 2014 Act also extended the definition of a 'sham marriage', first introduced in the 1999 Act, to include 'instances where there appeared to be no genuine relationship between the parties'[698], bringing in an element of subjectivity to assessments. The Immigration Act

[688] ibid s48.
[689] Criminal Justice and Immigration Act 2008, s130(1), accessed 28/12/20.
[690] ibid s133(2).
[691] Borders, Citizenship and Immigration Act 2009, accessed 14/12/20.
[692] Immigration Act 2014, part 1, accessed 26/02/21.
[693] ibid s21.
[694] ibid s39.
[695] Yeo (n512) 28.
[696] Jean McDonald, 'Building a Sanctuary City: Municipal migrant rights in the city of Toronto', P Nyers and K Rygiel (eds), *Citizenship, Migrant Activism and the Politics of Movement* (Routledge 2012) 133.
[697] ibid.
[698] Immigration Act 2014 s55 (n692).

2014, later updated to the Immigration Act 2016, also brought in the 'deport first, appeal later' policy[699], deporting foreign criminals before they had the chance to appeal. In a landmark case in 2017, R (Kiarie) v Secretary of State for the Home Department [2017] UKSC17, the Supreme Court ruled that this was unlawful as it constituted a breach of human rights[700].

The 2016 Act incorporated additional conditions regarding immigration and asylum, access to services and facilities, and the labour market. It laid out regulations on the labour market and illegal working with reference to the National Minimum Wage Act 1998, the Gangmasters (Licensing) Act 2004, and the Modern Slavery Act 2015[701]. It described offences with respect to 'working illegally'[702]; 'disqualification from housing entitlement'[703]; increased 'powers of fingerprinting'[704]; and 'cancellation of leave to remain in the UK'[705]. It also set out 'penalties for employing illegal workers and providing accommodation to disqualified persons'[706]. The 2014 and 2016 Immigration Acts extended the hostile environment policies on checking an individual's right to work to checks on housing, banking, and driving.

It is clear from the analysis of the Age of Hostility legislation that the UK government is increasingly outsourcing the day-to-day running of immigration control to companies, organisations, and individuals. Not only are these non-state actors (NSAs) expected to check immigration status in terms of right to work, rent, drive, or have a bank account, but they can also face fines or even imprisonment for non-compliance. In the UK's governance of asylum, the role of NSAs has particularly increased in the Age of Hostility as many aspects of hostile environment policy are outsourced to them. Private companies are involved with security, detention, and border control, and even members of the public are contributing by carrying out internal border control checks. In addition, with the demise of the welfare state, many local government services traditionally provided by the welfare state are now being undertaken by local, regional, and national charities. The relationship between these NSAs and the institution of the Home Office

[699] ibid s17.
[700] BBC, '"Deport first, appeal later" policy ruled unlawful', accessed 19/02/21.
[701] Immigration Act 2016, s3, accessed 15/12/20.
[702] ibid s34.
[703] ibid s41(6).
[704] ibid s57(1).
[705] ibid s62(1).
[706] ibid s47(2).

is a related factor which is outside the scope of this thesis, which focuses on the development of the legislation and how asylum seekers and refugees are represented by politicians and political parties in the law-making process.

Under the 2016 Act, it was also agreed that 'the Secretary of State must, as soon as possible after the passing of this Act, make arrangements to relocate to the UK and support a specified number of unaccompanied refugee children from other countries in Europe'[707]. The so-called 'Dubs Amendment' to accept unaccompanied child refugees originally included in this Act and then in the EU Withdrawal Agreement was subsequently rejected by the House of Commons. A total of 480 children were transferred to the UK under these arrangements before the scheme was withdrawn[708].

August 2021 saw the evacuation from Afghanistan of the coalition forces led by the United States and February 2022 saw the Russian invasion of Ukraine. In the wake of both of these, the UK has launched bespoke refugee resettlement schemes for Afghans and Ukrainians to come to the UK. Following the US withdrawal from Afghanistan, around 22,000 individuals have arrived in the UK under two Afghan resettlement schemes[709], and since the start of the war in Ukraine, the UK has launched three schemes for Ukrainian refugees, including the 'Homes for Ukraine' scheme. Around 190,000 Ukrainians have arrived in the UK under these schemes as of 10 October 2023[710]. All of these refugee resettlement schemes run in parallel with increasingly hostile policies and legislation introduced in 2022 and 2023 supposedly to deter spontaneous asylum arrivals. (See Appendix C, p.321 for a summary of the grants of protection and resettlement visas issued for the years ended 30 June 2023 and 2024.)

The two most recent Acts – the 2022 Nationality and Borders Act and the 2023 Illegal Migration Act – have extended hostile measures even further. The 2022 Act was an Act to make provisions about nationality; asylum and immigration; and slavery and human trafficking. Part 1 of the Act outlined amendments to the British Nationality Act 1981 regarding UK citizenship, including 'granting the Home Secretary powers to deprive a person of citizenship without giving them notice'[711]. Parts 2 and 3 set out extensive

[707] ibid s67(1).
[708] 'Factsheet: Section 67 of the Immigration Act 2016 ("Dubs Amendment")', Policy Paper, accessed 23/02/21.
[709] gov.uk, 'Afghan Resettlement Programme: operational data', accessed 13/10/23.
[710] gov.uk, 'Ukraine Data', accessed 13/10/23.
[711] Nationality and Borders Act 2022, s10(2)(b), accessed 16/10/23.

provisions in respect of asylum and immigration control, including proposals to introduce two tiers of refugees, resulting in differentiated treatment depending on how individuals had entered the UK. Those arriving directly from a country where they were threatened were Group 1, otherwise, they were classed as Group 2 and were entitled to lesser rights, including length of leave to remain[712]. Part 2 of the Act included provisions on accommodation and inadmissible asylum claims (asylum claims by persons with 'connection to safe third State' were deemed 'inadmissible'[713]) and Part 3 outlined measures on illegal entry, including an amendment to the Immigration Act 1971 such that the penalty for assisting unlawful immigration or asylum seekers was updated to 'imprisonment for life'[714].

The Introduction to the Illegal Migration Act 2023 states that it is an Act to:

> make provisions related to immigration, including: the removal from the United Kingdom of persons who have entered or arrived in breach of immigration control; detention for immigration purposes; unaccompanied children; victims of slavery or human trafficking; inadmissibility of certain protection and human rights claims relating to immigration; and the maximum number of persons entering the UK annually using safe and legal routes.[715]

Section 1(1) of the Act states its purpose is to 'prevent and deter unlawful migration, and in particular, migration by unsafe and illegal routes, by requiring the removal from the UK of certain persons who enter or arrive in the UK in breach of immigration control'[716]. To this end, the Act places a *duty* on the Secretary of State 'to make arrangements for the removal of these persons'[717]. Consequently, the 2023 Act extends the Home Secretary's discretionary powers, now placing a *statutory duty* on the Home Secretary of the day to remove asylum seekers who have arrived by irregular means. Section 12(1)(b) states that a person liable to be detained under these arrangements is detained for a period that, in the *opinion* of the Home Secretary, is 'reasonably necessary'[718]. The Secretary of State must also make regulations specifying the 'maximum number of

[712] ibid s12(5)(a).
[713] ibid s16(1).
[714] ibid s41(2).
[715] Illegal Migration Act 2023, Introduction, accessed 16/10/23.
[716] ibid s1(1).
[717] ibid s1(2)(a).
[718] ibid s12(1)(b).

persons who may enter the UK annually using safe and legal routes'[719]. These provisions – the powers to decide the 'reasonableness' of length of detention and to specify the number of refugees who should be allowed in – are further extensions of the Home Secretary's discretionary powers.

Coinciding with an increase in asylum applications, the emphasis in the legislation shifts to asylum seekers and the provision of asylum from 1993 onwards. From this point on, in a sustained effort to reduce numbers by making the UK as unattractive as possible as a destination for claiming asylum, both Conservative and Labour governments introduced a steady stream of increasingly restrictive rules and regulations in what is truly an Age of Hostility. As we see from this synopsis, new legislation is introduced every one or two years building on previous measures and bringing in more and more hostile laws and policies in an incremental fashion.

5.3 Conclusions

The doctrinal analysis maps the development of the legislation from the start of restrictions with the 1905 Aliens Act up to the present day and the 2023 Illegal Migration Act. This analysis reveals that increasingly restrictive and repressive measures have been introduced in successive pieces of legislation incrementally. Throughout the Age of Hostility, the legislation has become exceptionally hostile, resulting in the UK Home Office's contemporary hostile environment policy. The effect of this policy is summed up by Bloch who states that 'the erosion of welfare provisions for asylum seekers has led to institutionalised inequalities among people living in the same country'[720]. This hostile environment is in contradiction to successive UK governments' discourse of having a proud history of protecting those in need.

The increases in restrictions can be starkly demonstrated by comparing the UK's responses to displacement situations through the different Ages, including:

- The contrast between the implementation of the *Kindertransport* scheme before WW2 (Age of Humanitarianism) and the removal of the Dubs amendment from the 2016 EU Withdrawal Agreement (Age of Hostility).

[719] ibid s60(1).
[720] Bloch (n578) 33.

- The active recruitment of refugees to work in Britain under the EVWS following WW2 (Age of Humanitarianism) compared with the UK's contemporary asylum regime which does not allow asylum seekers to work (Age of Hostility).
- The different attitudes to refugees from the ideological notion of accepting political exiles during the Cold War (Ages of Humanitarianism and Hesitancy) to their construction as 'problems' when asylum seekers arrive today (Age of Hostility).
- The sympathy towards the plight of the Vietnamese boat people in small flimsy boats (Age of Hesitancy) compared with the negative rhetoric displayed towards asylum seekers crossing the English Channel in small flimsy boats (Age of Hostility).

The transitions from age to age can be seen by considering the laws introduced before and after each change of age. The Age of Humanitarianism in effect ends with the hugely generous 1948 British Nationality Act which gave all members of the British Empire the right to live and work in the UK. No other legislation was introduced until the 1962 Act which forms the start of the Age of Hesitancy, and which restricted Commonwealth immigration for the first time. Race dominated this age with the patriality clause of the 1971 Immigration Act followed by the amendments to right of abode included in the 1988 Immigration Act, the last act of this age. There was as yet no provisions for asylum seeking included in any of these acts. This changed with the 1993 Act at the start of the Age of Hostility which responded to increases in the numbers of asylum seekers and was the beginning of increasing restrictions specifically on asylum.

There are a number of conclusions to be drawn from the evidence presented in this review of UK legislation on asylum and immigration. Firstly, this inspection of UK legislation reveals that, for most of the twentieth century, issues of asylum and refugeehood were defined within the context of immigration policy. This chapter shows that between 1945 and 1993, the UK 'continued to treat asylum law as a branch of general immigration law, proceeding for almost fifty years with a haphazard and piecemeal system of control'[721]. Indeed, it was not until 1993 and the Asylum and Immigration Appeals Act of that year that the term 'asylum' was included in a title of a UK Act of Parliament. Secondly, over the years, the UK has introduced ever more

[721] Stevens (n514) 161.

restrictive policies to deter asylum seekers and reduce numbers claiming asylum. These measures have included visa restrictions, carriers' liability, automatic return to safe country of origin, expedited processing mechanisms, mandatory detentions and dispersal, and increased deportations. It was only when asylum seeker arrivals and consequently asylum applications increased that these increasingly restrictive and hostile measures were introduced. It would appear that 'one refugee is an individual in need who should be let in, a thousand refugees are a threat and a burden'[722]. This chapter shows that the increases in restrictive measures have been prompted, in part at least, by increases in numbers. Thirdly, there has been a clear governmentalisation of immigration control as a wide range of third parties are now co-opted to conduct immigration status checks at internal and invisible borders throughout institutions within the UK. Both the identity checking practices and the penalties for non-compliance have been introduced incrementally, building and expanding on previous legislation. This has been part of the increased emphasis on the monitoring and management of refugees and asylum seekers rather than their protection needs. Today, states and other actors [regional and international organisations such as the UNHCR, the IOM, and the European Union] are increasingly talking in terms of the need for more effective migration management[723].

Fourthly, there are very few references to international legislation in UK domestic law. Throughout the whole time period under review, there has been a shift in the UK's legislation such that the most recent laws – the 2022 Nationality and Borders Act and the 2023 Illegal Migration Act – have both been criticised as being in contravention of international instruments such as the Refugee Convention and the ECHR. This shift has happened incrementally with UK legislation becoming increasingly contrary to these international conventions over time. Lastly and related to the previous point, generally speaking, UK policy on forced migration is not a rights-based legislation. While there are occasional references to the Refugee Convention and rights of asylum seekers and refugees, it is primarily concerned with rules, regulations, control, and management. The UK has opted out of some European immigration legislation according to its own agenda of restrictionism and control of numbers. In spite of the existence of international law governing the protection of refugees, in reality it is UK domestic law on control and

[722] Emma Haddad, *The Refugee in International Society: Between Sovereigns* (CUP 2008) 31.
[723] Jeff Crisp,' A New Asylum Paradigm? Globalisation, Migration and the Uncertain Future of the International Refugee Regime' (2005) 1(1) St Antony's International Review 51.

management which prevails when it comes to issues of asylum and refugeehood. National laws define the rules, regulations, and procedures for the admission of asylum seekers; the assessment of asylum claims and allocation of status; the rights of appeal; and the processes of detention, deportation, and removal.

In part, the most recent period of development, the Age of Hostility, has flourished due to little constructive opposition to restrictive measures from 1997 onwards and the birth of New Labour. Legislation and polices which were introduced under New Labour continued and extended previous Conservative measures. Furthermore, at no point has a new government repealed the previous government's legislation. Refugees and asylum seekers present the UK government with a dilemma in that 'the refugee brings to the fore the very tension between the state prerogative to exclude and the human rights imperative to include'[724]. This analysis of the progression of legislation shows that the UK's attitude has increasingly tended toward measures of exclusion rather than human rights, protection, and inclusion.

[724] Haddad (n722) 70.

Chapter 6:

Case Study: The Lasting Legacy of the 1971 Immigration Act

6.1 Introduction

While there is extensive literature on the 1971 Immigration Act as part of social histories of the UK, in particular, with regard to the Commonwealth, race, and immigration[725], there is less discussion of the Act's significance and lasting legacy in the creation of the hostile environment and even less of how this relates to the UK's involvement with Europe. This chapter uses a case-study analysis of the Act – incorporating both a doctrinal examination of the legislation and a socio-historic analysis of both the context in which it was introduced and its consequences – to address this specific gap in the literature. It follows from arguments presented in the previous chapter about how the British Empire led to the tightening of British legislation in the form of the restrictive Acts of the 1960s and early 1970s and led the UK towards EU membership in 1973. In conjunction with these processes, the chapter argues, the 1971 Immigration Act began a long and systematic process of sustained exclusion of non-European citizens from protection in the UK.

In its introduction, the Immigration Act 1971 states that it was:

> An Act to amend and replace the present immigration laws, to make certain related changes in the citizenship law and enable help to be given to those wishing to return abroad, and for purposes connected therewith[726].

This provides a first hint of the extent to which the 1971 Immigration Act effected a complete overhaul of previous immigration legislation. By comparison to previous legislation, four features make it stand out: its racist nature; the fact that it spelled the effective end of Commonwealth immigration in favour of European immigration and accession to the EU; its heralding of Immigration Rules which are still used to bring in changes to asylum and immigration regulations; and the fact that many of its provisions

[725] Paul Gilroy, *There Ain't No Black in the Union Jack* (2nd edition) (Routledge 2003); Randall Hansen, *Citizenship and Immigration in Post-war Britain: The Institutional Origins of a Multicultural Nation* (OUP 2000); Robert Winder, *Bloody Foreigners: The Story of Immigration to Britain* (2nd edition) (Abacus 2013).

[726] Immigration Act 1971, Introduction, accessed 08/01/23.

are still in place today, most notably the discretion given to the Home Secretary. This chapter hones in on these four features in the ensuing doctrinal analysis of the Act.

6.2 Background

The 1971 Act followed in the footsteps of the two preceding Commonwealth Immigrants Acts of the 1960s, both of which were racially discriminatory[727]. The 1971 Act extended the restrictions on Commonwealth immigration already introduced under these two Acts. In addition, the 1971 Immigration Act was introduced in the 1970 general election campaign as part of a Conservative party pledge to reduce immigration[728]. It also coincided with the UK's accession to the EU, signifying a move by the UK toward Europe and away from the Commonwealth[729]. This section considers the background and context behind the introduction of the 1971 Immigration Act.

6.2.1 Commonwealth Immigrants Acts 1962 and 1968

Immigration legislation introduced in the 1960s was sparked by both the 1958 race riots in Nottingham and Notting Hill – viewed as a 'turning point in the history of modern racism'[730] – and New Commonwealth immigration. In 1961, the number of immigrants from New Commonwealth countries exceeded 100,000 for the first time, and the total entry since 1956 was over half a million[731]. This was perceived as a problem for both external and internal reasons. Externally, the parallel race unrest in the United States created a fear that Britain was importing 'a colour problem approaching that of the United States'[732]. Domestically, black immigration was viewed as problematic because of 'clotting', that is, concentration of ethnic communities in 'smallish areas of poor housing and high unemployment'[733]. Post-WW2, Commonwealth immigration had been encouraged to supplement the depleted male workforce but as time passed, the need for,

[727] Winder (n725) 270-8.
[728] Conservative Manifesto 1970, 'A Better Tomorrow'.
[729] Erica Consterdine, 'Community versus Commonwealth: Reappraising the 1971 Immigration Act' (2017) 35(1) Immigrants and Minorities 2.
[730] Gilroy (n725) 98.
[731] Christian Joppke, *Immigration and the Nation-State: The United States, Germany, and Great Britain* (OUP 1999) 107.
[732] Lord Chancellor Viscount Kilmuir (Conservative), Report to the Cabinet, May 1961, quoted in *The Times,* 1 January 1992 5.
[733] Shadow Home Secretary Gordon Walker (Labour), 1962 Commonwealth Immigrants Bill, Hansard HC Deb vol.649, col.714, accessed 17/12/21.

and acceptance of, Commonwealth immigrants decreased[734]. The 1962 Act was the beginning of a growing inward-looking stance on immigration. It ended the *laissez-faire* years and marked the beginning of institutionalised racism in the UK[735].

The primary aim of the 1968 Commonwealth Immigrants Act was to prevent Kenyan Asians arriving into the UK. Kenya had gained independence from Britain in 1963, and, in 1967, Asians from Kenya had started to arrive in the UK, driven from their country by the 'Africanisation' policies of the Kenyan government[736]. Consequently, the actual purpose of the 1968 Act – which was rushed through parliament in just *three days* in an atmosphere of absolute panic – was to curtail the increasing numbers of East African Asians exercising their rights as British passport holders to enter the UK from Kenya[737]. A duration of three days from a House of Commons second reading to Royal Assent is exceptionally quick for a Bill to pass through parliament. For context, the emergency legislation that was introduced post-9/11, the 2001 Anti-Terrorism Act, took 25 days, and, out of the 26 Acts of Parliament listed in Appendix B, fourteen took longer than 200 days. This speedily introduced legislation removed the right of entry from 200,000 East African Asians with UK passports, who had become the victims of the Africanisation drive in post-independence Kenya[738]. By removing this right of entry, Britain violated one of the fundamental norms of the international state system: the obligation of states to accept their own nationals[739]. The exclusion of East African Asians was accomplished by widening immigration control to UK passport-holders without 'substantial connection' with the UK.

6.2.2 1970 General Election and Application to the EEC

The assumption that good race relations necessitated minimum immigration was the bipartisan consensus that underpinned Britain's immigration policy[740], and both Labour and Conservative election manifestos linked race relations with immigration. The 'race

[734] Alyssa Girvan, 'The History of British Immigration Policy (1905-2016), Timeline Resource' (2018), accessed 12/02/21.
[735] Hansen (n725) 247.
[736] Randall Hansen, 'The Kenyan Asians, British Politics, and the Commonwealth Immigrants Act, 1968' (1999) 42(3) The Historical Journal 809.
[737] Alice Bloch, 'A New Era or More of the Same? Asylum Policy in the UK' (2000) 13(1) Journal of Refugee Studies 31-2.
[738] Joppke (n731) 109.
[739] ibid.
[740] Consterdine (n729) 1.

card' was played by both main parties in the 1970 election campaign, and, for the first time, immigration was the fourth most important issue for voters[741]. In 1970, the Labour party, under their leader Harold Wilson, were the party in government, and their manifesto, 'Now Britain's Strong – Let's Make It Great to Live In', claimed:

> With the rate of immigration under firm control and much lower than in past years, we shall be able to concentrate our resources in the major task of securing good race relations.[742]

The control of immigration is clearly linked in this single statement with 'good race relations'.

The Conservatives, under Edward Heath, campaigned on reducing immigration, and their manifesto, 'A Better Tomorrow', stated:

> Our policies will reduce the causes of racial tension, and we will ensure that there will be no further large-scale permanent immigration; and
>
> We will establish a new single system of control over all immigration from overseas. The Home Secretary of the day will have complete control … future immigration will be allowed only in strictly defined special cases.[743]

Whereas the Labour manifesto linked immigration control with good relations, the Conservative manifesto linked it to racial tension. Effectively, however, they both stated the same thing: that increased migration correlated with racial conflict and that the way to stop the latter was to control the former. For both, immigration was the source of risk for racial peace rather than, for example, pre-existing discrimination. Furthermore, not only did the Conservative election manifesto link racial tension with immigration, but it also pledged to give the Secretary of State of the Home Office complete control over immigration.

The 1970 election result was a surprising win for the Conservatives, arguably attributed to the right-wing Conservative MP, Enoch Powell, as 'of all those who had switched their vote from one party to another, fifty per cent were working class Powellites'[744].

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[741] ibid 6.
[742] Labour Manifesto 1970, 'Now Britain's Strong – Let's Make It Great to Live In'.
[743] Conservative Manifesto 1970 (n728).
[744] R W Johnson in Simon Heffer, *Like the Roman: The life of Enoch Powell* (Weidenfeld & Nicolson 1998) 568.

Immigration and race were major issues which were presented as a single concern by both main political parties. There was widespread anti-immigration feeling among the public, and Powell was successful in 'associating the Conservatives with opposition to immigration in the voters' minds'[745]. In previous elections, 'immigration opinion had no discernible effect on voting behaviour in 1964 and 1966 because the connection between parties and positions on the issue was not generally made'[746]. Helped by Powell, this changed in 1970, and those opposing immigration 'flowed in large numbers into the Conservative ranks'[747].

Running parallel to the issue of New Commonwealth immigration was the issue of the UK's application to join the EEC. Britain had made two unsuccessful applications in 1961 and 1967, when both bids were vetoed by France, primarily because the French President, Charles de Gaulle, was concerned about the UK's continued ties and commitments to other Commonwealth countries and its strong links with the US[748]. In its initial application, the UK had set out various conditions to preserve its privileged economic and monetary relations with Commonwealth countries[749]. However, relations between the UK and countries of the former British Empire declined throughout the 1960s such that by 1971, Britain had relaxed its previous conditions[750]. During the 1960s, the UK's policy towards Europe changed in a more pro-European direction. This was driven by two parallel geopolitical factors: 1) 'a fear of being sidelined and the resounding success of the EEC'[751]; and 2) a weakening of the political and strategic links between the UK and the Commonwealth such that 'the complementarity between the British economy and the economies of its former colonies diminished throughout the 1960s'[752]. Political and strategic links between the UK and the countries of the former British Empire continued to decline throughout this time such that by 1972, 'the UK was importing a mere 19% of its goods from the Commonwealth, which was taking just 20%

[745] David Butler and Donald Stokes, *Political Change in Britain* (2nd edition) (Macmillan Press 1974) 307-8.
[746] Donley T Studlar, 'Policy Voting in Britain: The Colored Immigration Issue in the 1964, 1966 and 1970 General Elections' (1978) 72(1) American Political Science Review 64.
[747] ibid.
[748] The Cabinet Papers, 'The EEC and Britain's Late Entry', accessed 26/05/23.
[749] 'The United Kingdom's Accession to the EC', accessed 26/05/23.
[750] ibid.
[751] 'The negotiations for British accession to the EC and the question of the Commonwealth', accessed 28/08/24.
[752] ibid.

of British exports'[753]. Consequently, the UK's decision to accede to the EEC was taken on both economic and political grounds.

The 1970 Conservative victory gave Heath as Prime Minister the mandate to begin formal negotiations with the EEC, and the UK's third application for membership was accepted. In conjunction with this, the new Conservative government quickly introduced the restrictive legislation that became the 1971 Immigration Act[754]. The 1971 Act imposed new and complicated restrictions on entry to the UK in order to curb immigration of the once sought-after Commonwealth workers who were now regarded as 'surplus colonial labour'[755]. At this point in time, legislation in the UK was explicitly restricting access to Commonwealth immigrants rather than to Europeans. The next section examines the specific stipulations of the 1971 Act in more detail.

6.3 Measures Introduced in the 1971 Immigration Act and the 1971 Immigration Bill Debate

The 1971 Immigration Act was introduced at a critical moment for the UK in terms of its international standing. As well as outlining the measures which were introduced in the 1971 Act, this section also explores part of the law-making process to assess what factors drove the introduction of this particular piece of legislation. It examines the House of Commons second reading debate, the main parliamentary debate on the Bill, and analyses the discourse surrounding this debate in terms of what MPs were discussing as well as the language they used.

6.3.1 Measures Introduced in the 1971 Immigration Act

The 1971 Immigration Act introduced the notion of 'patrial' (from the Latin 'patria' meaning homeland or fatherland) – persons having the right of abode in the UK[756] – and 'non-patrial' – those without the right of abode. Patrial immigrants enjoyed full citizenship rights while non-patrial immigrants were granted limited leave to remain[757]. Those with the right of abode were 'free to live in, and to come and go into and from,

[753] ibid.
[754] Nicholas Hillman, 'A 'Chorus of Execration'? Enoch Powell's 'rivers of blood' forty years on' (2008) 42(1) Patterns of Prejudice 94-5.
[755] Winder (n725) 385.
[756] Immigration Act 1971, s2(6) (n726).
[757] Girvan (n734).

the United Kingdom without let or hindrance…'[758] and this was supported by possession of a British passport or certificate of patriality[759]. The 1971 Act used heredity to determine citizenship among members of the Commonwealth. Those individuals who had a British parent or grandparent – and were usually white – were considered to be 'patrials' and received more favourable treatment, while all others – non-whites – were considered to be 'non-patrials' and they faced more rigorous constraints. The highly controversial and racist patriality clause included in the 1971 Immigration Act was designed to ensure access to the UK for citizens of Australia, Canada, and New Zealand while denying access to the rest of the Commonwealth, in effect bringing an end to the 'Windrush generation'.

Under the 1971 Act, immigration officers were also given more powers to grant or refuse leave [that is, permission] to enter the UK[760], and had the authority to examine *any* persons arriving in the UK by ship or aircraft to determine their patriality[761]. Leave to enter the UK could be refused on the grounds that 'exclusion is conducive to the public good as being in the interests of national security'[762]. There were further specifications made for deportations[763], and Part II of the Act covered rules and regulations with respect to appeals[764]. Notably, the 1971 Act was the first piece of UK legislation to identify an "illegal entrant": this term was defined in the Act as 'a person unlawfully entering or seeking to enter in breach of a deportation order or of the immigration laws and includes a person who has so entered'[765]. It also introduced definitions of 'limited leave' and 'indefinite leave' – 'leave under this Act to enter or remain in the UK which is, and one which is not, limited as to duration'[766]. The 1971 Act ended, with just a few exceptions, the privileges that had previously been granted to British subjects physically resident outside of the UK[767]. Another new and significant development included in the 1971 Act was the power given to immigration officers of detention of asylum-seekers[768].

[758] Immigration Act 1971, s1(1) (n726).
[759] ibid s2(9).
[760] ibid s4(1).
[761] ibid Sch2 s2(1).
[762] ibid s9.
[763] ibid s6.
[764] ibid ss12-23.
[765] ibid s33(1).
[766] ibid.
[767] Hansen (n725) 205.
[768] Louise Pirouet, *Whatever Happened to Asylum in Britain? A Tale of Two Walls* (Berghahn Books 2001) 82.

In 1970, the first UK detention centre, Harmondsworth Detention Centre in Greater London, was built. Its purpose was to detain Commonwealth citizens who were denied entry into Britain, and in 2010, the addition of two new wings made it Europe's largest detention centre[769]. It continued to be the largest detention facility in Europe, with the capacity to hold up to 676 adult male detainees[770], up until November 2022, when all its immigration detainees were removed and relocated to prisons or other detention centres following a loss of electricity and subsequent protests at the centre[771]. Asylum seeker detention, introduced into legislation over fifty years ago in the 1971 Immigration Act, is just one restrictive measure which has been incrementally developed in the intervening years. Detention has been expanded through the years from the detention of asylum seekers at ports pending examination to determine their patriality into the 'blanket detention' of all asylum seekers arriving by irregular means included in the 2023 Illegal Migration Act.

Most importantly, Section 3(2) of the 1971 Immigration Act conferred discretionary powers on the Home Secretary:

> The Secretary of State shall from time to time (and as soon as may be) lay before parliament statements of the rules, or of any changes in the rules, laid down by him as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the United Kingdom of persons required by this Act to have leave to enter, including any rules as to the period for which leave is to be given and the conditions to be attached in different circumstances…[772].

The Immigration Act 1971 grants the Secretary of State of the Home Office discretionary powers to give, refuse or vary leave to remain in the UK. If successful, asylum applicants in the UK are granted protection status in the form of either full refugee status or complementary protection. Complementary protection in the UK was originally called 'exceptional leave to remain', but this was replaced in 2003 with 'humanitarian protection' which was to be granted 'to those who, though not refugees, would, if

[769] gov.uk, Press Release, 'Europe's Largest Immigration Removal Centre', accessed 26/05/23.
[770] 'Report on a Scrutiny Visit to Harmondsworth Immigration Removal Centre', accessed 26/05/23.
[771] 'Immigration detainees removed from Harmondsworth Centre after disturbances', accessed 26/05/23.
[772] Immigration Act 1971, s3(2) (n726).

removed, face in the country of return a serious risk to life or person arising from the death penalty, unlawful killing or torture, inhuman or degrading treatment or punishment'[773]. It should be noted, however, that such risks are embedded in the stipulations of the Refugee Convention, which raises the question why a different form of protection would be necessary in these cases. Indeed, the principle of *non-refoulement* means that a refugee cannot be returned to a territory where (s)he fears threats to life or freedom, and 'this is so fundamental that no reservations or derogations may be made to it'[774]. The Secretary of State also had the power to grant limited leave – termed 'discretionary leave' – to be used in exceptional circumstances for those who did not qualify for humanitarian protection[775]. This system of assessment remains in place today: The Home Office considers an asylum seeker's claim on a hierarchical basis – refugee status, followed by humanitarian protection, followed by discretionary leave[776].

In the EU, a successful applicant would be granted international protection in the form of either full refugee status or subsidiary protection, which has the same definition as the UK's humanitarian protection[777]. EU documentation also refers to humanitarian protection as a form of non-EU harmonised protection awarded at the discretion of individual Member States[778] (similar to the UK's discretionary leave). Although the notion of complementary protection is to provide protection to those who would not qualify as refugees under the 1951 Geneva Convention, in practice its effect has been to undermine refugee rights rather than enhance them[779]. Claimants granted complementary protection are entitled to reduced rights compared with those granted refugee status. While both statuses entitle people to work, study, use the NHS, and access benefits, there are some nuanced lesser rights for those granted humanitarian protection, such as non-entitlement to a Convention document[780] (a travel document which ensures that refugees are not returned to a country where they face persecution) and, importantly,

[773] 'Immigration Rules part 11: Asylum', accessed 25/02/22.
[774] Convention and Protocol relating to the Status of Refugees, Introductory Note by the Office of the UNHCR, accessed 31/10/24.
[775] gov.uk, 'Discretionary Leave: Caseworker Guidance', accessed 26/05/23.
[776] John Vassiliou, 'What is the Difference between Refugee Status and Humanitarian Protection?', accessed 05/02/21.
[777] European Commission, Migration and Home Affairs, 'Humanitarian Protection', accessed 26/05/23.
[778] ibid.
[779] Olga Demetriou, 'Complementary protection and the recognition rate as tools of governance: ordering Europe, fragmenting rights' (2022) 48(5) Journal of Ethnic and Migration Studies 1266.
[780] 'Humanitarian Protection vs Refugee Status – What's the Difference?', accessed 26/05/23.

restrictions on family reunification[781]. In the UK, this hierarchy of protection, ranging from full refugee status to a definite period of discretionary leave, has been diminished over the years to the extent that the 2023 Illegal Migration Act now denies asylum seekers who arrive by irregular means access to the UK's asylum system. The beginning of this incremental restrictionism was the stipulation in the 1971 Act regarding the Home Secretary's discretionary powers to decide over different statuses.

6.3.2 The 1971 Immigration Bill: House of Commons Second Reading Debate

When the 1971 Immigration Bill was debated in the House of Commons, MPs from both sides of the House were extremely critical of it, describing it as 'bad', 'rushed', 'nasty', 'ill-considered', 'dangerous', 'foolish', 'restrictive', 'unjust and unfair', 'unnecessary and irrelevant', and 'objectionable'[782]. Opposition Labour MPs were particularly condemnatory of the Bill: Shadow Home Secretary, James Callaghan, accused it of destroying the statutory right of immigrants, of not being an improvement on the existing system, and of 'sailing under false colours'[783], while Bidwell said it was 'a bit of Hogg-wash'[784], and Short called it a 'window-dressing Bill'[785]. Callaghan also accused the government of 'putting the cart before the horse – that is to say, control before citizenship'[786] and of adopting a Powellite Administration. Jenkins (then Labour) claimed that the 'patriality' clause was a 'particularly nasty word to describe a pretty nasty concept' and accused the government of 'irrelevant illiberalism'[787].

MPs from all political parties expressed their worries about the number of immigrants coming into the UK, voicing discourses that likened migrants to undifferentiated masses, a motif that has since become commonplace. Home Secretary, Reginald Maudling (Conservative), was concerned about a 'large wave of immigration'[788], Powell (Conservative) about a 'large and increasing influx into this country from the New

[781] UNHCR UK, 'Family Reunion Application', accessed 31/10/24.
[782] 1971 Immigration Bill Debate, Hansard HC Deb vol 813 cc 42-173, accessed 17/12/22.
[783] James Callaghan, Hansard (n782).
[784] Sydney Bidwell, Hansard (n782).
[785] Renee Short, Hansard (n782).
[786] James Callaghan, Hansard (n782).
[787] Roy Jenkins, Hansard (n782).
[788] Reginald Maudling, Hansard (n782).

Commonwealth'[789], and Short (Labour) that the 'trickle…will develop into a flood'[790]. Immigration was viewed as a 'problem' by many, with Gurden (Conservative) claiming that 'no other country has faced an immigration problem at all comparable with our own'[791].

The patriality clause and citizenship were discussed, as was race, which was a theme running right through the debate, both in terms of the legislation being potentially racially discriminatory and the danger of immigration having an adverse effect on race relations in the country. There was a consensus on both sides of the House that immigration was an issue which was linked with race relations, much like the links that the manifestos had already drawn. The control and regulation of immigration was a bipartisan concern for MPs, who wanted an orderly, sensible, and firm system of immigration control, although Labour MPs tended to show more compassion towards immigrants. Immigration and race were perceived as a single 'problem', with MPs expressing their concern that the Bill was prejudiced, racist, and a 'deliberate policy of racial discrimination'[792] (Hunt, Conservative). There were fourteen mentions of race relations throughout the debate, thirteen mentions of racialism or discrimination, and fifteen references to coloured or black immigrants. Callaghan said that the Bill provided a 'badge of respectability to prejudice'[793] and Bottomley (Labour) said it was 'biased in favour of white people'[794]. Home Secretary Maudling refuted the accusation of racism, stating, 'patriality has been attacked as a racial concept, an argument which I wholly reject'[795]. Throughout the parliamentary discussion of the Bill, MPs expressed concerns about social and racial problems and problems of community relations; housing and overcrowding; education; and unemployment. Callaghan referred to the 'very delicate relationship existing between police and immigrants'[796].

MPs from both main parties were concerned about the Home Secretary's discretionary powers, with comments such as 'a very dangerous weapon to put in the hands of a less

[789] Enoch Powell, Hansard (n782).
[790] Renee Short, Hansard (n782).
[791] Harold Gurden, Hansard (n782).
[792] John Hunt, Hansard (n782).
[793] James Callaghan, Hansard (n782).
[794] Arthur Bottomley, Hansard (n782).
[795] Reginald Maudling, Hansard (n782).
[796] James Callaghan, Hansard (n782).

liberal Home Secretary'[797] (Short, Labour), 'the power given to the Minister to act where the conduct of any other person is "not conducive to the public good" is far too wide a power to give to any Minister'[798] (Fraser, Conservative), and 'in the hands of a Home Secretary more ruthless or more energetic than himself, this procedure could be used most dangerously and most damagingly'[799] (Jenkins, Labour).

The House of Commons second reading debate of the 1971 Immigration Bill was passed on 8 March 1971 by 295 votes in favour to 265 votes against[800]. Not only does this brief synopsis of the debate provide a flavour of the issues being discussed around the legislation at that time, but it also provides a guide to understanding the legislation that would come after this Act. Apart from statements proclaiming the UK's proud history of protecting those in need, there are very few references to protection in this debate and subsequent ones. There are, however, nine references to "illegal immigration". Rather than looking for ways to help and protect refugees, much of the discussion revolves around the politics, the administration, and trying to prevent asylum seekers from reaching the UK. The language around the issue of asylum tends to portray it as a problem, burden, crisis, or emergency, and links it with other matters such as housing shortages and homelessness. Emphasis in this 1971 debate on immigration control rather than refugee protection; the discretion of the Home Secretary; and Home Office bureaucracy were precursors for subsequent asylum and immigration debates and legislation, and, in retrospect, the tip of the iceberg in terms of increasingly hostile future rules and regulations. The next section explores the four features that render the Act a turning point in the development of the hostile environment.

6.4 The Lasting Legacy of the 1971 Immigration Act

6.4.1 The Issue of Race and the End of the Windrush Generation

From the 1960s onwards, the UK's immigration policy in respect of Commonwealth immigrants was discriminatory in that it differentiated between individuals from the 'New Commonwealth' and those from the 'Old Commonwealth'. The British

[797] Renee Short, Hansard (n782).
[798] Hugh Fraser, Hansard (n782).
[799] Roy Jenkins, Hansard (n782).
[800] 1971 Immigration Bill Debate, Hansard (n782).

Commonwealth of Nations – the 'Old Commonwealth' – officially formed in 1931 following the 1926 Balfour Declaration, comprised the earliest and original members of the Commonwealth, namely, the UK, Canada, Australia, New Zealand, South Africa, Irish Free State, and Newfoundland[801]. The 1949 London Declaration marked the birth of the Commonwealth of Nations – the 'New Commonwealth' – which incorporated India, other Asian countries, and countries from Africa, the Americas, Europe and the Pacific[802]. This discriminatory legislation meant that the UK's immigration policies of the 1960s and early 1970s 'gradually eroded the rights of entry to the UK of black and Asian people and increasingly curtailed their citizenship rights once in the UK[803].

Post-WW2, British immigration policy was influenced by the process of decolonisation and the tensions that existed between domestic political pressures and the management of Commonwealth relations[804]. Decolonisation presented Britain with a dilemma. On the one hand, UK governments were worried that increasing numbers of New Commonwealth immigrants would create racial friction. And on the other, the UK wanted to maintain good relations with newly independent Commonwealth countries, and was, therefore, keen to be perceived as looking after their citizens who had migrated to the UK[805]. In this atmosphere, British 'multiculturalism' flourished and successive governments throughout the 1950s resisted calls for the introduction of immigration controls[806]. Border controls were rejected by both sides of the political divide: the Conservatives were unwilling to do anything that would facilitate breaking up the Empire, and Labour adopted an anti-racist stance, viewing the Commonwealth as a platform for international solidarity[807]. Nevertheless, the 'open door' policy of the 1948 British Nationality Act triggered concerns about race relations, diversity, and multiculturalism. It led to criticisms of Prime Minister Clement Attlee by his own MPs, and eleven Labour MPs wrote to Attlee, stating that 'an influx of coloured people

[801] Commonwealth Oral Histories, 'Commonwealth Chronology', accessed 26/05/23.
[802] ibid.
[803] Bloch (n737) 31.
[804] Eleanor Passmore and Andrew S Thompson, 'Multiculturalism, Decolonisation and Immigration: Integration policy in Britain and France after the Second World War', K Fedovowich and A S Thompson (eds), *Empire, Migration and Identity in the British World* (Manchester University Press 2013) 248.
[805] ibid 251.
[806] ibid.
[807] ibid 253.

domiciled here is likely to impair the harmony, strength and cohesion of our public and social life and to cause discord and unhappiness among all concerned'[808].

From 1948 onwards, colonial British subjects from the Caribbean were racialised not only by their representation as 'coloured' but also as a 'problematic presence in Britain'[809]. Racism and discrimination were already elements of British society and were regarded as justification for the introduction of legislation which would restrict British subjects from the Caribbean exercising their legal right to enter and settle in the UK[810]. At this time, under this racialised narrative, the UK preferred to recruit (white) Eastern European refugees under the European Volunteer Workers Scheme than (black) British subjects from the Caribbean.

Issues of race, culture, and diversity would continue to be intertwined with issues of immigration and asylum in the coming years, and this congruence of race and immigration was used by politicians as justification for the introduction of immigration control[811]. In the 1964 general election, local Conservative candidate, Peter Griffiths, won the Smethwick (a small industrial town on the outskirts of Birmingham) constituency with a fiercely anti-immigrant campaign, during which he famously refused to condemn the deeply offensive campaign slogan, 'If you want a nigger neighbour, vote Labour'[812]. Throughout the 1950s and into the 1960s the Colonial Office, the UK government department responsible for the affairs of British colonies, consistently defended the rights of West Indian migrants to enter the UK without any restrictions, and Hansen argues that it was the Office's demise in 1966, when it was replaced by the Commonwealth Office, which allowed the introduction of more restrictive migration policies[813].

There was a racist element to the immigration legislation of the 1960s and '70s. The 1968 Commonwealth Immigrants Act was passed by a Labour government under pressure from the media and the public fired up by right-wing Conservatives, most

[808] The National Archives, 'HO213/244, J Murray et al. to Prime Minister', 22 June 1948, accessed 11/04/23.
[809] Diana Kay and Robert Miles, 'Refugees or Migrant Workers? The Case of the European Volunteer Workers in Britain (1946-1951)' (1988) 1(3/4) Journal of Refugee Studies 234.
[810] ibid.
[811] Hansen (n725) 12.
[812] Rachel Yemm, 'Immigration, race and local media: Smethwick and the 1964 general election' (2018) 33(1) Contemporary British History 98.
[813] Hansen (n725) 98.

notably Enoch Powell. It was in 1968 that Powell delivered his infamous 'rivers of blood' speech, in which he represented 'immigrants' – by which he meant black and Asian immigrants – as a threat to Englishness[814]. In the speech, Powell, quoting Virgil, warned against colonial migration as a threat to Britain: 'As I look ahead, I am filled with foreboding; like the Roman, I seem to see "the River Tiber foaming with much blood"'[815]. Not only did Powell's speech provide encouragement to the racist National Front, but it also made racism acceptable among people who would not have dreamed of associating with such an organisation. Powell's speech empowered the National Front to openly campaign and rally for support, condemning immigration and promoting racial discrimination. In this atmosphere, the 1968 Act, rather than contributing to good race relations by reducing the number of Asians entering the country, actually contributed to increased racial tension. People came to regard the Conservatives as more restrictive on immigration in the run-up to the 1970 election, and, largely because of Powell, immigration had a very strong impact on the outcome in 1970[816].

Britain's post-war immigration policy was underpinned by racialism and the 1971 Act was a symbol of this[817]. The upshot of the 1971 Immigration Act was that Commonwealth immigrants no longer had any more rights than people from other parts of the world, in effect bringing an end to the Windrush generation.

6.4.2 'Choosing' Europe over the Commonwealth

At the time when the Immigration Act was being debated, discussions were also taking place on the movement of people throughout Europe and membership of the EEC. The Maastricht Treaty, which was signed in February 1992 and came into force in November 1993, officially created the European Union[818]. Alongside this, on 1 January 1993, the single market and its four freedoms – the free movement of people, goods, services, and money – was established[819]. The freedom of movement and residence for people across EU Member States is the cornerstone of EU membership, and the Schengen Agreements, allowing complete border-free travel across the EU, took full effect from 1995

[814] Wendy Webster, '"There'll Always be an England": Representations of Colonial Wars and Immigration, 1948-1968' (2001) 40(4) Journal of British Studies 583.
[815] Enoch Powell's 'Rivers of Blood' Speech, accessed 03/06/22.
[816] Hillman (n754) 98.
[817] Consterdine (n729) 14.
[818] European Union, 'History of the EU', accessed 29/05/23.
[819] ibid.

onwards[820]. Although the Maastricht Treaty and Schengen Agreements came after the 1971 Immigration Act and the UK's accession to the EU, there was a mechanism in place for the free movement of workers dating back to 1957 and the Treaty of Rome. Article 3(c) of the Treaty establishing the EEC (the 'Treaty of Rome') provides for 'the abolition as between member states of the obstacles to the free movement of persons, services, and capital'[821]. So, when the UK joined the EU in 1973 there was already a degree of free movement of workers, and this freedom was gradually extended throughout the UK's 47 years as a Member State. Article 2 of the Accession Treaty between Member States of the European Communities and the UK, Ireland, Denmark, and Norway (not subsequently ratified by Norway) provides that the accession states become parties to the existing EC Treaties[822], which included the free movement of workers. However, a 'Joint Declaration on the free movement of workers' included in the Accession Treaty acknowledged that this might be problematic (It is unclear whether it was Member States, accession states, or a combination of both which were the drivers of this proviso.):

> The enlargement of the Community could give rise to certain difficulties for the social situation in one or more Member States as regards the application of the provisions relating to the free movement of workers.
>
> The Member States declare that they reserve the right, should difficulties of that nature arise, to bring the matter before the institutions of the Community in order to obtain a solution to this problem in accordance with the provisions of the Treaties establishing the European Communities and the provisions adopted in application thereof.[823]

So, as far back as 1973 there was a degree of acknowledgment that the free movement of workers across EU Member States could lead to problems.

The UK joined the European Community on 1 January 1973, the same day that the 1971 Immigration Act came into force. And from that date up until the end of the transition period on 31 December 2020 (following the Brexit vote in 2016), the UK was a member of the European Union and, as such, was subject to EU legislation. It is clear that UK

[820] ibid.
[821] 'The Treaty of Rome', accessed 29/05/23.
[822] Official Journal of the European Communities, 'Accession Treaty' (1972), accessed 29/05/23.
[823] ibid.

domestic policy on immigration and asylum throughout the UK's membership of the EU has been influenced to a certain extent by EU legislation. However, with regard to asylum and immigration policy, successive British governments have made strategic use of EU laws[824]. Britain was never part of the Schengen area of free movement and opted out of the freedom, security, and justice legislation in the 1997 Amsterdam Treaty[825]. The UK also secured a Protocol to the 2000 European Charter of Fundamental Rights limiting its applicability to the UK. With regard to asylum law, although the EU has not ratified the 1951 Refugee Convention, all Member States are signatories to the Convention, which the EU assumes they will implement through their national legislation[826]. Moreover, EU Treaties acknowledge that asylum policy should be in accordance with the 1951 Refugee Convention and other relevant treaties such as the ECHR[827]. The EU Treaties and the case law of the Court of Justice of the European Union confirm the EU's commitment to international refugee and human rights law, and Article 18 of the EU Charter of Fundamental Rights contains a right to asylum[828]. So, when the UK joined the EEC in 1973 there was a Community-wide obligation to refugee protection which remains in place today. However, more and more administrative restrictions have been introduced by the EU throughout the UK's membership, many of which have been adopted by the UK. Concepts such as 'safe third countries' and 'white-lists' of safe countries originated in the EU as did asylum claims which are declared to be 'without foundation' or 'manifestly unfounded'[829]. In addition, the tendency for EU policy to focus on process rather than protection has had an influence on UK domestic law[830]. It would seem that, rather than being constrained by EU legislation, British governments have felt empowered to implement increasingly restrictive measures when it comes to asylum policy. Of course, since the Brexit referendum in 2016 and the end of the transition period in 2020, the UK is no longer subject to any EU legislation.

[824] Andrew Geddes, 'Getting the best of both worlds? Britain, the EU and migration policy' (2005) 81(4) International Affairs 724.
[825] ibid 732.
[826] 'The EU and the UN Refugee Agency (UNHCR)', accessed 29/05/23.
[827] Evangelia Tsourdi and Cathryn Costello, 'The Evolution of EU Law on Refugees and Asylum', P Craig and G de Burca (eds), *The Evolution of EU Law* (3rd edition) (OUP 2021) 794.
[828] ibid 795.
[829] Geddes (n824) 732.
[830] Dallal Stevens, *UK Asylum Law and Policy: Historical and Contemporary Perspectives* (Sweet & Maxwell Ltd 2004) 367.

Accession to the EU in 1973, coinciding with the restrictions on Commonwealth immigration contained in the 1971 Immigration Act (in particular, the divisive 'patriality clause'[831]), effectively meant that the UK 'chose' the European Union over the Commonwealth, a decision which would have repercussions for the UK's immigration and asylum regimes for decades to come. The symbolic decision to favour the EEC over the Commonwealth effectively paved the way for the contemporary immigration debate in the UK. Whereas a previous referendum on EC membership in 1975 barely mentioned migration, in the 2016 referendum, immigration and free movement were central to the campaign discourse. The campaign to leave the EU focused on 'taking back control of our borders', espousing a rhetoric of stopping free movement of people and controlling immigration. Accordingly, the issue of immigration, which received little public attention when the UK joined the EEC in 1973, has recently dominated the political and public agenda, in particular, the 2016 EU referendum result, which was clearly influenced by debates around EU free movement[832].

6.4.3 The Immigration Rules: Still In Place Today

An important part of the lasting significance of the 1971 Immigration Act is its legal longevity. As an Act, it introduced the Immigration Rules, which continue to underpin the UK's legislative framework on asylum and immigration today. Since their introduction more than fifty years ago, there has been a 'flurry of changes in the so-called Immigration Rules, the real body of British immigration law and policy'[833]. While the Immigration Act defines who is subject to immigration control, the Immigration Rules provide the substantive criteria, terms, and conditions for admission. Published on the Home Office pages of the gov.uk website since 2012, the 'Immigration Rules: statement of changes' page of this website indicates that there have been 164 changes to the Immigration Rules between March 1994 (when records began) and July 2023[834], with each individual change comprising a substantial number of updates. According to the Home Office website, 'The Immigration Rules are some of the most important pieces of legislation that make up the UK's immigration law'[835]. The rules are:

[831] Immigration Act 1971, s2(6) (n726).
[832] Consterdine (n729) 15.
[833] Joppke (n731) 115.
[834] gov.uk, 'Immigration Rules: statement of changes', accessed 12/04/23.
[835] gov.uk, 'Immigration Rules', accessed 12/04/23.

> A type of delegated legislation that sets out the practices to be followed in the administration of immigration law in the UK. The Immigration Rules are not a Statutory Instrument, but they are in effect subject to the 'made negative' scrutiny procedure.[836]

This means that, rather than being subject to the full scrutiny that applies to a parliamentary Bill, an amendment to the Immigration Rules laid under the negative procedure becomes law on the day the Minister – in this case, the Home Secretary – signs it, and automatically remains law unless a motion to reject it is agreed by either House within forty sitting days. While they are subject to parliamentary approval, the rules are determined by the Home Secretary, who is free to make or unmake them according to the demands of the day[837]. The Immigration Rules introduced in the 1971 Immigration Act initially detailed administrative procedures: Section 1(4) of the Act provides for 'rules laid down by the Secretary of State as to the practice to be followed in the administration of this Act[838]. However, the many amendments to the rules – which are not subject to the same scrutiny as primary legislation – now include a vast and complex array of all sorts of asylum and immigration provisions. The rules are now a very lengthy document which do not merely cover administrative regulations but encompass all aspects of immigration and asylum governance. Today, UK policy on asylum and immigration is incorporated within the framework of immigration law which stems from the Immigration Act 1971, its much-amended Immigration Rules, and many subsequent Acts and Statutory Instruments (secondary legislation which allow amendments to Acts of Parliament without parliament having to pass a new Act[839]). The result is an extremely complicated patchwork of relevant legislation[840].

6.4.4 The Discretionary Powers Given to the Home Secretary

A vitally significant aspect of the Act is the fact that under Section 3(2) of the Immigration Act 1971, the Secretary of State has discretionary powers to give, refuse or vary leave to remain in the UK. The absolute discretion given to the Home Secretary was laid down in the 1971 Immigration Act[841], and in the 1971 Immigration Bill debate,

[836] Hansard Society, 'Glossary', accessed 09/01/23.
[837] Joppke (n731) 115.
[838] Immigration Act 1971, s1(4) (n726).
[839] Parliament Factsheet L7 Legislative Series, 'Statutory Instruments', accessed 25/02/21.
[840] 'UK immigration authorities and sources of law – Overview', accessed 25/02/21.
[841] Consterdine (n729) 2.

MPs expressed their concerns about these discretionary powers. It is clear from the 1971 parliamentary debate and subsequent ones that the role of the Home Office and the discretion of the Home Secretary are both highly significant elements of asylum and immigration governance. The Home Office has sole responsibility for the day-to-day operation of asylum provision and immigration, and there are very few mentions in the debates of cooperation or coordination with other government departments. It is also clear that the Home Office is plagued by delays, backlogs, and bureaucratic inefficiencies, and much of the legislation that is now being introduced is to 'help' with these inefficiencies by reducing the number of asylum applications. The 1971 Immigration Act gives the Home Secretary powers to determine who can legally enter, reside, and settle in the United Kingdom and it is the statutory basis for all Immigration Rules. Consequently, the UK's immigration policy is able to respond to the political will of the governing party, and this power stems from the authority enshrined in the 1971 Immigration Act[842]. Thus, the guiding principle of British immigration and refugee policy is unhindered state discretion[843].

6.5 Conclusions

There are four main factors which contribute to the significance of the 1971 Immigration Act in terms of its lasting legacy. Firstly, the 1971 Act through its 'patriality' clause, was not only a mechanism to control immigration of New Commonwealth citizens but was also a reflection of Britain's geopolitical interests[844]. Britain's post-war immigration regime – centred on notions of race, descent, belonging, and nationality – adopted increasingly draconian measures, and the Act was 'the final dismantling of universal Commonwealth citizenship and … a definitive acceptance of the end of the Empire[845]. Secondly, the 1971 Immigration Act was also closely associated, in its content and timing, with Britain's moves towards Europe. By a highly symbolic coincidence, on the same day that the 1971 Act became law – 1 January 1973 – Britain entered the European Economic Community[846]. The government, forced to decide between Commonwealth

[842] ibid.
[843] Joppke (n731) 279.
[844] Consterdine (n729) 8.
[845] ibid 2.
[846] ibid 5.

migrants and joining the EEC, had chosen the latter. The 1971 Act ended Britain's policy of Commonwealth preference in favour of European preference. Third, the Immigration Rules introduced in the 1971 Immigration Act remain a principal instrument for making policy today. Making changes to the rules rather than bringing in primary legislation means that immigration legislation can be introduced without full and detailed scrutiny. And lastly, the 1971 Act gave unfettered powers to the Home Secretary which remain in place today[847].

As a destination for claiming asylum, the UK has presented itself over the years as an increasingly strict and hostile option. There has been a shift from the humanitarian, moral and ethical position post-WW2 to the control and management associated with today's policies. In accordance with this, the 1971 Immigration Act was a significant piece of legislation in the development of the UK's hostile environment. It was regarded as a repressive law at the time and measures introduced in this Act still apply today. Not only that, but the 1971 Act was also an important steppingstone in the incremental construction of what has now become the hostile environment. Legislation which has been introduced since the 1971 Act has extended the Act's measures, becoming more and more restrictive over the years, and culminating in the extremely hostile legislation of the 2020s, that is, the 2022 Nationality and Borders Act and the 2023 Illegal Migration Act.

The significance of the 1971 Act tends to be overshadowed by the astounding levels of restriction that make up the contemporary hostile environment: these have been extensively examined, and critically so. This chapter is a reminder that this contemporary hostile environment would not have been possible without the historic repressive legislation that was the 1971 Immigration Act. It also reminds us that legislation development cannot be understood via consideration of the law alone. Not only do we need to consider the legislation as it relates to events (global and domestic), but an understanding of the law-making process is required. To this end, the next section of the thesis considers the law- and policymaking processes in terms of an examination of parliamentary debates and general election manifestos.

[847] ibid.

Part III:

The Political Life of Law-making: Parliament and Elections

Chapter 7:

Parliamentary Debates and General Election Manifestos: Codes, Categories, and Concepts

7.1 Introduction

The case study analysis of the 1971 Act clearly showed how restrictive legislation was intimately connected to parliamentary debates and party electoral politics. This part of the thesis examines the development of restrictions on these two planes. In doing so, it seeks to understand the law-making process in a temporal holistic way, by looking into the political context in which the laws examined in the previous section have been developed. In keeping with political science analyses of these two domains, the approach turns to a quantitatively informed analysis of discourse. This allows the breadth of available data to be considered, via content analysis of all relevant parliamentary debates and election manifestos. This initial overview of content is then further scrutinised using discourse analysis of specific segments of the data. This takes the form of a discourse historical analysis, which is a temporal examination of *what* is being said and *how*. This is supplemented with an objectivist content analysis which considers frequencies of hostile comments in order to assess changing levels of hostility over time. The content analysis – providing evidence of hostility in the law-making – is a springboard to the more detailed discourse historical analysis. This quantitative element of the analysis supplements the (mainly) qualitative approach to the research by quantifying hostile comments in the debates and manifestos. The discourse analysis then analyses these elements of the law-making in-depth, looking for other factors which politicians associate with asylum and immigration. In other words, the discourse analysis looks for reasons for the increasing levels of hostility identified in the content analysis.

The incorporation of more objectivist approaches to analysis within the more critical interpretative framing of the thesis has a double role: methodologically, it applies a combinative element that enhances the robustness of the multi-method approach the thesis pursues, following examples from similar studies in political science; and empirically, it allows the utilisation of a broad range of empirical evidence that strengthens the holistic understanding the study aims at. Accordingly, this chapter explains the specific steps that content analysis has followed in order to reach the

conclusions presented in the next chapters in this final part of the thesis. It focuses on the ways in which coding was done and explains how the codebooks used in the next two chapters and described in Appendices E and H were produced. The conclusions reached in this part of the thesis support and illuminate the approach of temporal constructivism, used throughout to analyse incremental changes in the construction of the hostile environment.

7.2 Parliamentary Debates

This part of the thesis examines the law-making process and considers the parliamentary debates for each relevant Act of Parliament. It analyses the political discourse of the debates, looking for further evidence of increased hostility and also explores the debates for possible reasons for any increases in hostility. Adapted from Saldaña's streamlined codes-to-theory model for qualitative inquiry[848], it is an iterative step-by-step process of data collection, coding, and analysis.

UK Acts of Parliament relevant to the related issues of asylum, refugeehood and immigration were identified in the doctrinal analysis which was carried out on these laws, and this is included in chapter five. To map the progression of the legislation and the law-making process associated with it, the parliamentary debates for each piece of legislation were examined. The passage of a Bill through parliament from introduction, that is, first reading, to Royal Assent can be a very lengthy process. Consequently, I decided to limit scrutiny to the House of Commons second reading debate for each Bill. So, the data corpus for this part of the research was the House of Commons second reading debates for each of the 26 relevant Acts of Parliament from the Aliens Act of 1905 up to the 2023 Illegal Migration Act. The verbatim transcripts of the debates were downloaded from the Hansard website in full.

7.2.1 Codes

Descriptive codes, taken together, provide a strong flavour of the discussions taking place in the debates, as well as an indication of the political discourse surrounding immigration and asylum. As the debates are being examined over a period of time, the codes also show how the issues under discussion and the discourse have changed over

[848] Johnny Saldaña, *The Coding Manual for Qualitative Researchers* (3rd edition) (Sage 2016) 14.

time. While Saldaña refers to 'cycles' of coding (first cycle, second cycle, and possibly third and fourth etc.)[849], I have used the term 'iteration' to emphasise that each stage develops from the previous one. Within each step of the step-by-step process from initial data to conclusions, iterations of coding and categorising are carried out. Each iteration builds on the results from the previous one and moves the data coding and analysis forward.

- **First Iteration**

In the first step, I considered full verbatim transcripts of the parliamentary discussions. From an initial read-through, I compiled bullet point summaries of the debates, and these are included in Appendix D, p.322. I also identified some initial recurring codes running through the debates, and these formed the preliminary codes for the basis of the codebook developed in the second iteration.

- **Second Iteration**

The transcripts of the parliamentary debates were uploaded to NVivo and coded using this coding software. The codes used were the ones identified in the first iteration plus others which emerged inductively during the coding process. In total, 26 codes were used in this coding process. The codes used in the second iteration were descriptive codes, designed to organise the content of the parliamentary debates into a coherent order. They were also intended to assess longitudinal change in the discourse of the parliamentary debates over time. In addition, by the fact that these were debates, that is, spoken words, the data segments coded to the codes were verbatim quotes. The 26 codes used in the NVivo coding of the parliamentary debates are listed in Appendix E, p.331, which also includes the codebook detailing all the codes in full, with a description, key words, and data examples.

- **Third Iteration**

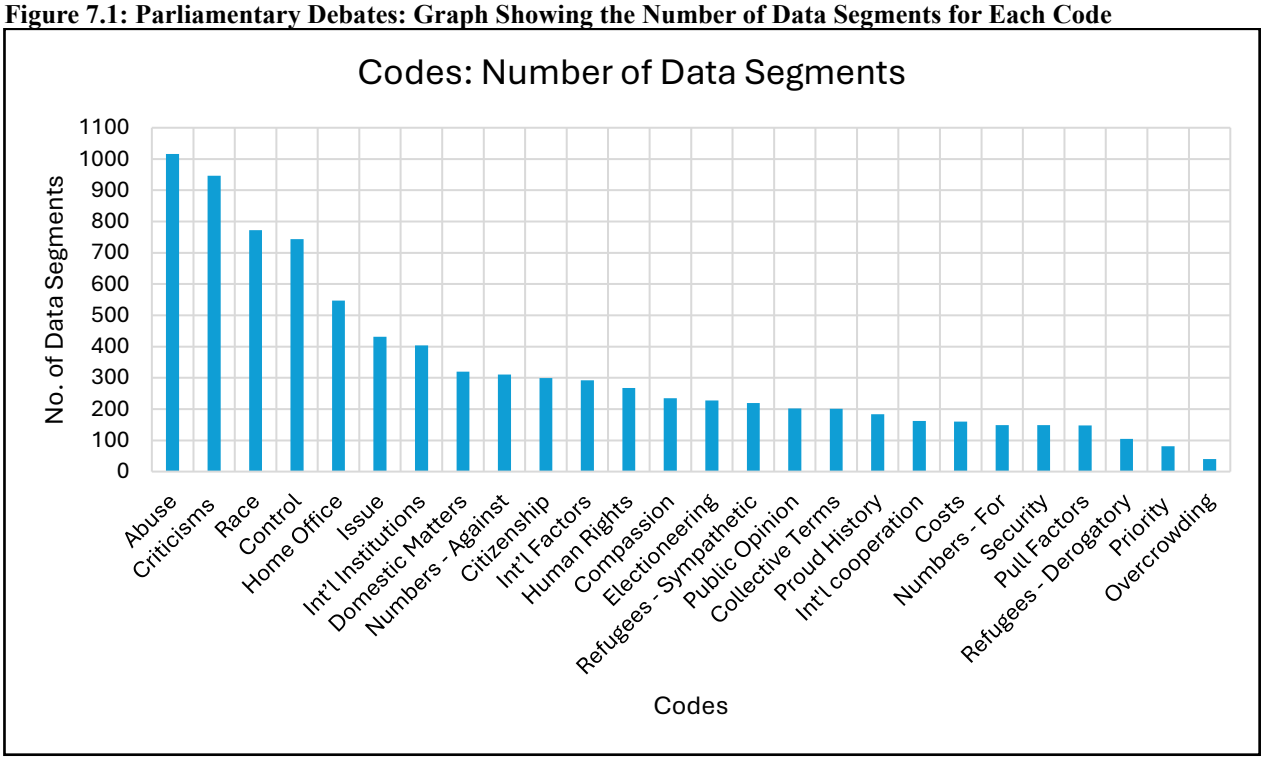
The data segments in the second iteration coded using NVivo were organised into a chronological order code by code. So, for each of the 26 codes, the data fragments were arranged in a temporal fashion from the 1905 Aliens Act up to the 2023 Illegal Migration Act.

[849] ibid 68.

These coded data segments range from one or two words (e.g., ‘vast influx’ [coded to ‘collective terms’]; ‘urgent matter’ [coded to ‘issue – portrayal’]) to a phrase (‘to prevent abuse of asylum’ [‘abuse’ code]; ‘need for tight immigration rules’ [‘control’ code]) to a sentence (‘We all have a moral duty to be compassionate to the many asylum seekers who are in difficulty.’ [coded to ‘compassion’]) to a short paragraph (‘The 64 Tamils travelled in an organised way. They either had no documents, or the documents that they had were false, forged, or mutilated.’ [coded to ‘abuse’, i.e., how the asylum system is perceived to be abused by claimants; traffickers and other criminals; unscrupulous lawyers; and bogus institutions]). Each datum comprises a single point made in the debate, whether it be an idea, a viewpoint, a criticism, a statement about statistics or a reference to immigration control, domestic matters, or international affairs. The focus of these coded data segments is the political discourse of the debates – descriptions and use of language, opinions, perceived repercussions, consequences, advantages, and disadvantages of the Bills – rather than the content of the legislation which is covered in the doctrinal analysis. This descriptive coding provides a comprehensive summary of the parliamentary dialogue and allows us to see exactly what politicians were discussing in their debates on asylum and immigration. It identifies other factors which they deemed relevant to asylum and immigration law-making as well as highlighting the language used in these debates.

The graph below shows the number of data segments coded to each of the 26 codes, arranged from most frequent to least. (See Table 1, Appendix F, p.337 for a list of the number of data segments coded to each code. Table 1 also indicates the number of data segments as a percentage of the total number of coded data segments and ranks the codes in order.)

Figure 7.1: Parliamentary Debates: Graph Showing the Number of Data Segments for Each Code



7.2.2 Categories

The data segments coded using NVivo software have been further categorised as either hostile, non-hostile, or not applicable (N/A). This categorisation has been carried out manually by going through the coded data segments on an individual basis. The categorisation has been done 'by exception', that is, a code is deemed to be either hostile or non-hostile overall, then all data segments in that code are examined for any exceptions to this overall categorisation. Any data segments which are neither hostile nor non-hostile are classified as N/A for this categorisation process. The numbers of data segments coded as hostile, non-hostile or N/A are included in Table 1, Appendix F. A content analysis was carried out on this data, taking account of frequencies of categories and how these change over time.

The 26 codes used in the NVivo coding process were also amalgamated and coordinated into eight categories of related codes. Each of the eight categories comprise two, three or four codes. For each category, a descriptive summary of the coded data was recorded, and notable references and prominent elements of the data were highlighted. The 26 codes were amalgamated and coordinated into the following eight categories:

Category 1: Control and Management

- Perceived Abuse of the Asylum System (Abuse)

- Control of the Immigration and Asylum System (Control)
- Security of the UK (Security)
- Pull Factors of the UK as a Country of Refuge (Pull Factors)

Category 2: Party Politics

- Criticisms of Policies and Legislation (Criticisms)
- Electioneering and Party Politics (Electioneering)
- Home Office: Administration and Discretionary Powers (Home Office)

Category 3: Race and Citizenship

- Citizenship and Nationality (Citizenship)
- Race Relations or Racial Discrimination (Race)

Category 4: Discourse around Refugees and the Issue of Asylum

- How the Issue of Asylum is Described or Portrayed (Issue)
- Descriptions of Refugees: Collective Terms (Collective Terms)
- Descriptions of Refugees: Derogatory (Refugees – Derogatory)
- Descriptions of Refugees: Sympathetic (Refugees – Sympathetic)

Category 5: International Issues

- International Cooperation (Int'l Cooperation)
- International Legislation or Institutions (Int'l Institutions)
- International Factors (Int'l Factors)

Category 6: Compassion and Human Rights

- Compassion and Right to Asylum (Compassion)
- Britain's Proud History of Providing Asylum (Proud History)
- Human Rights and Civil Liberties (Human Rights)

Category 7: Domestic Issues

- Domestic Matters associated with Asylum and Immigration (Domestic Matters)
- Overcrowded Island (Overcrowding)
- Priority of Own Citizens (Priority)
- Opinion of the British Public (Public Opinion)

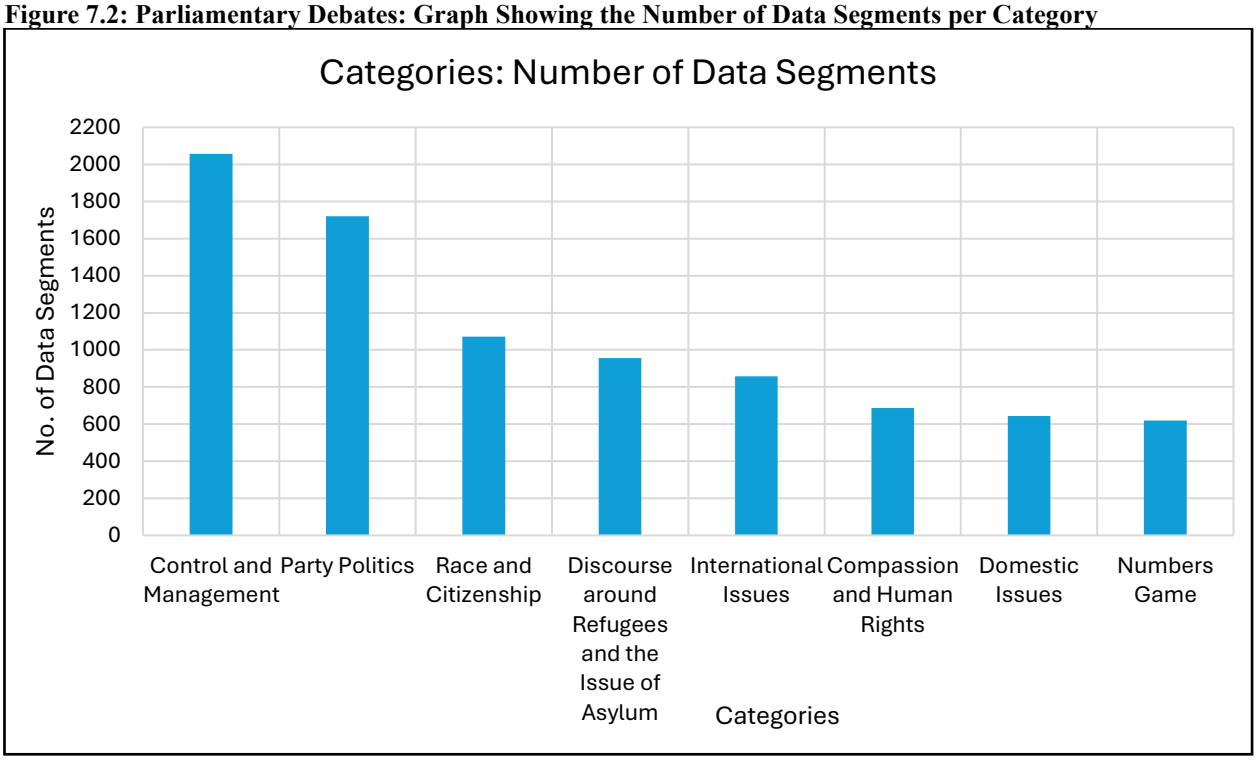
Category 8: Numbers Game

- Financial Costs related to Asylum (Costs)

- Numbers Game: Arguments Against Asylum Acceptances (Numbers – Against)
- Numbers Game: Arguments For Asylum Acceptances (Numbers – For)

The graph below shows the number of data segments allocated to each category. (The number of data segments, percentages, and rankings for each category are shown in Table 2, Appendix F, p.338.)

Figure 7.2: Parliamentary Debates: Graph Showing the Number of Data Segments per Category



7.2.3 Concepts

Based on the iterations of coding and categorising already carried out, the eight identified categories for the parliamentary debates were combined into the following four interrelated concepts:

- **Concept 1: Internal Politics:** UK law-making on asylum and immigration is constrained by domestic party politics.

Categories	Codes
• Party Politics	• Criticisms • Electioneering • Home Office

- **Concept 2: International Norms:** UK law-making on asylum and immigration takes account of international norms and influences.

Categories	Codes
• International Issues	• International Cooperation • International Institutions • International Factors

- **Concept 3: Domestic Constraints:** UK law-making on asylum and immigration is limited by domestic issues and constraints.

Categories	Codes
• Control and Management	• Abuse • Control • Security • Pull Factors
• Domestic Issues	• Domestic Matters • Overcrowding • Priority • Public Opinion
• Numbers Game	• Costs • Numbers - Against • Numbers - For

- **Concept 4: Values:** UK law-making on asylum and immigration is impacted by the values and principles of decision-makers.

Categories	Codes
• Discourse	• Issue • Collective Terms • Refugees – Derogatory • Refugees – Sympathetic
• Race and Citizenship	• Citizenship • Race
• Compassion and Human Rights	• Compassion • Proud History • Human Rights

These four concepts were analysed via discourse analysis.

7.3 General Election Manifestos

In addition to the debates analysis, I have also examined asylum- and immigration-related pledges in election manifestos to assess whether the messages related to the public via party literature mirror the discussions in parliament. In particular, the use of language in the manifestos was examined as a comparison to that used in the debates. Election manifestos 'give a sense of what issues parties prioritize and how they will address them'[850]. On the other hand, manifestos do not always contain as much information as one would like, and 'parties often make election pledges they then deviate from once entering parliament'[851]. I also acknowledge that there are some limitations with regard to the coding of manifestos, e.g., limitations with the Manifesto Project include 'the subjective choices made by individual coders, the to-some-extent arbitrary determination of content categories to summarise the most relevant issues across different contexts and time periods, and the difficulty of imposing consistent classifications'[852].

To provide uniformity and ensure robustness, the analysis of the manifestos adopted a parallel coding scheme and the same methodology as used in the analysis of the debates. This allowed a comparison to be made between the discourse of the debates and the discourse of the manifestos, and levels of hostility could be compared between the two. A consideration of the manifestos gives an extra dimension to the analysis as it takes account of how political parties directly engage with the electorate regarding asylum and immigration. The process of coding and analysing the general election manifestos follows the same format as the parliamentary debates, adapted from Saldaña's streamlined codes-to-theory model for qualitative inquiry[853].

The data corpus for this part of the thesis was the general election manifestos of the three main British political parties – Conservative, Labour, and Liberal (later Liberal Democrat) – from 1900 to 2019. The manifestos were downloaded from online databases of Conservative, Labour, and Liberal manifestos in their full original format

[850] Pontus Odmalm, *Coding and Using Party Manifestos: Pros, Cons and Pitfalls* (2018).
[851] ibid.
[852] Jonathan Lehne and Maiting Zhuang, 'European democracy through the lens of party manifestos' (2023).
[853] Saldaña (n848) 14.

which ranged from being a short statement of address to a multi-page booklet. A list of the manifestos examined in this part of the study is included in Appendix G, p.339.

7.3.1 Codes

The general election manifestos were coded using NVivo software in an iterative fashion, with each iteration building on the previous one. The iterations moved the coding and analysis forward from an initial read through of the data (first iteration) to a thematic coding using NVivo (second iteration) to a chronological ordering of the coded data (third iteration). This third iteration organised the coded data into a coherent order to enable a detailed analysis of the data.

- **First Iteration**

The first iteration involved an initial read-through of the general election manifestos for the three main British political parties from 1900 up to 2019. The intention was to apply the same codebook, comprising the same 26 codes, as for the parliamentary debates. However, an initial inspection of the manifestos revealed that while some of these codes (e.g., abuse, race, proud history) were relevant to this data, others, such as electioneering (because the whole of the documents by their nature were electioneering) or financial costs related to asylum (barely mentioned in the manifestos) were not relevant and could not be included in the codebook for this data. In addition, this initial read-through revealed some new codes which were applicable to the general election manifestos but had not been included in the parliamentary debates coding (e.g., immigration or refugee obligations, overseas aid, and UK legislation).

- **Second Iteration**

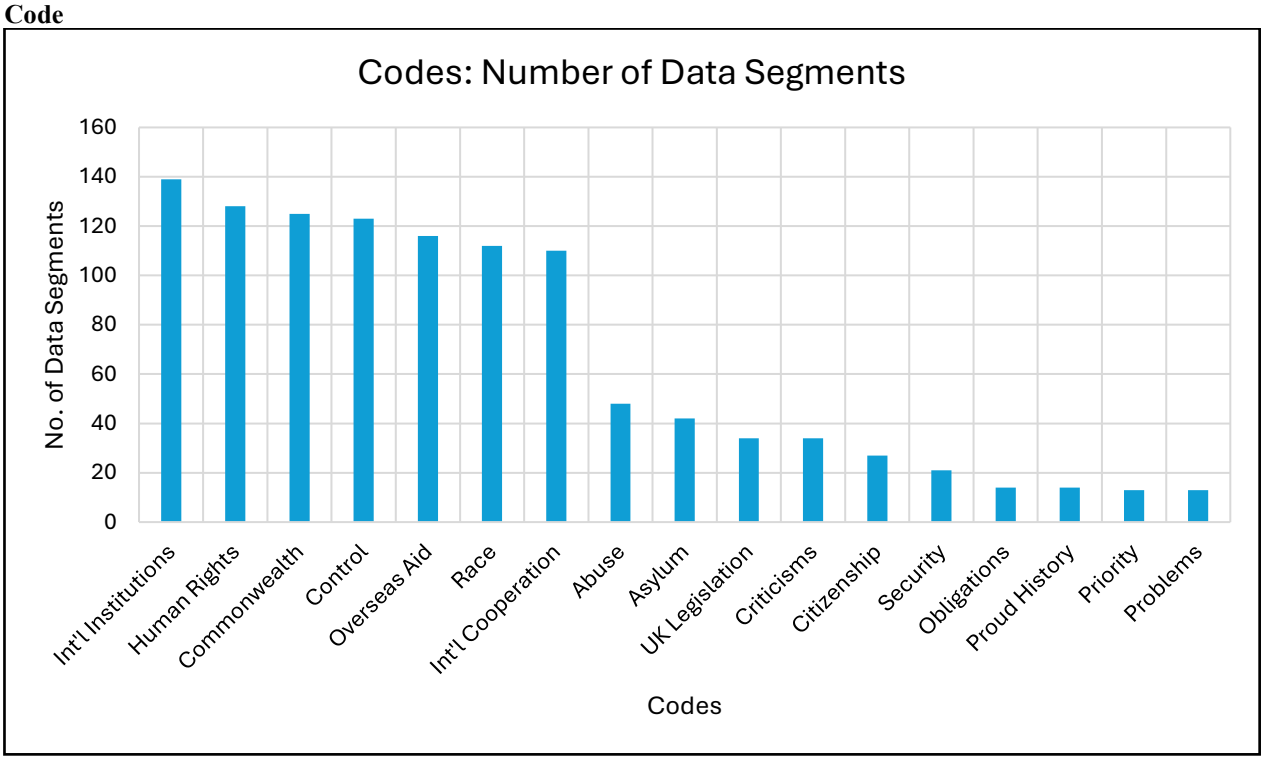
The election manifestos were then uploaded to NVivo and coded using this coding software. The codes used were the ones identified in the first iteration plus others which emerged inductively during the coding process. In total, seventeen codes were used for the coding of the general election manifestos. In accordance with the coding scheme used for the parliamentary debates, I have used a descriptive thematic coding scheme for the manifestos based on the language, ideas and issues related to asylum and immigration. These codes provide an indication of the political discourse surrounding election pledges related to immigration and asylum in the parties' manifestos. The codes and the codebook are included in Appendix H, p.340.

- **Third Iteration**

The data segments coded using NVivo according to the codebook in the second iteration were presented in a matrix which organises the data segments in chronological order for each code and split by party. Conforming with the coding of the parliamentary debates, the coded data segments for the manifestos range from one or two words (e.g., 'united Europe' [coded to 'international cooperation]) to a phrase ('…defend the rights of the individual' ['human rights' code]) to a sentence ('Only two out of every ten asylum seekers are found to have a genuine claim.' [coded to 'abuse']) to a short paragraph ('Asylum: It is right that people fleeing persecution are able to make a new life as hard-working citizens in a new country. Britain has a long record of providing a home for such people, and it is important that we maintain this position' ['proud history' code]). Each coded data segment comprises a single pledge made in the manifesto, the focus being statements made in the manifestos in relation to matters connected to immigration, asylum, and refugeehood. This descriptive coding organises the data corpus – British parties' general election manifestos – into a coherent order to facilitate further analysis.

The graph below shows the number of data segments coded to each of the seventeen codes, arranged from most frequent to least. (See Table 1, Appendix I, p.344 for a list of the number of data segments coded to each code. Table 1 also indicates the number of data segments as a percentage of the total number of coded data segments and ranks the codes in order.)

Figure 7.3: General Election Manifestos: Graph Showing the Number of Data Segments for Each Code



7.3.2 Categories

Replicating the content analysis of the parliamentary debates, the manifesto data segments coded using NVivo software have been categorised as either hostile, non-hostile, or N/A. These categorisations were allocated manually by going through the coded data segments on an individual basis, and any data segments which were neither hostile nor non-hostile were classified as N/A. A content analysis was carried out on this data, taking account of frequencies of categories (hostile or non-hostile) and how these change over time. See Table 1, Appendix I for the numbers of data segments coded to hostile, non-hostile and N/A for each of the codes. These seventeen codes used in the NVivo coding of the general election manifestos were then grouped into six categories. For each category, a brief descriptive summary of the coded data was recorded, with notable references and prominent elements highlighted. The seventeen codes were amalgamated and coordinated into the following six categories:

Category 1: International Issues

- International Cooperation
- International Institutions
- Commonwealth

- Overseas Aid

Category 2: Control and Management

- Abuse
- Asylum
- Control
- Security

Category 3: Compassion and Human Rights

- Human Rights
- Obligations
- Proud History

Category 4: Race and Citizenship

- Citizenship
- Race

Category 5: Domestic Issues

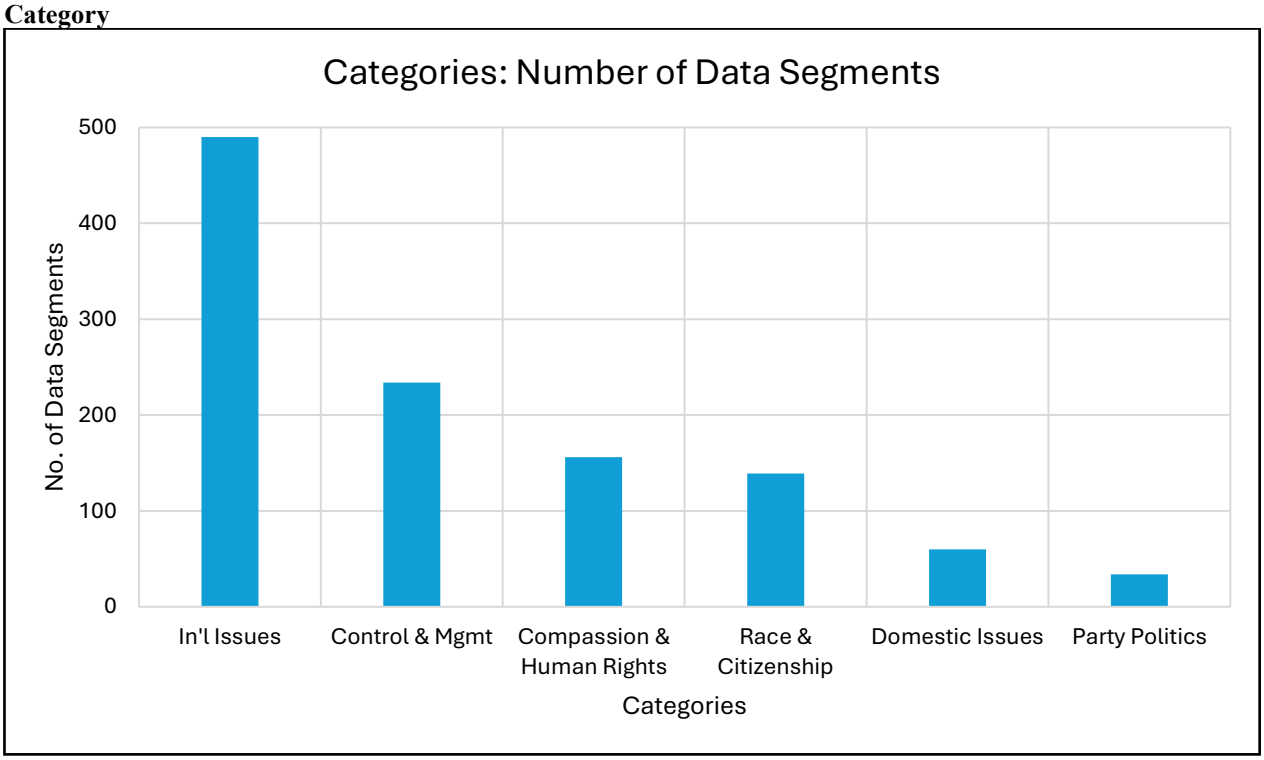
- UK Legislation
- Priority
- Problems

Category 6: Party Politics

- Criticisms

Figure 7.4 shows the number of data segments allocated to each category. (The number of data segments, percentages, and rankings for each category are shown in Table 2, Appendix I, p.345.)

Figure 7.4: General Election Manifestos: Graph Showing the Number of Data Segments per Category



7.3.3 Concepts

Based on the iterations of coding and categorisation, the six categories identified for the general election manifestos were combined into the same four interrelated concepts as for the parliamentary debates:

- **Concept 1: Internal Politics:** UK law-making on asylum and immigration is constrained by domestic party politics.

Categories	Codes
• Party Politics	• Criticisms

- **Concept 2: International Norms:** UK law-making on asylum and immigration takes account of international norms and influences.

Categories	Codes
• International Issues	• International Cooperation • International Institutions • Commonwealth • Overseas Aid

- **Concept 3: Domestic Constraints:** UK law-making on asylum and immigration is limited by domestic issues and constraints.

Categories	Codes
• Control and Management	• Abuse • Asylum • Control • Security
• Domestic Issues	• UK Legislation • Priority • Problems

- **Concept 4: Values:** UK law-making on asylum and immigration is impacted by the values and principles of decision-makers.

Categories	Codes
• Race and Citizenship	• Citizenship • Race
• Compassion and Human Rights	• Human Rights • Obligations • Proud History

These four concepts were analysed via discourse analysis.

Applying these codes, the following two chapters use content analysis to quantify changing levels of hostility over time, leading to a more detailed discourse historical analysis in these chapters and a summary temporal analysis in chapter ten.

Chapter 8:

Parliamentary Debates:

Content Analysis and Discourse Historical Analysis

8.1 Content Analysis: Hostile or Non-hostile?

The analysis of the parliamentary debates considers the frequencies of hostile and non-hostile comments in order to determine levels of hostility in each debate and how this has changed over time. It provides a temporal picture of hostility in this aspect of the law-making process. Hostile statements are unfriendly, unsympathetic or negative comments relating to asylum seekers, the provision of asylum, and immigration in general. Examples include 'we are not obliged to give refuge to those who come from troubled parts of the world'[854] (Waddington, Conservative); and '…tougher measures to limit visas for those third countries that are not cooperating with us'[855] (O'Brien, Conservative). Non-hostile statements are friendly, sympathetic or positive comments. Examples include 'Britain should not be in the game of seeking to prevent asylum seekers from coming here'[856] (Allan, Liberal Democrat); and 'welfare should be at the core of legislation'[857] (Shannon, DUP). Statements which have been classed as N/A are neutral comments which are neither hostile nor non-hostile, such as '…a constituency that deals with many cases of immigration and nationality matters'[858] (Khabra, Labour); and '…substantial public interest in this issue'[859] (Clappison, Conservative).

Numbers of data segments allocated to each of the hostile/non-hostile categories show the general trends of increasing hostility over time in the discourse of the parliamentary debates. Figure 8.1 shows the absolute numbers of data segments classified as either hostile or non-hostile in each of the parliamentary debates from the 1905 Aliens Act up to the 2023 Illegal Migration Act.

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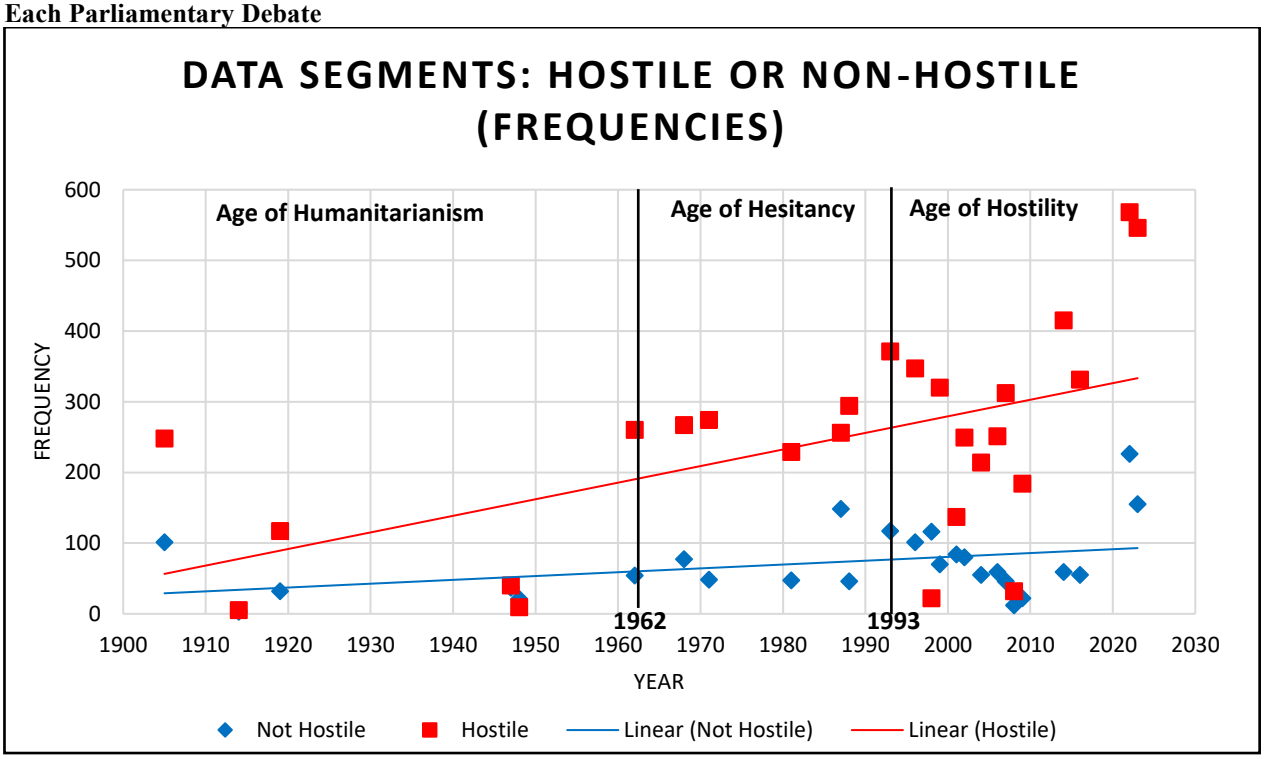
[854] David Waddington, 1987 Immigration (Carriers' Liability) Bill, Hansard HC Deb vol 112 cc706-89, accessed 17/12/21.
[855] Neil O'Brien, 2022 Nationality and Borders Bill, Hansard HC Deb vol 699 cc705-927, accessed 01/02/22.
[856] Richard Allan, 1999 Immigration and Asylum Bill, Hansard HC Deb vol 326 cc37-129, accessed 18/12/21.
[857] Jim Shannon (n855).
[858] Piara S Khabra, 1993 Asylum and Immigration Appeals Bill, Hansard HC Deb vol 213 cc21-120, accessed 17/12/21.
[859] James Clappison (n856).

Figure 8.1: Graph Showing Frequencies of Data Segments Categorised as Hostile or Non-hostile in Each Parliamentary Debate



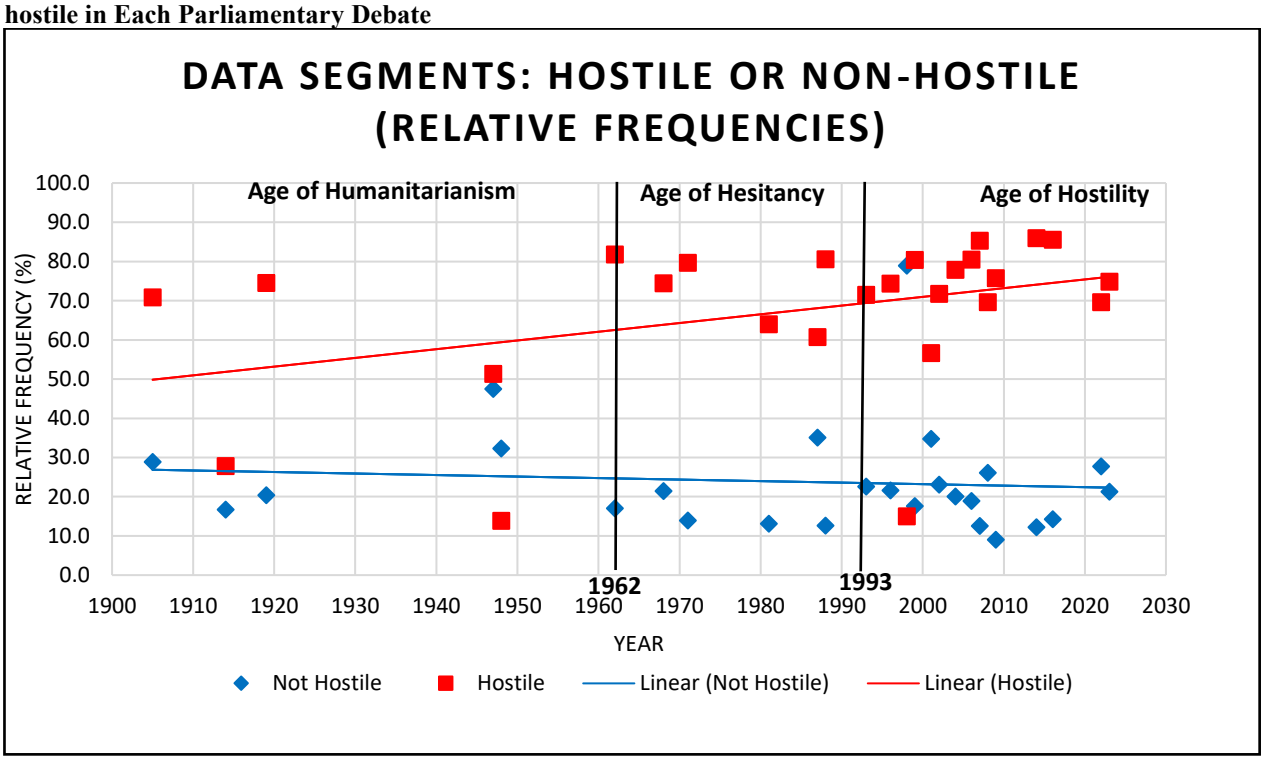
Although there are large amounts of variation in both hostile and non-hostile data, and especially in the number of hostile comments, linear trendlines have been superimposed onto the graph to provide a general indication of the tendency to hostility. Variations aside, there is a general increase of hostility over the whole period under review (the gradient of the 'hostile' trendline is approximately 2.3) with very large absolute numbers of hostile comments in the last four debates in 2014, 2016, 2022, and 2023. The absolute numbers of comments deemed to be 'non-hostile' are much less, although there is also a slight increase in these over time (gradient is approximately 0.5). So, as well as increased hostility over time, there is also increased non-hostility, albeit at a much lower rate. In terms of numbers of coded statements, the numbers classified as hostile have greatly increased over time. While this coincides with increased numbers of coded statements overall, it also indicates that statements made by parliamentarians are more hostile in conjunction with the increasingly hostile legislation being debated. There is not a corresponding increase in non-hostile statements. The actual frequencies of both categorisations have increased over time, and the important point here is that the differential between hostile and non-hostile comments has increased, indicating increased hostility over time. This can be seen more clearly with the next graph which

considers *relative* frequencies rather than actual ones, thus eliminating any effect caused by differing lengths of debates.

The graph has been divided (vertical lines at 1962 and 1993) into the three broad Ages of Humanitarianism, Hesitancy, and Hostility already identified in the doctrinal analysis of the legislation. Each of these three eras paints a different picture. In the Age of Humanitarianism pre-1962, there are relatively few comments of either persuasion: numbers in both categories are fairly even throughout the period and reasonably similar to each other. In the middle era, frequencies are reasonably consistent for both categories throughout the period, but now there is a large gap between the numbers of hostile and non-hostile comments. There is much more variation in the Age of Hostility for both categories, but especially the hostile comments. There are severe dips in hostility in 1998 (the debate on the Human Rights Act) and 2008 (the Criminal Justice and Immigration Act debate), and very steep increases in hostility from this point on.

Figure 8.2 shows the relative frequencies of hostile and non-hostile comments. These have been calculated as percentages: the number of hostile or non-hostile comments as a percentage of all coded data segments in that debate. Note that where the comments were coded *only* as hostile or non-hostile in a debate, the two relative frequencies add up to 100% (e.g., 1905), but if some comments were coded as N/A (ignored for these graphs), the relative frequencies add up to less than 100% (e.g., 1914).

Figure 8.2: Graph Showing Relative Frequencies of Data Segments Categorised as Hostile or Non-hostile in Each Parliamentary Debate



Proportionally, the number of hostile comments tends to be above the non-hostile ones by some margin. Exceptions to this are the debates on the 1947 Polish Resettlement Act (much sympathy was shown towards Polish soldiers and their families post-WW2), the 1948 British Nationality Act (there were many N/A statements or comments of support for those seeking British citizenship), and the 1998 Human Rights Act (when there were many comments acknowledging human rights obligations). Considering the whole time period under review, there is a very small overall increase in the proportion of coded data segments which are hostile (gradient of the trendline is 0.2) and an almost imperceptible decrease in the percentage of coded data categorised as non-hostile (trendline gradient is -0.04). However, these two trends taken together result in an increasing differential between the proportion of hostile and non-hostile statements. In the earliest era from 1905 to 1962 there is some variation, with the debates in 1905 and 1919 having a large proportion of hostile comments, while those in 1914 and 1947 record much closer percentages, and in the 1948 Human Rights Bill debate, the proportion of hostile comments dipped below non-hostile ones. In the middle era, there is a reasonably consistent differential between the proportion of hostile comments (varying between 60% and 80%) and non-hostile ones (fluctuating between 12% and 35%). In the final period post-1993, the proportion of hostile data segments is

consistently higher by a margin of 20% to 60% except for the debate on the Human Rights Act 1998 when the trend is completely reversed due to MPs pledging their support for human rights. This graph indicates increased hostility over time relative to non-hostility. It reinforces the picture painted in the previous graph, that is, a higher share of hostile statements made in parliament reflecting increasingly hostile legislation under debate.

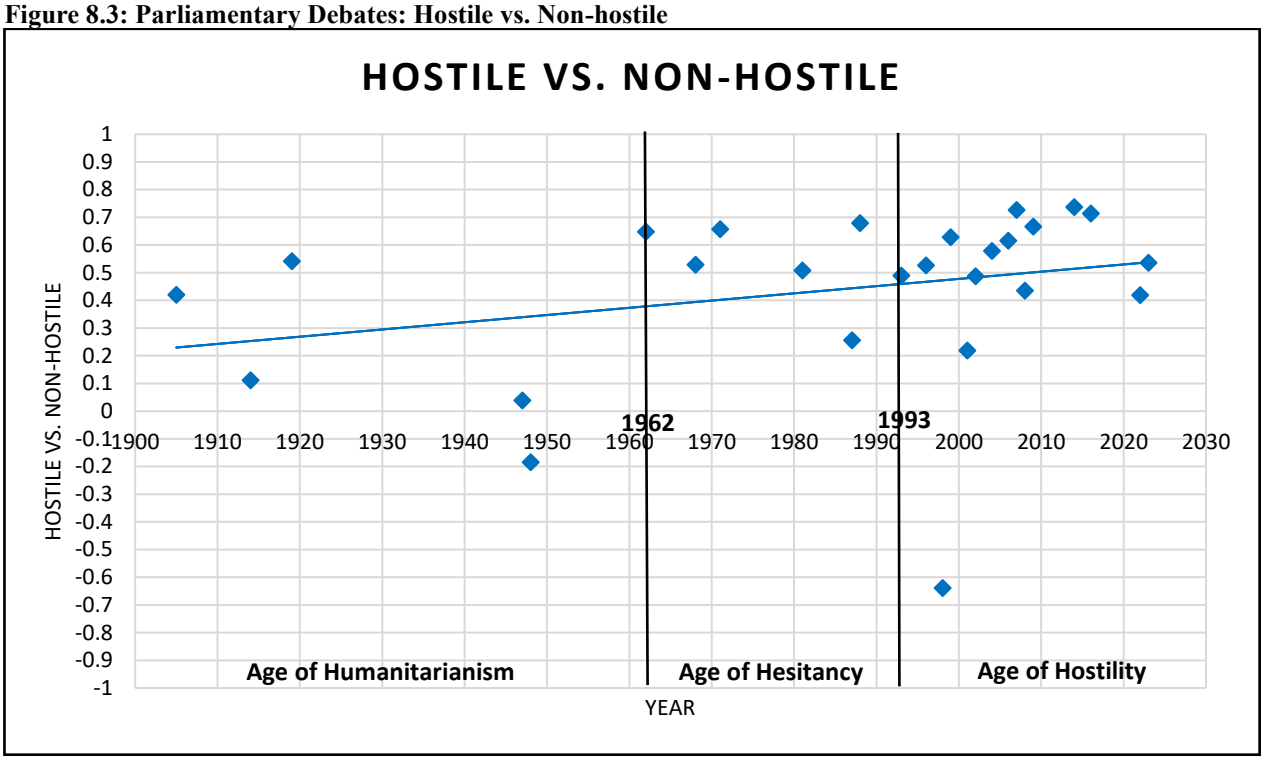
Once the data segments were categorised as hostile or non-hostile, I allocated numerical values to this data to compare the levels of hostility debate by debate. Non-hostile comments were coded as -1 and hostile comments were coded as 1. Based on these numerical values, I calculated weighted averages for the non-hostile and hostile comments in each debate, meaning that scores for each debate could theoretically range from -1 (all non-hostile comments) to 1 (all hostile comments), with a score of zero indicating an equal number of hostile and non-hostile comments. The weighted average calculations for each debate were as follows:

$$\text{Weighted Average} = \frac{(N_H \times 1) + (N_N \times -1)}{T}$$

where N_H is the number of comments coded as hostile; N_N is the number of comments coded as non-hostile; and T is the total number of coded comments in that debate.

The results are shown in Figure 8.3.

Figure 8.3: Parliamentary Debates: Hostile vs. Non-hostile



This graph paints a temporal picture of increasing 'net hostility' in the parliamentary debates from 1905 up to 2023. There are only two occasions where the graph dips below zero, indicating net non-hostility: in the 1948 British Nationality Act and 1998 Human Rights Act debates. In all other debates, the score is above zero, indicating net hostility, and there is an upward trend for this hostility over time. This is a clear indication that not only is there net hostility in the majority of parliamentary debates, but this has increased over time, corresponding with the increasingly hostile legislation being introduced. For more detailed information on the changing picture in the debates over the three Ages of Humanitarianism, Hesitancy, and Hostility, see the matrices supporting the summary temporal analysis of parliamentary debates and general election manifestos in Appendix J, p.346.

8.2 Categories of Related Codes: Initial Observations

Below are some initial observations for each of the eight parliamentary debates categories. This is examined in more detail in the discourse analysis.

- **Category 1: Control and Management**

Overall, 2,057 data segments were coded to codes in the control and management category, equating to 24% of all coded data, making this the highest-ranking category in terms of numbers of data segments. The category incorporates data coded to abuse, control, security, and pull factors, and the majority of coded data (94%) has been classified as hostile. Comments coded to this category were widespread throughout the debates in the Ages of Hesitancy and especially Hostility, and there is an upward general trend for all four codes. The legislation introduced to combat perceived abuse of the system is reactive and changes according to the issue in hand. Each piece of legislation dealing with abuse is an effort to close a particular loophole. In addition, there is a general default setting that assumes that applicants *are* abusing the system, with claimants being referred to as bogus, illegal, and fraudulent. Control of the system became an issue from 1962 onwards, the start of the Age of Hesitancy, with MPs consistently calling for asylum and immigration control measures which were better, fairer, faster, and firmer. Security became a factor related to asylum and immigration following the 9/11 attacks in 2001: from this point on, terrorism threats were linked to issues of asylum and refugeehood. Factors attracting people to the UK became part of the debate from the Age of Hesitancy in 1962. Generally regarded in this thesis as a hostile classification, 'control and management' is notable as an increasingly prominent feature of the debates. On the other side of the coin, and equally notable, is the absence of 'protection' from the coding scheme as there were very few references to this in the debates. This omission adds to the hostility as there is no category to offset the hostile comments included within the control and management category.

- **Category 2: Party Politics**

Overall, 1,721 data segments were coded to codes in the party politics category, equating to 20% of all data segments and ranking this category second in terms of numbers of coded data segments. The category incorporates references made to electioneering; criticising policies and legislation; and criticisms of the Home Office. All of these were widespread throughout the debates, but especially in the more recent ones, that is, in the Age of Hostility from 1993 onwards. The vast majority of data (98%) coded to this category is classified as hostile. Nearly all parliamentary Bills brought before the House were criticised by MPs from all parties, including policies which were similar to their own party's policies and even backbenchers criticising their own party's legislation. Criticisms of the proposed legislation are categorised as hostile as they highlight that

MP's across the House are critical of the proposals which they regard as, for example, discriminatory or repressive. Criticisms of the government or the Home Office are also regarded as hostile in that they highlight that MPs are associating the proposed legislation with factors unrelated to the protection of asylum seekers such as electioneering or dealing with Home Office inefficiencies.

Indeed, some of the points raised in the parliamentary debates were more concerned with electioneering and party politics than with the issues under discussion. Debates where there were peaks in data segments coded to the electioneering code coincided with general elections in 1970, 1987, 1997, and 2015. Bringing in tough immigration legislation has been used as a general election issue, in particular, to assuage potential supporters of right-wing opposition parties such as UKIP. In addition, legislation has been introduced in an attempt to reduce asylum applications in order to ease the backlogs and deal with inefficiencies at the Home Office. In recent debates, the legislation under discussion has been heavily criticised by MPs across the House, often from a moral and ethical point of view. In other words, MPs criticise the legislation as being hostile, although it can be unclear as to whether this is genuine criticism or 'pantomime and party politics'. It is probably partly both, criticism of increasingly hostile legislation as well as an element of parliamentary performance where one automatically criticises one's opponents' policies.

- **Category 3: Race and Citizenship**

Race and citizenship accounts for a total of 1,071 data segments (12% of the coded data), placing this category in third position with 59% of the data classified as hostile. Most of these data segments were within the race code, and the majority of these were references to race, race relations or racial discrimination. In terms of citizenship and nationality, there were, unsurprisingly, peaks in coded data for the debates on the 1981 British Nationality Act and the 2009 Borders, Citizenship, and Immigration Act. The entitlement to citizenship of a state is inevitably intertwined with the state's immigration policy, and the UK is no exception. UK citizenship has been complicated in the past because of colonisation and the existence of the British Empire, the Commonwealth, and the Dominions. This was further complicated as decolonisation started to take place from 1945 onwards as previous colonies gained their independence. Although citizenship and immigration are closely connected, there were relatively few references to citizenship

except in the debates on the two Bills specifically related to citizenship in 1981 and 2009. As decolonisation took hold, the notion of common citizenship for British subjects across the globe diminished and issues of citizenship became increasingly interconnected with immigration control. Race is a strand which runs through the parliamentary debates, especially the middle period from 1962 to 1996, that is, the whole of the Age of Hesitancy and the start of the Age of Hostility. Immigration Bills in 1962, 1968 and 1971 were criticised as being racially discriminatory. Concerns were raised about the BNP and the National Front in the early 2000s and there were fears of racial profiling in the 2014 and 2016 debates, with MPs referring back to the situation in the 1950s when landlords/landladies would advertise in their windows "No Irish, no blacks, no dogs". Sparked by Commonwealth immigration, issues relating to race have consistently been a factor throughout the debates on asylum and immigration from the early 1960s onwards, that is, throughout the Ages of Hesitancy and Hostility. This element of racism has added to the hostility in the debates and within the legislation.

- **Category 4: Discourse Around Refugees and the Issue of Asylum**

Overall, 956 references were made to codes in the discourse on asylum category, equating to 11% of all coded data. Taking account of how the issue is portrayed; the collective terms used; and the adjectives used, the discourse surrounding the issue of asylum and refugees is overwhelmingly negative: 75% of the data segments are categorised as hostile. The negative discourse is widespread throughout the debates, with a noticeable shift from the 1960s onwards, that is, in the Ages of Hesitancy and Hostility. Alarming descriptions of the issue and derogatory collective terms were used extensively from this point on. Negative adjectives used for individual asylum seekers are not as prevalent but, as the emphasis has shifted from desirability to legitimacy, many of these negative terms are included in the 'abuse' code, e.g., increased references to *illegal* migrants. Positivity around refugees has been expressed recently in terms of acknowledging what people have been through and their vulnerability. Terms used for the issue emphasise the gravity and scale of the problem as well as how threatening, urgent, and dangerous the situation is. Adjectives used in the early debates to question the desirability or suitability of foreigners have given way to those which question the status of individuals as being in genuine need. Non-hostile references have been reasonably numerous in recent debates as MPs strive to demonstrate that they can show sympathy and recognise the plight of refugees. However, these are outnumbered by the

negative and derogatory terms used for individuals, groups and the issue of asylum seeking generally as well as the numbers of comments assigned to the abuse code referring to asylum seekers as illegal. All of this negative discourse adds to the hostility in the debates on asylum- and immigration-related Bills.

- **Category 5: International Issues**

There was a total of 858 data segments coded to the international issues category. This represents 10% of all coded data. Over half (56%) of this coded data is categorised as non-hostile, with 23% classified as hostile. Codes included in this category were international cooperation; international legislation or institutions; and international factors. References to these codes are widespread throughout all three Ages of Humanitarianism, Hesitancy, and Hostility, and all three are increasing over time. While MPs generally acknowledged that international cooperation was necessary and welcome, some criticised the French government for their lack of cooperation[860] and others accused the UK of undermining global cooperation[861]. There was a limited recognition that more could be done to tackle at source the issues which lead to people seeking asylum. Various references were made to the 1951 Convention and the ECHR: many MPs noted the importance of upholding these international conventions while others accused UK legislation of breaching them, particularly in the debate on the 2023 Illegal Migration Bill. Throughout the debates, MPs referred to situations around the world such as conflict and intolerant governments, e.g., Castroism in 1962 and Kenyanisation in 1968, which were contributing to people seeking asylum. This category is generally viewed as a non-hostile categorisation in terms of advocating international cooperation and adherence to international instruments. However, there has been a tendency to hostility in recent debates with criticisms of other states (such as France) and references to potential breaches of international legislation by the UK.

- **Category 6: Compassion and Human Rights**

Overall, 687 data segments were assigned to codes in the compassion and human rights category, equating to 8% of all coded data. This category includes references made to compassion, proud history, and human rights, and the majority of coded data was non-

[860] 1999 Immigration and Asylum Bill (n856); 2002 Nationality, Immigration and Asylum Bill, Hansard HC Deb vol 384 cc341-432, accessed 18/12/21; 2022 Nationality and Borders Bill (n855).
[861] 2022 Nationality and Borders Bill (n855).

hostile (89%). There were numerous references to the UK's compassion and proud history throughout all three ages, with a large spike for both codes in 2022, when MPs were concerned about the legislation being contrary to the country's history of compassion. Throughout the debates, MPs did demonstrate compassion and a moral duty towards refugees with some referring to this as a Christian duty. At the start of any speech on asylum or immigration, there is a tendency for MPs to refer to the UK's proud history or proud tradition of helping those in need. Some MPs expressed pride at providing *political* asylum, while others compared the UK's record favourably with that of other countries. Although there were a few mentions of human rights throughout the Ages of Hesitancy and Hostility, the majority of references to human rights were in the 1998 Human Rights Bill debate, in which many MPs expressed their commitment to human rights. This is a non-hostile categorisation overall, although there is an increasing tendency to hostility as the UK is increasingly accused of jeopardising human rights in more recent debates.

- **Category 7: Domestic Issues**

Overall, there were 643 data segments coded to the domestic issues category, 8% of all coded data segments. Codes in this category were domestic matters, overcrowded island, priority of own citizens, and public opinion, and the vast majority (93%) of coded comments were classified as hostile. References to the first three of these codes were more frequent in the Age of Humanitarianism, and references to public opinion have increased over time, especially in the last four debates in 2014, 2016, 2022, and 2023. Throughout the debates, issues of asylum, refugeehood and immigration have been linked to other domestic matters. In fact, refugees and immigrants have been blamed for a wide array of domestic issues such as lack of housing, overcrowding, homelessness, high unemployment, shortage of school places, and non-availability of GP appointments. Some MPs have commented that the UK cannot take in any more foreigners because it is already overcrowded or overpopulated, while others have pronounced that the needs of British citizens should come first. Lately, there has been a series of MPs claiming to speak on behalf of the public, invariably asserting that public opinion is anti-immigration. This category overwhelmingly contributes to the increasing hostility in the debates as MPs use refugees and migrants as scapegoats for a range of domestic 'problems' from lack of housing to destitution and homelessness.

- **Category 8: Numbers Game**

A total of 619 data segments were included in the numbers game category, representing 7% of all data segments. The codes included in this category were costs, numbers – against, and numbers – for, with the hostile comments outnumbering the non-hostile ones by three to one (75% and 25% respectively). Throughout the debates, and particularly in the Age of Hostility, there were a few mentions of the costs to the taxpayer of the asylum system. In what appears to be a 'dig' at human rights lawyers, references were made in 2008 to Home Office payments being made to appellants for human rights breaches. The 'costs' code does not appear higher up the rankings as MPs from both sides of the House tend to view asylum measures as costly but necessary. References made to 'numbers – against' and to 'numbers – for' were widespread throughout the debates, in all three ages. Superfluous adjectives such as 'overwhelming' and 'relentless' are used throughout to describe the numbers and increases in the numbers. References such as a 'tenfold'[862] increase, the creation of 'two constituencies a year'[863] or the arrival of 'one migrant every minute'[864] are intended as 'shock statistics' to back up arguments against further immigration. On the other side of the coin, there were also references to using numbers as an argument in favour of providing asylum. Many of these arguments revolved around the fact that the UK accepts fewer applicants than other countries.

Not only do claims of unsustainable numbers span the whole time period under review but they tend to be quite extreme. For example, if we consider the first debates in each of the three periods, there were claims of 'enormous immigration of aliens'[865] in 1905; 'virtually limitless immigration'[866] in 1962; and that 'the rate of application has escalated vastly and clogged up the system'[867] in 1993. These claims tend not to be disputed in debates but rather are refuted with counterclaims. For example, 'the proportion of aliens in this country is comparatively small'[868] in 1905; 'utter and complete myth that there is the slightest danger or prospect of millions and millions of

[862] Lynne Jones, 2006 Immigration, Asylum and Nationality Bill, Hansard HC Deb vol 436 cc188-270, accessed 18/12/21.
[863] Peter Lilley, 2006 Immigration, Asylum and Nationality Bill (n862).
[864] Philip Davies, 2007 UK Borders Bill, Hansard HC Deb vol 456 cc590-680, accessed 18/12/21.
[865] 1905 Aliens Bill, Hansard HC Deb vol 145 cc687-808, accessed 15/12/21.
[866] 1962 Commonwealth Immigrants Bill, Hansard HC Deb vol 649 cc687-819, accessed 17/12/21.
[867] 1993 Asylum and Immigration Appeals Bill (n858).
[868] 1905 Aliens Bill (n865).

brown and black people coming to this country'[869] in 1962; and 'the vast majority of the world's eighteen million refugees are not in Europe and, of those who are, relatively few are in the United Kingdom'[870] in 1993. Use of statistics in a negative way, including the use of excessive adjectives and descriptions of the numbers of arrivals, adds to the increasing hostility in the debates. On the other side of the coin, statistics can also be used to paint a non-hostile picture of the numbers arriving as actually being quite low.

8.3 Discourse Historical Analysis

Following from the quantification of hostile comments in parliament, this section turns to a discourse historical approach to determine *what* politicians are actually discussing during these debates and *how* they are discussing it. It is structured around the concepts identified through the coding described above.

8.3.1 Concept 1: Internal Politics

- UK law-making on asylum and immigration is constrained by domestic party politics.

Many unflattering terms were used throughout the debates to criticise the proposed legislation. These ranged from adjectives describing the cumbersome nature of the legislation (such as bureaucratic, ill-considered, confusing, and complicated) to adjectives used to convey how awful the proposals under review were considered to be (such as appalling, miserable, shameful, shabby, squalid, sad, cruel, inhumane, nasty, draconian, disgraceful, discriminatory, and regressive). Criticisms levelled at the government and/or its proposed legislation also included terms such as chaos, mess, shambles, out of control, and unfit for purpose. In 1962, at the start of the Age of Hesitancy, Walker (Labour) called the Commonwealth Immigrants Bill a 'fig leaf to preserve [the Government's] reputation for liberalism'[871]. In other words, the Bill is an attempt to disguise the Government's *illiberalism*, and the choice of the term 'fig leaf' implies the cover-up of something embarrassing or distasteful. In the 1971 Immigration Bill debate, Callaghan (Labour), referencing the right-wing Conservative MP, Powell,

[869] 1962 Commonwealth Immigrants Bill (n866).
[870] 1993 Asylum and Immigration Appeals Bill (n858).
[871] Gordon Walker (n866).

accused the government of adopting 'a Powellite administration'[872] and the patriality clause in that Bill was highlighted as being 'particularly nasty'[873] (Jenkins, Labour). Tilley (Labour) described the 1981 British Nationality Bill thus: 'It is a curate's egg – good in parts. That is a good metaphor. Like an egg, if a nationality Bill is not good throughout, it is no good at all'[874]. The 'curate's egg' metaphor was used to describe the British Nationality Bill as being partly good and partly bad. However, historically, a 'curate's egg' was something that was intrinsically bad but was referred to as good out of politeness.

In 1993, at the start of the Age of Hostility, the government were accused of scapegoating asylum seekers and using them to divert attention, and in the 1999 debate, Allan (Liberal Democrat) said that 'the ethos of the Bill is that because some people abuse the system, it should be made tough for everyone. It is like a teacher giving the entire class detention because someone who cannot be identified stole the chalk'[875]. This analogy of giving the whole class detention is a rare acknowledgement that genuine refugees are adversely affected by hostile environment measures. In the 2014 debate, McDonnell (Labour) stated that the Bill was 'derived from the gutter politics of Lynton Crosby'[876] [a right-wing political strategist]. The use of the term 'gutter politics' implies that the government have hit 'rock bottom' with this legislation, and it could not be any worse.

In 2016, McDonald (Scottish National Party (SNP)) accused the government of creating 'Skype families'[877], in other words, keeping families separate and preventing them from reuniting, while Ahmed-Sheikh (SNP) said that they [the government] were engaging in the 'distasteful process of "othering" on migration and immigration'[878]. The 2022 Nationality and Borders Bill was dubbed an anti-refugee Bill, and the government were accused of using immigration as a distraction: 'Hatred, division and racism are used as weapons of mass distraction to try to shift the blame for Tory policies that hurt the majority of society'[879] (Burgon, Labour). This is a play on the phrase 'weapons of mass destruction' which was widely used to justify the Iraq War. This theme of being anti-

[872] James Callaghan, 1971 Immigration Bill, Hansard HC Deb vol 813 cc42-173, accessed 17/12/22.
[873] Roy Jenkins (n872).
[874] John Tilley, 1981 British Nationality Bill, Hansard HC Deb vol 997 cc935-1047, accessed 17/12/21.
[875] Richard Allan (n856).
[876] John McDonnell, 2014 Immigration Bill, Hansard HC Deb vol 569 cc156-257, accessed 28/01/22.
[877] Stuart C McDonald, 2016 Immigration Bill, Hansard HC Deb vol 600 cc195-285, accessed 18/12/21.
[878] Tasmina Ahmed-Sheikh (n877).
[879] Richard Burgon (n855).

refugee continued in the debate on the 2023 Illegal Migration Bill. When this Bill was debated in the House of Commons, it received heavy criticism from both sides of the House and was accused of being a 'refugee ban Bill', 'empty rhetoric', a 'trafficker's charter', 'scapegoating refugees', and even 'state-sanctioned fascism'[880] (Webbe, Independent). In recent debates in 2022 and 2023, the Conservative government have been widely accused by MPs from all opposition parties of scapegoating refugees and focusing on the issue of asylum as a distraction from other pertinent political issues of the day. It should be noted that it is difficult to gauge motive from the parliamentary debates in terms of whether criticisms of restrictive Bills are genuine concerns or playing party politics.

Asylum and immigration are election issues, and, throughout these debates, politicians of all political persuasions made references to electioneering; playing party politics; making or fulfilling election or manifesto pledges; playing the race card or immigration card; and seeking political advantage. In 1987, Dubs (Labour) stated that 'questions of electoral advantage underlie the hasty introduction of the Bill'[881], and the 1993 Bill was criticised as 'a Bill for domestic consumption, not to help refugees'[882] (Allen, Labour). In 2007, Rowen (Liberal Democrat) said, 'The real problems with immigration are administrative, not legislative, and can be blamed on the government's use of migration as a political football'[883]. The use of the term 'political football' implies that immigration, through continually being introduced as an issue, is being used by the government for political point scoring and to gain political advantage rather than pursuing genuine solutions to tackle the issue. The 2014 Immigration Bill was described by opposition MPs as a 'calculated political propaganda move'[884] (Gardiner, Labour) and 'trying to make a political point and pander to UKIP voters'[885] (Abbott, Labour). In 2023, the government were accused of 'playing political games', 'political point scoring', and creating a 'political culture war', with Lavery (Labour) demanding, 'put these people before politics'[886].

[880] Claudia Webbe, 2023 Illegal Migration Bill, Hansard HC Deb vol 729, cc573-660, accessed 24/10/23.
[881] Alfred Dubs (n854).
[882] Graham Allen (n858).
[883]Paul Rowen (n864).
[884] Barry Gardiner (n876).
[885] Diane Abbott (n876).
[886] Ian Lavery (n880).

Many aspects of the parliamentary debates were concerned with administrative matters, inefficiencies at the Home Office, or the Secretary of State's discretionary powers. MPs were concerned about Home Office bureaucracy, backlogs, and delays; powers given to the Home Secretary; poor quality decision-making; and a lack of coordination and communication in the department and with other government departments. Many disparaging terms were used to describe the Home Office, including a shambles, chaos, in crisis, broken, abysmal, inefficient, dysfunctional, mismanaged, and not fit for purpose. In 1968, Moyle (Labour) observed that there was 'no long-term planning, research, and forethought in the Home Office'[887], and, in 1981, Freeson (Labour) was concerned about the 'arbitrary and frightening discretionary power of the Home Secretary'[888]. In 1999, Gerrard (Labour) questioned the Home Office's asylum application process, claiming that 'Home Office decisions on asylum applications are inconsistent, leaning on questionable credibility arguments'[889]. Delay in decision-making was a particular concern in 2002, with Baker (Conservative) referring to an asylum claimant thus: 'For years, he has lived with the sword of Damocles hanging over his head'[890]. The 'sword of Damocles' is a term used to refer to any situation threatening imminent harm or disaster, and its use here implies that the length of wait is damaging and detrimental to claimants.

In 2006, Malins (Conservative) was concerned with the volume of legislation originating from the Home Office: 'The tendency to legislate is becoming almost a disease in the Home Office'[891]. To use the term 'disease' implies a disorder or malfunction out of anyone's control. The Home Office continued to face extensive criticism in the 2022 Nationality and Borders Bill debate, with Khan (Labour) concerned about its 'culture of disbelief'[892]. In the 2023 debate, there were sixteen references to the Home Office backlog, and one of the government's own MPs (Daly, Conservative) pointed out that we now have an 'ironic situation with the Home Office where we have doubled the number of case workers and have lost productivity'[893].

[887] Roland Moyle, 1968 Commonwealth Immigrants Bill, Hansard HC Deb vol 759 cc1241-368, accessed 17/12/21.
[888] Reginald Freeson (n874).
[889] Neil Gerrard (n856).
[890] Gregory Baker (n860).
[891] Humfrey Malins (n862).
[892] Afzal Khan (n855).
[893] James Daly (n880).

Overall, these references indicate clearly that UK law-making on asylum and immigration *is* constrained by domestic party politics. There was extensive criticism in the parliamentary debates at the introduction of every new piece of immigration legislation, and it is difficult to ascertain definitively whether this is genuine criticism of inadequate legislation or political point scoring. It is probably partly both. One element of these parliamentary debates is 'pantomime politics', whereby MPs automatically criticise their opponents' policies and make exaggerated statements for effect. Legislation is increasingly criticised partly as part of the 'pantomime' and partly because it is genuinely hostile legislation. The legislation under debate, the serving government, and, increasingly, the Home Office are all the subject of such criticisms. There is a correlation between electioneering and the introduction of hostile legislation with the latter perceived by the more right-wing politicians as an election tool. That said, the language used, such as 'nasty', 'draconian', 'disgraceful', and 'frightening', is extreme and there does appear to be genuine concern at some of the legislation being introduced rather than merely having a 'dig' at the party opposite. Increasingly, throughout the Age of Hostility, the government have been accused of focusing on the issue of immigration as a distraction tactic. In addition, asylum and immigration are perceived as general election issues, used to garner political support, and gain political advantage. The Home Office is subject to what appears to be justified criticism for backlogs, delays and inefficiencies which adversely affect anyone waiting for asylum decisions, akin to living under a 'sword of Damocles'. It appears that the steady stream of new legislation has more to do with dealing with Home Office inefficiencies rather than the provision of asylum and protection of refugees.

8.3.2 Concept 2: International Norms

- UK law-making on asylum and immigration takes account of international norms and influences.

Throughout the parliamentary debates, various references were made to international cooperation with, at various times, the international community as a whole, the Commonwealth, Europe, and France. As far back as 1919, Benn (Liberal then Labour) acknowledged that 'we have very greatly benefited, materially, politically, and in every other way, from the free association which this country has always fostered with the

other countries of the world'[894]. In the 1948 British Nationality Bill debate, the focus was on equality and common status throughout the Commonwealth: 'the whole conception of the Commonwealth is that we are equal States, and we have our common claim of brotherhood and allegiance to the Crown'[895] (Glyn, Conservative). This statement promotes unity throughout the Commonwealth, with 'equal states' stressing the parity of all member states and the term 'brotherhood' implying a mutual bond and shared responsibility toward each other. In 1987, Hanley (Conservative) called for 'proper research to be carried out into the areas from where the refugees come and where they claim to be in danger'[896], and in 1993, Trimble (Ulster Unionist Party) talked about 'improving the economic conditions or increasing the respect for human rights and democracy in other countries'[897]. These were rare instances of MPs acknowledging that more could be done to tackle the issue in origin countries, although the phrase 'claim to be in danger' suggests that the speaker is sceptical about such claims.

In 1999, Hancock (Independent) criticised the situation in France, stating that 'the real problem lies on the other side of the channel in the inability of the French authorities to tackle the issue'[898], and in 2002, nine MPs mentioned the bilateral agreement between the UK and France and the need for it to be reinstated. In 2022, the French government was again criticised by some MPs, with Loughton (Conservative) claiming, '…further measures need to be taken unilaterally. The French have failed to play ball and are trying to make their problem our problem'[899]. While most politicians acknowledge and value the importance of international cooperation, this MP's statement suggests that the French authorities were undermining the UK, and that the UK should 'go it alone'. Others criticised the 2022 Bill from an international perspective: 'if the UK is playing a part in undermining global cooperation, it can hardly expect cooperation back'[900] (Smith, SNP). In 2023, MPs' concerns turned to the memorandum of understanding between the UK and Rwanda and the fact that there were no returns agreements in place with France or the EU.

[894] Wedgewood Benn, 1919 Aliens Restriction (Amendment) Bill, Hansard HC Deb vol 114 cc2745-818, accessed 15/12/21.
[895] Richard Glyn, 1948 British Nationality Bill, Hansard HC Deb vol 453 cc385-510, accessed 17/12/21.
[896] Jeremy Hanley (n854).
[897] David Trimble (n858).
[898] Mike Hancock (n856).
[899] Tim Loughton (n855).
[900] Alyn Smith (n855).

As well as references to cooperation with other States, there were also references in the debates to international legislation – the 1951 Refugee Convention and the European Convention on Human Rights (ECHR) – and international institutions – the European Union and the UNHCR – especially from 1987 onwards. In the 1987 debate, there were twenty mentions of the Refugee Convention and fourteen references to the UNHCR, and in 1988, Gorman (Conservative) acknowledged that 'our laws are being harmonised, whether we like it or not, with those of the EEC'[901]. In the 1993 debate, at the start of the Age of Hostility, there were 36 references proclaiming the UK's commitment to the 1951 Convention, while in 1996, five MPs questioned whether the Bill breached international obligations: '…grave risk of infringing the 1951 Convention'[902] (Henderson, Labour).

In the 2007 UK Borders Bill debate, Davies (Conservative) acknowledged that the UK was inextricably linked with the EU, pointing out that 'our border controls can only be as good as the border controls in the EU'[903]. Concerns were expressed in the Immigration Bill debates of 2014 and 2016 about possible breaches of the ECHR. In 2014, Corbyn (Labour) was concerned that 'the Bill would undermine article 8 of the European convention on human rights, the right to family life'[904], and in 2016, Burnham (Labour) pointed out that 'the Bill is potentially in breach of articles 6, 8, and 13 of the European convention on human rights'[905]. In 2022, many MPs expressed concerns that the Bill would breach the 1951 Convention and/or the UK's international obligations (42 coded data segments): 'nowhere is the retreat from international law, international cooperation and basic human decency more apparent than in the absolute trashing of the Refugee Convention as it approaches its 70th birthday'[906] (McDonald, SNP); 'abhorrent legislation that rides roughshod over the Refugee Convention'[907] (Crawley, SNP); and 'the Bill will undermine the 1951 Refugee Convention and international protection system, not only in the UK but globally'[908] (Thomas-Symonds, Labour) were just some of the numerous substantial claims made by MPs in this debate. A major element which

[901] Teresa Gorman, 1988 Immigration Bill, Hansard HC Deb vol 122 cc779-858, accessed 17/12/21.
[902] Doug Henderson, 1996 Asylum and Immigration Bill, Hansard HC Deb vol 268 cc699-808, accessed 17/12/21.
[903] Philip Davies (n864).
[904] Jeremy Corbyn (n876).
[905] Andy Burnham (n877).
[906] Stuart C McDonald (n855).
[907] Angela Crawley (n855).
[908] Nick Thomas-Symonds (n855).

received a lot of attention in the 2023 debate was the statement on the front page of the Bill stating that the Secretary of State was unable to confirm that the Bill was compatible with the European Convention on Human Rights[909]. This resulted in 21 references to the ECHR in this debate. As well as potential violations of the ECHR, MPs were also concerned that the 2023 Bill would breach the Refugee Convention (thirteen references).

Spread throughout the debates, there were various references to worldwide situations and events, and to the UK's relationship with other nations, in terms of how these could affect UK law-making or, conversely, how they may be affected by the UK's legislation. In the two 'Asylum Bills' of the 1960s – at the start of the Age of Hesitancy – concerns were expressed about communism and the 'Africanisation' of decolonised countries. In 1962, Gaitskell (Labour), referring to Fidel Castro, the communist leader of Cuba, expressed a fear that 'Castroism may spread'[910], and in 1968, Faulds (Labour) voiced concerns about the 'illiberalism of the Kenya Government'[911]. In the 1981 Nationality Bill debate, Deakins (Labour) claimed that the effect of the Bill was that the 'basic message from the government to the rest of the world is "stay away, we don't want you"'[912]. At the start of the Age of Hostility, in 1993, MPs acknowledged adverse situations around the world and in 1996, three MPs referred to the relationship between conflict and refugees. In 2004, Corbyn (Labour) recognised the role played by the west, stating that the 'European Union and north American contributions to the world arms trade, to the search for and the extraction of minerals and to the trade policies followed around the world lead to instability and to large numbers of people seeking a place of safety – asylum – somewhere else'[913]. This was a rare recognition of the role played by developed nations in the generation of refugees.

In 2006, MPs questioned the government's policy of sending people back to countries such as Zimbabwe and Sudan, and in 2007, McCarthy (Labour) referred to people arriving in the UK from Somalia: 'because many hail from Somalia, there are problems with deporting them because of the difficult circumstances in that country'[914]. This statement recognises that individuals cannot be deported from the UK to a country which

[909] Illegal Migration Bill ECHR Memorandum 1, accessed 26/08/23.
[910] Hugh Gaitskell (n866).
[911] Andrew Faulds (n887).
[912] Eric Deakins (n874).
[913] Jeremy Corbyn, 2004 Asylum and Immigration Bill, Hansard HC Deb vol 415 cc1587-681, accessed 18/12/21.
[914] Kerry McCarthy (n864).

is a fragile state. In 2016, at the height of Europe's refugee and migrant crisis, MPs were impacted by the distressing photographs of refugees: 'pictures of Alan Kurdi, the three-year-old Syrian boy who was drowned along with twelve other Syrians'[915] (Bellingham, Conservative). In the 2022 debate, seventeen MPs made references to war and conflict, and Cherry (SNP) made another rare reference to the UK's role and responsibility:

> There are millions of displaced people across the world and millions of refugees. The United Kingdom cannot wash our hands of responsibility for them, particularly when at least some of the reasons for their displacement can be laid at our door and at the door of our foreign policy and our colonial past.[916]

In this debate, there was an outpouring of outrage, with many MPs voicing concerns that the Nationality and Borders Bill contravened the Refugee Convention and undermined the UK's international obligations regarding asylum seekers and refugees. In 2023, Neill (Conservative), critical of his own government's approach, observed that, 'a kind of isolationist unilateralism will not solve an international problem'[917].

Overall, apart from a few contradictory statements, politicians were generally agreed that there is a need for international cooperation with other States and international institutions when it comes to asylum provision. However, contrary to this acknowledgement, there were also increasing concerns, particularly since the 2016 Brexit vote, that the UK has no international returns agreements in place with France, the EU, or other countries. There was a shift in the debates from recognising the UK's commitment to, and responsibilities under, the 1951 Convention to concerns that the legislation being introduced might contravene this convention and/or the ECHR. This has been an increasing worry, culminating in many MPs expressing concerns in the 2022 and 2023 debates that the legislation under discussion would breach these international conventions. Language used in these criticisms such as 'absolute trashing' and 'rides roughshod' leaves us with no doubt that the speakers believe this was deliberate policy and not a mere oversight. Some MPs acknowledged events around the world which contribute to people seeking asylum, and some recognised the UK's role and responsibility in these events. Consequently, politicians acknowledged the UK's responsibility to provide asylum and were increasingly concerned that this was being

[915] Henry Bellingham (n877).
[916] Joanna Cherry (n855).
[917] Robert Neill (n880).

undermined with restrictive legislation. The focus of international cooperation has shifted from an emphasis on cooperation throughout the Commonwealth in the early Age of Hesitancy to European cooperation, and specifically, bilateral agreements with France in the Age of Hostility from the early 2000s onwards. Throughout the Age of Hesitancy, there was limited recognition of global situations which could generate refugees. This was extended in the Age of Hostility when there were increasing concerns about such situations. Commitments to the Refugee Convention in the Age of Hesitancy have given way to increasing concerns about UK legislation potentially breaching the convention and the ECHR throughout the Age of Hostility. To conclude, although UK law-making on asylum and immigration does take account of international norms and influences, this is accompanied with the caveat of increasing concerns that recent UK legislation (in 2022 and 2023) potentially breaches international legal instruments.

8.3.3 Concept 3: Domestic Constraints

- UK law-making on asylum and immigration is limited by domestic issues and constraints.

From 1987 onwards, there were numerous references to perceived or actual abuses of the asylum system. Bogus colleges, sham marriages, asylum seekers in the backs of lorries, asylum seekers on small boats, bogus claims, unfounded claims, and unscrupulous immigration advisors are just some of the different 'abuse' issues that have periodically been tackled through legislation. Applications or claims that are fraudulent, false, bogus, groundless, unfounded, or manifestly unfounded are all tarred with the same brush: no distinction is made between them in debates despite there being a wealth of difference between an action that is fraudulent and one that is groundless. The 1987 debate on the Carriers' Liability Bill, which took place in the wake of the spontaneous arrival of 64 Tamil asylum seekers most of whom were refused entry, was entirely focused on closing loopholes and stopping abuse. Continuing with this theme, in the 1993 debate, Gerrard (Labour) branded asylum seekers 'as liars and as bogus'[918] while Watson (Labour) claimed that people were 'out to defraud Britain'[919]. In 1996, Rooker (Labour) referred to the need to close the 'Jackal loophole'[920], a fraud named after the novel, *The Day of the Jackal,* in which fraudsters apply for false passports assuming the

[918] Neil Gerrard (n858).
[919] Mike Watson (n858).
[920] Jeff Rooker (n902).

name of a dead child. In 1999, a number of MPs across the House stated that *most* asylum seekers were not genuine, and Snape (Labour) used this cricketing analogy: 'The political asylum application is regarded, in cricketing parlance, as the long stop when all else has failed'[921]. The 'long stop' is a largely obsolete fielding position behind the wicketkeeper which was traditionally used as a last resort. The inference is that if individuals try and fail to enter the UK using immigration channels (e.g., student visa, seasonal work permit), they will then go on to claim asylum as a last resort.

'Disorder at the border'[922] (Byrne, Labour) was an issue in 2007 with Green (Conservative) stating, 'we do not have a barrier; we have a sieve'[923], the implication being that the preference would be for a barrier. This suggests that there is broad agreement across the political spectrum on the need for border control, which is an important constituent of the hostile environment. In 2014, referring to the town of Tilbury on the River Thames, Doyle-Price (Conservative) claimed that there had been 'over thirty sham marriages in that church in Tilbury alone'[924], and in 2022, particular attention was paid to those who were 'gaming' the system. The 2023 Illegal Migration Bill debate included fifty references to illegal migration or illegal arrivals. Human trafficking and people smuggling were issues raised in this debate, with Randall (Conservative) acknowledging that the role of the smuggler is a 'de facto part of the asylum process'[925], and Leadsom (Conservative) claiming that there had been 'exponential growth in human trafficking across the channel'[926]. Using a somewhat unsympathetic turn of phrase, Brereton (Conservative) was concerned about 'chancers from safe countries'[927] and wanted to ensure that 'illegal migrants cannot jump the queue'[928]. From the extreme language used throughout the debates (terms such as 'bogus', 'fraudulent', and 'defraud'), the impression is that abuse of the asylum system is extremely serious and widespread, rather than applicable to a small minority of asylum seekers.

[921] Peter Snape (n856).
[922] Liam Byrne (n864).
[923] Damian Green (n864).
[924] Jackie Doyle-Price (n876).
[925] Tom Randall (n880).
[926] Andrea Leadsom (n880).
[927] Jack Brereton (n880).
[928] ibid.

The control and management of immigration and asylum has been a thread which has consistently run through the parliamentary debates from 1962 up to now, that is, in the Ages of Hesitancy and Hostility. While some MPs seemed to be in support of a more hostile environment – calling on the system to be firm, tighter, stringent, stronger, tougher, and more robust – others used more temperate language, such as orderly, effective, fair, speedier, humane, and better managed. In the 1988 debate, many MPs were looking for immigration controls which were firm and/or fair. This was to be a phrase which would be consistently used up to and including the 2022 Nationality and Borders Bill debate. In 1996, in an analogy of weeding out the bad from the good, Howard (Conservative) was looking for an 'effective sifting mechanism'[929], and in the 2007 UK Borders Bill debate, Byrne (Labour) called for better protected borders by placing a 'ring of steel'[930] around the country. In 2022, taking control of our borders or taking back control was mentioned seventeen times (2.1% of all coded comments in that debate), and in the 2023 debate, the emphasis shifted to stopping the boats (19 references or 2.6% of all coded data); the agreement with Rwanda (13 mentions, 1.8%); establishing safe and legal routes (32 references, 4.4%); and setting an annual cap or quota on numbers arriving by those routes (11 references, 1.5%). Security, linked with immigration control, was rarely mentioned until 1993, the start of the Age of Hostility, with a large spike, unsurprisingly, in 2001 following the 9/11 attacks. References were made throughout the debates to border security, national security, aviation and port security, and terrorist threats, and the 2001 Bill was dubbed an 'emergency terrorism Bill'[931] (Letwin, Conservative). The Chahal case – in which the European Court of Human Rights overturned a decision by the Home Office to deport Mr Chahal on the grounds that he was a risk to national security – was cited by MPs in debates in 1998 and 2001. In 2007, Jackson (Conservative) explicitly linked security with immigration by referring to the 'damage done to the security of the country by the government's open-door immigration policy over the past ten years'[932], and border security was mentioned thirteen times in the 2023 Illegal Migration Bill debate.

[929] Michael Howard (n902).
[930] Liam Byrne (n864).
[931] Oliver Letwin, 2001 Anti-terrorism, Crime and Security Bill, HC Deb vol 375 cc21-118, accessed 18/12/21.
[932] Stewart Jackson (n864).

Throughout the debates, MPs referred to various 'pull factors' for asylum seekers and refugees travelling to or attempting to travel to the UK. These included a higher standard of living, a better life, health tourism, asylum shopping, claiming benefits, access to public services, and the attractiveness of the UK as a destination. In 1962, Osborne (Conservative) described the UK as 'the honeypot to which they will come, so long as there is any honey in the pot'[933], and in 1981, Marlow (Conservative) said that people 'come to the bright lights, the hot spots, the relatively wealthy Western European economies'[934]. The honeypot analogy portrayed the UK as being a source of wealth for foreigners, and in 1981, all western developed states were acknowledged as such. In 1988, Ashby (Conservative) claimed that 'those people are all waiting and hoping to come to this country in the same way as Dick Whittington wanted to come to London because he thought that the streets were paved with gold'[935], and in 1993, Clarke (Conservative) claimed that the UK offered 'a prize that has drawn increasing numbers to seek asylum here'[936]. The reference to the English folk tale Dick Whittington is an odd comparison as Dick is actually very successful, dragging himself out of poverty and becoming the Lord Mayor of London! Describing the UK as a 'prize' confers a sense of entitlement which cannot be assumed but needs to be earned. In 2002, Watkinson (Conservative) covered all possibilities, claiming that the reasons people came to the UK were:

> the availability and perception of social security benefits, more generous interpretation of asylum law, slow decision-making on asylum cases, lack of an efficient removal system for people refused asylum, access to public services such as free health care, education and housing, and scope for living here without documentation or the need for proof of identity.[937]

In 2014, five MPs were concerned that the UK was being viewed as a 'soft touch', and in 2016, four MPs pointed to 'illegal working' as a pull factor. Contrary to the reality of the hostile environment, there is a general attitude throughout more recent debates that asylum seekers are choosing the UK as a destination because it is regarded as attractive,

[933] Cyril Osborne (n866).
[934] Tony Marlow (n874).
[935] David Ashby (n901).
[936] Kenneth Clarke (n858).
[937] Angela Watkinson (n856).

a ‘prize’, or a ‘soft touch’. The implication is that legislation ought to clamp down on these perceived pull factors to deter asylum seekers from travelling to the UK.

There has been a tendency throughout the debates to link the issues of immigration, refugees, and asylum with domestic matters such as housing, homelessness, overcrowding, jobs, unemployment, health, and education. As far back as 1905, right at the start of restrictions, the debate on the Aliens Bill focused on the issues of sweating [that is, sweatshops]; overcrowding; and unemployment and rate of wages. At the start of the Age of Hesitancy, in the 1962 Commonwealth Immigrants Bill debate, housing and overcrowding were major concerns (38 coded data segments), with comments such as ‘we are clearing slum houses at the rate of 70,000 a year’[938] (Hare, Conservative). Housing, homelessness, overcrowding, unemployment, and education continued to be issues of concern in the 1988 Immigration Bill debate, and in 1993, the focus was still on housing: ‘the government blame those seeking asylum for the housing crisis that already exists’[939] (Corbyn, Labour). The housing concern continued throughout the debates such that in 2006, Lilley (Conservative) said that the ‘housing policy was largely driven by Home Office immigration policy’[940], and in 2014, McDonnell (Labour) stated that there were ‘problems with Rachmanite landlords as it is, with people living in appalling overcrowded conditions and being charged too much’[941]. This was a reference to the notorious landlord Peter Rachman who charged extortionate rents for overcrowded slum housing in London in the 1950s. References to domestic matters continued in the 2023 debate, which contained five references to housing, seven to the pressure on public services, and six to health and medical appointments. By relating immigration to domestic issues in the debates, MPs are constructing asylum and immigration as a ‘problem issue’ which is affecting and exacerbating other issues such as housing and the availability of school places.

The debates included a small number of references to the UK being overcrowded or overpopulated. In 1962, MPs expressed concern at how densely populated the UK was: ‘we are the most densely populated little island in the world’[942] (Osborne, Conservative), and, in 1971, Gurden (Conservative) claimed that there was ‘overcrowding to the extent

[938] John Hare (n866).
[939] Jeremy Corbyn (n858).
[940] Peter Lilley (n862).
[941] John McDonnell (n876).
[942] Cyril Osborne (n866).

that we have about 1,000 people to the square mile'[943]. There were also various references to the priority of British citizens. In 1905, there were twenty references to having a duty to look after the British people in the face of alien immigration and competition, with Vincent (Conservative) stating that it is the 'duty of a country to look after its own people first of all'[944]. In 1919, nine MPs maintained that it should be Britain for the British, and in 1968, five MPs wanted to give priority to Britons and those with a British passport: Harris (Conservative) stated that 'in fairness to our own people excess immigration must stop'[945]. In 2009, Smith (Labour) stated that we need 'an immigration system that works in the interests of Britain and British citizens'[946], and in 2016, Blomfield (Labour) pointed out that immigrants have 'fewer rights than UK citizens'[947].

There were also various references to public opinion, one being in the debate in 1962 when Fisher (Conservative) stated, 'the public obviously wants a Bill of this type'[948]. In 1971, Short (Labour) claimed that there was a 'swing of public opinion against immigrants'[949] and in 1988, Gorman (Conservative) linked public concern with 'being swamped' in this statement: 'legitimate concern of our citizens, who sometimes feel that they are being swamped with people'[950]. The term 'swamped' had previously been used by Margaret Thatcher in a TV interview back in 1978 when she said that British people feared they were being swamped with immigrants[951]. In the 2001 debate, Blunkett (Labour) stated that 'public opinion demanded urgent and appropriate action after the 11 September attacks'[952] and in 2004, Turner (Conservative) claimed that '80% of the population of the country want better control of the immigration process'[953]. In 2014, there were thirteen mentions of public worries, anxieties, and concerns and in 2016, there were thirteen references to public concern or to immigration being the number one issue. In the 2022 debate, Home Secretary, Priti Patel (Conservative), claimed that 'the

[943] Harold Gurden (n872).
[944] Howard Vincent (n865).
[945] Frederic Harris (n887).
[946] Jacqui Smith, 2009 Borders, Citizenship, and Immigration Bill, Hansard HC Deb vol 493 cc169-240, accessed 18/12/21.
[947] Paul Blomfield (n877).
[948] Nigel Fisher (n866).
[949] Renee Short (n872).
[950] Teresa Gorman (n901).
[951] Margaret Thatcher Foundation, TV Interview for Granada *World in Action* ("rather swamped"), accessed 04/10/23.
[952] David Blunkett (n931).
[953] Andrew Turner (n913).

British people have had enough of open borders and uncontrolled immigration'[954] and Bailey (Conservative) stated, 'the Bill aligns with public opinion'[955]. In 2023, five MPs claimed that the British people backed the Bill or government policies, with Hayes (Conservative backbencher) saying, 'polls show that the British people want tough action on illegal immigration'[956]. Conversely, Britcliffe (fellow Conservative backbencher, deviating somewhat from the general stance of her party) said, 'I think that people in this country are genuinely supportive of immigration and refugees'[957]. This latter statement is contrary to most MPs' assertions which claim that the British public is anti-immigration.

There were some references in these debates to the costs of the asylum system. In 1996 and 1999, MPs were concerned about the potential additional costs which would be incurred under the new legislation: in 1996, Straw (Labour) called the Bill a 'blank-cheque Bill'[958] [implying there is no limit to how much these new measures will cost], and in 1999, Clappison (Conservative) stated, 'the new system will mean a big increase in the cost imposed on the public purse'[959]. In 2002, Gerrard (Labour) described the Bill as 'something that will cost a fortune'[960], and in 2004, Baldry (Conservative) referred to the 'ever-spiralling cost of the government's asylum policy'[961]. In 2007, Davies (Conservative) claimed, 'the government are already paying out probably tens of millions of pounds in entirely bogus claims to asylum seekers who are probably claiming that their human rights have been breached'[962], and in 2008, he stated that 'the government have been happily handing out bucketsful of taxpayers' money in compensation to prisoners and asylum seekers who have been encouraged to stick in bogus claims by money-grabbing lawyers'[963]. These references to payments made to claimants were in fact 'digs' at human rights lawyers defending their clients' rights to claim asylum and not be wrongfully detained. In the 2022 debate, twelve MPs made

[954] Priti Patel (n855).
[955] Shaun Bailey (n855).
[956] John Hayes (n880).
[957] Sara Britcliffe (n880).
[958] Jack Straw (n902).
[959] James Clappison (n856).
[960] Neil Gerrard (n860).
[961] Tony Baldry (n913).
[962] David Davies (n864).
[963] David Davies, 2008 Criminal Justice and Immigration Bill, Hansard HC Deb vol 464 cc60-139, accessed 18/12/21.

references to costs and the financial burden on the British public: 'not fair on the British public, who pick up the tab'[964] (Vickers, Conservative), and a further six MPs placed a figure on the cost: 'a failed asylum system that costs the taxpayer more than £1 billion a year'[965] (Patel, Conservative). This latter statement is a criticism from the Home Secretary of her own party's policy: she is acknowledging that not only is the current system not working, but it is costing a fortune. There were further concerns about costs in the 2023 debate, especially with regard to the costs of hotel accommodation and the potential costs of the detention measures proposed in the Bill.

Throughout the debates, there were numerous references to the numbers of asylum seekers from a negative perspective in terms of increasing numbers or the numbers being so large that it would be difficult to take any more. As well as references to specific figures, the numbers involved were also described as enormous, considerable, very large, overwhelming, vast, excessive, massive, huge, worrying, substantial, significant, unparalleled, unsustainable, and the highest on record. Increases in numbers were said to be large and rapid, extraordinary, growing and growing, steeply upward, escalating vastly, dramatic, relentless, rocketing, and formidable. As we can see, many extreme and superfluous adjectives were used throughout the debates to describe the numbers of asylum seekers and increases in the numbers. In 1905, eighteen MPs made general references to numbers or increases in numbers and a further eleven MPs mentioned specific numbers. In 1962, many MPs referred to numbers with comments such as 'virtually limitless immigration'[966] (Butler, Conservative) and 'vastly increased numbers'[967] (Hare, Conservative). In 1968, Hogg (Conservative) – referring specifically to Kenyan Asians – used the analogy of a run on the bank:

> They have an absolute right of entry because they have, for historical reasons of one sort or another, a British passport. Quite obviously, like the customers of a bank, if they all entered and asked the bank for payment of their outstanding balance at the same time, they would cause a run on the bank[968].

[964] Matt Vickers (n855).
[965] Priti Patel (n855).
[966] Rob Butler (n866).
[967] John Hare (n866).
[968] Quintin Hogg (n887).

In 1987, Dubs (Labour) accused the Home Secretary, Douglas Hurd (Conservative) of suggesting that 'increasing numbers of people from the Third World would become footloose'[969]. The 'run on the bank' analogy acknowledges that, while people are entitled to come to the UK, it would be problematic if they all exercised their right and arrived at once, and the use of the term 'footloose' in 1987 was a warning against allowing people to travel freely without restrictions. In 1993, MPs were concerned about the rate of increase in numbers: 'asylum applications increasing more than tenfold in three years'[970] (Ward, Conservative), and this was still a concern in 1996: 'the relentless rise in applications is outstripping our ability to deal with them'[971] (Howard, Conservative). In the 2006 debate, Lilley (Conservative) claimed that 'two constituencies a year are being created in this country as a result of immigration'[972], and in 2007, Davies (Conservative) claimed that 'we have one migrant a minute coming into this country'[973]. These are 'shock statistics' designed to emphasise that it is an extremely serious situation, and these numbers of arrivals are having an enormously adverse effect on the country. In 2022, Benton (Conservative) stated that 'the trend is continually up, and the most recent figures show that 700,000 migrants arrived in the UK in the year ending March 2020'[974]. And in 2023, the emphasis was on the numbers arriving by small boats: 85,000 since 2018 (three mentions) and 45,000 in 2022 alone (eight mentions). Leigh (Conservative) suggested that 'there is no limit to how many people want to come'[975] and claimed that 'every single hotel is filled up [with asylum seekers]'[976]. These two statements are both completely exaggerated claims which cannot possibly be true: there is not an infinite number of people wishing to come to the UK, and every hotel in the UK is not full of people waiting to claim asylum.

Conversely, there were instances throughout the debates where numbers were used in a positive way to demonstrate that the UK is not receiving large numbers of asylum applications and does not accommodate large numbers of asylum seekers. Many of these statements compared the UK with other countries. In the 1905 debate, references were

[969] Alfred Dubs (n854).
[970] John Ward (n858).
[971] Michael Howard (n902).
[972] Peter Lilley (n862).
[973] Philip Davies (n864).
[974] Scott Benton (n855).
[975] Edward Leigh (n880).
[976] ibid.

made to the alien population being small or not increasing, with Evans-Gordon (Conservative) stating that 'the alien population here is trifling compared with that of every other country in the world'[977]. In the Age of Hesitancy, immigration numbers were compared with figures for emigration. In 1962, two MPs stated that emigration was exceeding immigration and Fisher (Conservative) said that the 'numbers have been considerably stepped up and exaggerated'[978]. In 1968, Faulds (Labour) claimed that 'the exodus of emigrants from this country is about twice the number of immigrants to this country'[979]. In the 1971 debate, three MPs stated that the numbers would not be affected by the Bill and fourteen MPs suggested that immigration was low and/or decreasing: 'ridiculous myth that there is now large-scale immigration going on'[980] (Short, Labour), and in 1987, MPs argued that the UK accepted fewer people than other countries: 'Britain is very low down the league table in the number of asylum seekers that we have accepted'[981] (Dubs, Labour).

In 1993, at the start of the Age of Hostility, MPs noted that the situation was worse overseas: 'Only about 5% of the world's estimated 17.5 million refugees tried to come to Europe. In Somalia one person in six is a refugee; in Britain, the figure is only one in 5,500'[982] (Roche, Labour). And in 1999, MPs continued to refer to the numbers in an international context: 'The UK was ninth of the thirteen European countries in the rate of asylum seekers per 100,000 population in 1998. Switzerland, the Netherlands, and Germany are dealing with far more applications, proportionately'[983] (Allan, Liberal Democrat). In 2009, Vaz (Labour) said, 'there is no mass immigration in Britain anymore'[984], and, in 2022, Farron (Liberal Democrat) said that 'the notion that we are overwhelmed with asylum seekers is bogus nonsense'[985]. Here, Farron turns the term 'bogus' on its head: a term typically associated negatively with asylum seekers, he uses it to apply to the claim of high numbers as nonsense. In this debate, many MPs noted that the UK accepted fewer asylum applicants than other countries, with Creasy (Labour) stating, 'Turkey is taking four million refugees, and we are quibbling about 26,000

[977] Major Evans-Gordon (n865).
[978] Nigel Fisher (n866).
[979] Andrew Faulds (n887).
[980] Renee Short (n872).
[981] Alfred Dubs (n854).
[982] Barbara Roche (n858).
[983] Richard Allan (n856).
[984] Keith Vaz (n946).
[985] Tim Farron (n855).

applications'[986]. Two MPs in the 2023 debate referred to other European countries taking more refugees per capita than the UK. Throughout these parliamentary debates, politicians use statistics in their arguments both for and against accepting more asylum seekers in the UK.

It can thus clearly be seen that much of the debate on asylum and immigration in parliament centres on the effects that asylum seekers and immigrants could have *on the UK* rather than discussions on the protection needs of individuals. Control and management of the asylum and immigration system is very much at the forefront of debates, and there is a distinct absence of discussion on support and protection. Alongside this, asylum seekers and immigrants are linked with a variety of domestic issues such as overcrowding, homelessness, and housing shortages. There is often a presumption of 'bogusness' and of attempts to 'abuse' the system, and statistics are used both to justify accepting either more or less asylum seekers. Extreme and superlative adjectives and 'shock statistics' are used to describe the numbers attempting to reach the UK. Conversely, the UK is compared unfavourably with other States in terms of numbers of asylum claims and acceptances. The consequences on the UK of accepting more asylum seekers is the dominant discourse in the debates and the protection needs of vulnerable individuals is secondary to this.

Asylum as a separate issue became a concern from the end of the Age of Hesitancy/start of the Age of Hostility onwards. From this point on, perceived abuses of the asylum system were a concern, with increasingly hostile language and suspicion in sequential debates (e.g., 'liars and bogus'[987] in 1993; the 'Jackal loophole'[988] in 1996; and the 'long-stop'[989] cricketing analogy in 1999). These incremental increases in hostility continued into the new millennium with an emphasis on 'sham marriages'[990] in 2014 and 'illegal migration'[991] in 2023. These incremental increases in hostility also coincide with an increased emphasis on immigration control throughout the Age of Hostility, culminating in a call for measures to 'stop the boats'[992] in 2023. Throughout the Age of Hesitancy, statistics were used as a tool in the construction of increasing hostility, and

[986] Stella Creasy (n855).
[987] 1993 Asylum and Immigration Appeals Bill (n858).
[988] 1996 Asylum and Immigration Bill (n902).
[989] 1999 Immigration and Asylum Bill (n856).
[990] 2014 Immigration Bill (n876).
[991] 2023 Illegal Migration Bill (n880).
[992] ibid.

extreme adjectives and shock statistics were increasingly used from 1962 onwards (e.g., 'virtually limitless immigration'[993] in 1962). From 1993, the start of the Age of Hostility, general concern about numbers was extended specifically to asylum applications, and the descriptions became even more exaggerated (e.g., 'two constituencies a year'[994] in 2006 and 'one migrant a minute'[995] in 2007). Counter-claims, though not as prevalent as the shock statistics, became used increasingly throughout the Age of Hesitancy, and this became more specific in the Age of Hostility with MPs citing 'worse' scenarios in other countries (e.g., Somalia in 1993; other European countries in 1999; and Turkey in 2022).

By including domestic issues within immigration debates, the issues of asylum and immigration have been constructed as being associated with a range of internal matters, including housing shortages, lack of school places and unavailability of GP appointments. In accordance with this, MPs are increasingly scapegoating asylum seekers and refugees as part of the construction of the hostile environment. For example, although refugees and migrants have been blamed for the housing shortage, the Chartered Institute of Housing has concluded that 'the housing crisis is due to a lack of new homes being built, not due to rising migration'[996]. They add that, 'migrants are often blamed for housing shortages, but the truth is they stand less of a chance of getting social housing than people born in the UK'[997] and, furthermore, 'asylum seekers aren't eligible for council housing'[998]. In conclusion, UK law-making on asylum and immigration *is* limited by domestic issues and constraints. This is because asylum and immigration have been *constructed* as being associated with domestic issues rather than any incidental relationship. In other words, asylum and immigration law-making is deliberately constrained by association with domestic issues.

8.3.4 Concept 4: Values

- UK law-making on asylum and immigration is impacted by the values and principles of decision-makers.

Throughout the debates, many terms and labels are used to describe the issue of asylum, including problem, emergency, national urgency, crisis or near crisis, difficult situation,

[993] 1962 Commonwealth Immigrants Bill (n866).
[994] 2006 Immigration, Asylum and Nationality Bill (n862).
[995] 2007 UK Borders Bill (n864).
[996] 'Dispelling myths about migrants and housing', Chartered Institute of Housing, accessed 10/09/24.
[997] ibid.
[998] ibid.

vast issue, burden, threat, strain, challenge, pressures, out of control, chaos, extremely serious, appalling, complex, massive, complicated, and unprecedented. This negative terminology was widely used in parliamentary debates from the 1968 Commonwealth Immigrants Act onwards. In this debate, Whitaker (Labour) compared the management of immigration with the treatment of leprosy: 'leprosy is in fact neither an infectious nor an incurable disease: but if the people who should be trying to heal leprosy lie down and simulate the illness, what hope is there of curing it'[999]. Comparing the issue to leprosy is an abhorrent analogy which conjures up images of untouchables in isolation: it is an unpleasant metaphor which reveals a lack of compassion and empathy with the plight of refugees. Maudling (Conservative) warned of the explosive nature of the issue: 'there is bound to be a flashpoint somewhere, and if the flash occurs everyone will be burned, and probably seriously burned'[1000]. The language being used here is severe, implying that, not only is the issue very serious indeed, but also that it adversely affects everyone. In 1996, Marlow (Conservative) made two somewhat extreme predictions: 'the alternative if we do not take strong action could yet be undreamt of and unimaginable barbarism'[1001] and 'sometimes it is necessary to be cruel in order to be kind. Frankly, the alternative is terrifying'[1002]. Mentions of barbarism and terrifying consequences introduce an element of hysteria into the proceedings.

In the 2001 debate, following the 9/11 attacks, the issue of immigration was associated with that of terrorism, and it became an 'emergency' with mentions made of dangers and threats. In 2006, against a backdrop of a group of Chinese nationals dying in the back of a lorry in Dover and others drowning in Morecambe Bay while harvesting cockles for a gangmaster, Lilley (Conservative) used the analogy of running a car engine: 'Immigration acts as a lubricant for the economy, rather than a fuel. If we do not put oil in the car, it will not work well. If there is more than sufficient oil, the car will not go any better and too much oil may cause problems'[1003]. This metaphor implies that immigrants are only welcome if, like engine oil, they can be of some use, and even then, like the amount of oil in a car engine, there is a limit to how many are needed: the values indexed here are utilitarian, placing a worth on immigrants in terms of their usefulness

[999] Ben Whitaker (n887).
[1000] Reginald Maudling (n887).
[1001] Tony Marlow (n902).
[1002] ibid.
[1003] Peter Lilley (n862).

to the UK and pointing out that there is an upper threshold for this. In the 2022 debate, the issue was called a small boats crisis, an unprecedented global refugee crisis, and a crisis in our asylum system. In 2023, there were references to a small boats crisis, this vile trade, a problem, and a threat, with McDonald (SNP) accusing the government of treating asylum seekers not as human beings but rather as 'a political problem'[1004], and Sheppard (SNP) alleging that 'the problem of small boats is one entirely of this Government's making'[1005]: these are references to the values of those in charge as driven by political interest rather than humanitarian concern.

Value-laden terminology is most clearly indicated in the collective terms used to describe groups of refugees included mass movement, influx, flow or inflow, tide, flood, stream, wave, pool, surge, rush, flock, swarm, shoals, overload, hordes, invasion, army, swamping, and storming, all of which were used throughout the debates. In the Age of Humanitarianism, the 1905 debate – when human mobility into the UK was restricted for the first time – was an outlier in its use of disparaging collective terms. Among the 23 derogatory collective terms used in this debate, Evans-Gordon (Conservative) was concerned that 'the East End of London was being swamped by aliens who were coming in like an army of locusts'[1006]. This debate was an outlier, and there were only a few similar references in subsequent debates until they reached a peak of 35 in 1968, when there was a particular emphasis on the flood, flow, or influx of Asians from Kenya. In 1993, at the start of the Age of Hostility, in a somewhat gruesome and graphic depiction, Allen (Labour) referred to the 'human drifts piling up on the EC's eastern border'[1007], and in 1996, Khabra (Labour), in a reference to Thatcher's 1978 speech, referred to the 'swamping of British culture by foreigners'[1008]. In 2014, Doyle-Price (Conservative) was concerned about a 'significant influx of Nigerians and Ghanaians'[1009], while in 2016, the focus shifted to the country being 'stormed' by migrants. In 2022, fears were expressed about a *tide* of illegal immigration, a *deluge* of asylum seekers, and people coming *en masse*, while in 2023, Sheppard (SNP) accused the government of inviting the public 'to regard migrants as some sort of amorphous collective menace and a threat

[1004] Stuart C McDonald (n855).
[1005] Tommy Sheppard (n855).
[1006] Major Evans-Gordon (n865).
[1007] Graham Allen (n858).
[1008] Piara S Khabra (n902).
[1009] Jackie Doyle-Price (n876).

to our way of life'[1010]. The collective terms used widely throughout the debates imply an uncontrollable natural disaster, something unwanted and extremely difficult to control. Many of them are watery disasters, e.g., there are references to a flood or a flow but none to other natural phenomena such as an avalanche. This could be specific to the UK as an island nation and the fact that refugees do need to cross water to enter the country. There are also military terms such as invasion or army, suggesting a fight, battle, or war. Not only are collective terms utilised to convey the size and uncontrollable nature of the issue, but they are also dehumanising – the 'small boats crisis' refers to the boats rather than the people in them – and deliberately detract from the fact that the matter being debated is about human beings.

Again, the 1905 debate is an outlier with 69 data segments coded to the 'descriptions of refugees: derogatory' code. Apart from this, references to this code were very low throughout the debates. In the 1905 debate, terms used to describe aliens included evil, diseased, criminal, penniless, poorest, unfit, insanitary, undesirable, refuse heap, dumping ground, residuum, burden, scum, derelicts, lunatics, and paupers, and, in 1919, they were referred to as the alien peril, the scum of the earth, muck, rubbish, and undesirable riffraff. It should be noted that while this language appears contrary to an Age of Humanitarianism, it is language from over a century ago and is indicative of a time when hate and racist speech was not subject to sanctions. In 1981, Proctor (Conservative) used the following analogy:

> A daschund born in a foxhound's kennel may remain a daschund, but he may feel himself to be more of a foxhound than a daschund, and if he remains long enough in the kennel may behave so much like a foxhound as to be accepted as such. That is acceptable, depending upon the number of daschunds and foxhounds'.[1011]

Proctor's daschund/foxhound analogy rather offensively compared the balance and mix of immigrants and citizens to different breeds of dogs. In 1988, Abbott (Labour) pointed out that, disturbingly, immigrants had been compared to 'a kind of plague or contagion'[1012]. Questioning the 'desirability' of immigrants, which was prevalent in the early twentieth century, has given way to questioning their status as genuine asylum

[1010] Tommy Sheppard (n880).
[1011] Harvey Proctor (n874).
[1012] Diane Abbott (n901).

seekers, and in the Age of Hostility, there has been a move away from describing asylum seekers in negative terms.

Throughout the debates, there were empathetic references to refugees and asylum seekers in terms of recognising that they are genuine and deserve compassion; acknowledging what they have been through; and that they can and do make a positive contribution to British society. Adjectives and terms used included genuine, bona fide, poor, unfortunate, vulnerable, desperate, disadvantaged, exploited, frightened, law-abiding, an asset, and not a danger. In 1905, many MPs recognised the contributions of aliens and their positive attitude, with Atherley-Jones (Liberal) noting that 'the alien is a hard-working, industrious person'[1013]. In 1987, Bidwell (Labour) pointed out that 'it is very likely that anybody who arrives without papers is a political refugee'[1014], and in 2006, Fisher (Labour) noted that 'the expression "illegal asylum seeker" is meaningless'[1015]. In the 2016 debate, Newlands (SNP) called migrants 'our foreign-born friends'[1016]; and in 2022, McDonald (SNP) stated that 'the vast majority of people crossing the channel are refugees'[1017]. In 2023, asylum seekers were recognised as vulnerable, genuine, and desperate, with Lucas (Green) reminding the House that they are 'real people with lives, hopes, families, and dreams'[1018].

Citizenship and immigration are issues which are closely linked, and this was evident from the parliamentary discussions. The issue of citizenship was mentioned in the 1947 debate when it was acknowledged that Polish servicemen and their families resettling in the UK would enjoy 'equal citizenship with all other members of our community'[1019] (Lipson, Independent). In the debate on the 1948 British Nationality Bill, a 'common citizenship'[1020] throughout the UK and Colonies, and the value that should be attached to such a status, was recognised (Ede, Labour). In the 1960s, this notion of common citizenship began to be eroded, although citizenship was a feature of the 1968 Commonwealth Immigrants Bill debate which centred around the Kenyan Asians. In

[1013] Atherley-Jones (n865).
[1014] Sydney Bidwell (n854).
[1015] Mark Fisher (n862).
[1016] Gavin Newlands (n877).
[1017] Stuart C McDonald (n855).
[1018] Caroline Lucas (n880).
[1019] Daniel Lipson, 1947 Polish Resettlement Bill, Hansard HC Deb vol 433 cc373-482, accessed 17/12/21.
[1020] James Ede (n895).

1981, citizenship was explicitly linked with the control of immigration: 'the Bill seeks to marry citizenship to the needs of immigration control'[1021] (Marshall, Labour), and in 1988, the elevated status of UK citizenship was emphasised: 'citizenship of our country is a great prize'[1022] (Gorman, Conservative). This statement implies that being 'allowed' to reside and settle in the UK should be viewed as a reward to be earned and not something to be taken for granted. Controlling the numbers being granted citizenship was a concern in the 2009 debate, and in 2022, the close relationship between citizenship and immigration was acknowledged as well as the expense and bureaucracy associated with applying for UK citizenship. In the 2023 debate, Cooper (Labour) pointed out that the Illegal Migration Bill would deny citizenship to people like Mo Farah[1023].

Race – in terms of race relations, racial discrimination, and racism – formed a large part of the debates, especially in the middle period from 1962 to 1981 and 1988 to 1996. In 1962, 26 MPs stated that the Bill was based on racial discrimination, while seven said there was no racial discrimination in the Bill. In 1968, there were five references to a multi-racial society, twelve to racial or colour prejudice, eight to discrimination, and twenty to racialism, with Mahon (Labour) stating, 'this Bill is a deplorable concession to racialism'[1024] and calling the Bill 'white man's treachery'[1025]. In 1971, there were 21 mentions of racialism or discrimination; twenty mentions of coloured or black immigrants; and eighteen mentions of race relations, with Callaghan (Labour) – clearly linking immigration and race – referring to an 'inflammatory tinder that lies around both immigration control and race relations'[1026]. In the 1981 debate, there were thirteen references to race relations, and 47 references to racism or (racial) discrimination, with Freeson (Labour) stating that, 'racial discrimination is tolerated and legitimised by successive immigration laws and practices'[1027].

In 1988, 31 references were made to racism or discrimination. Corbyn (Labour) made an early reference to the hostility of the Home Office, stating, 'because of the attitude of the Home Office the general atmosphere in which anyone seeking political asylum in

[1021] Jim Marshall (n874).
[1022] Teresa Gorman (n901).
[1023] Yvette Cooper (n880).
[1024] Peter Mahon (n887).
[1025] ibid.
[1026] James Callaghan (n872).
[1027] Reginald Freeson (n874).

Britain is one of unremitting hostility bordering on racism'[1028], and in the same debate, Abbott (Labour) claimed that 'immigration legislation has been used as a vehicle for people to air their racism'[1029]. In 1993, Simpson (Labour) said that 'black and migrant communities [were] being blamed for the economic failures of the countries in which they happen to be living'[1030], and in 1996, Widdecombe (a Conservative Minister in the Home Office at that time) pointed out that 'alarmism and scaremongering destroy good race relations'[1031]. Simpson's comment in 1993 acknowledged that black and migrant communities were being used as scapegoats, and in 1996, Widdecombe's statement pointed out that exaggeration and hysteria were damaging race relations.

In the debates in 2002, 2004 and 2007, references were made to the British National Party and the National Front, and in 2014 and 2016, MPs were concerned about the right to rent policy: 'what is proposed will lead to racial profiling in the letting of properties that could end up on a scale reminiscent of the 1950s'[1032] (Alexander, Labour); and, in a reference to the situation in the 1950s when discriminatory signs would be placed in lodgings' windows, '"No Irish, no blacks, no dogs." We forget that at our peril.'[1033] (Lammy, Labour). In 2022, McDonnell (Labour) stated, 'this Bill institutionalises further racism in our asylum and immigration system'[1034], and in 2023, the government were accused of 'xenophobia and racism'[1035] (Mahmood, Labour) and of 'pandering to racists'[1036] (Begum, Labour). As we see, many concerns were expressed by politicians that the legislation being introduced was racist and that it would adversely affect race relations: these were particularly prevalent from 1962 onwards, that is, in the Ages of Hesitancy and Hostility.

In contrast to these accusations of racism, there were also various references to compassion, humanity, humanitarianism, and moral duty or obligation throughout the debates. Compassion was shown toward specific refugees: Asians from Kenya in 1971; Ugandan Asians and Vietnamese boat people in 1981; and Vietnamese, Chileans, and

[1028] Jeremy Corbyn (n901).
[1029] Diane Abbott (n901).
[1030] Alan Simpson (n858).
[1031] Ann Widdecombe (n902).
[1032] Heidi Alexander (n876).
[1033] David Lammy (n876).
[1034] John McDonnell (n855).
[1035] Khalid Mahmood (n880).
[1036] Apsana Begum (n880).

'individuals coming from behind the Iron Curtain'[1037] (Hurd, Conservative) in 1987. In 1993, Greenway (Conservative) said that there were 'compelling moral imperatives for a Christian country such as ours to help asylum seekers'[1038]. In 1999, Stinchcombe (Labour) and Clappison (Conservative) both stated that 'we cannot become a "walk-on-by society"'[1039] [in other words, we cannot sit by and do nothing], and in 2004, Malins (Conservative) described the UK as a 'a beacon of humanity and decency to the rest of the civilised world'[1040]. In the 2022 debate, nineteen MPs mentioned compassion and six referred to a moral obligation, and in 2023, twenty MPs referred to the UK as being fair, compassionate, kind, and/or generous.

References were made throughout the debates to the UK's tradition, proud history, or proud record of providing asylum or a safe haven to asylum seekers and refugees. From 1905 up to 2023, mentions were made of hospitality, pride, tradition, reputation, fair play, open door, honour, decency, generosity, tolerance, our record, heritage, and long history. In 1962, Butler (Conservative) remarked 'this country has probably as noble and as good a record in introducing refugees to our shores as any other country'[1041] and in 1971, Maudling (Conservative) referred to the UK as an 'example to the rest of the world'[1042]. In 1987, there were ten mentions of tradition and eight of the UK's record or history of accepting political asylum seekers and other refugees. In that debate, Bermingham (Labour) called the UK 'the hub of a civilised society that catered for the revolutionary who had fled his native state'[1043]. In 1996, Straw (Labour) described Britain as a 'beacon of liberty'[1044] and Alton (Liberal Democrat) referred to 'an ancient duty that stretches back 3,500 years'[1045]. In 2002, Coaker (Labour) referred to the 'principles of fairness and tolerance for which this country is famous'[1046] and in 2016, Jackson (Conservative) described the UK as 'a beacon of hope across the world'[1047]. In 2022, there were 26 references to pride, being proud, or having a proud history, tradition,

[1037] Douglas Hurd (n854).
[1038] Harry Greenway (n858).
[1039] Paul Stinchcombe, James Clappison (n856).
[1040] Humfrey Malins (n913).
[1041] R A Butler (n866).
[1042] Reginald Maudling (n872).
[1043] Gerald Bermingham (n854).
[1044] Jack Straw (n902).
[1045] David Alton (n902).
[1046] Vernon Coaker (n856).
[1047] Stewart Jackson (n877).

or record, with Davison (Conservative) stating, 'from the Kindertransport to the Bosnian genocide, the UK has a proud history of welcoming people fleeing war and persecution, and we should be proud of our reputation as a tolerant nation holding out its arms to the most vulnerable'[1048]. As we see from these statements, politicians from all political parties tended to make statements about the UK's proud history or tradition of helping people in need. These often preceded the introduction of punitive or restrictive measures.

Throughout the debates, there were various references to human rights, both in the context of protection of human rights and possible violations of them. References were made to human rights, individual freedoms, political rights, and civil liberties. The first notable mention of human rights was in the 1968 debate on the Commonwealth Immigrants Bill, when Foot (Labour) was concerned that, despite it being Human Rights Year, 'we are not expanding human rights, but taking them away'[1049], and in the 1996 debate, Cunningham (SNP) claimed that 'we are creating groups of people with no apparent rights'[1050]. Unsurprisingly, there were many references to human rights in the 1998 Human Rights Bill debate, with 75 MPs referring to human rights and a further seven to bringing British people's rights home. Straw (Labour) stated, 'bringing these rights home will mean that the British people will be able to argue for their rights in the British courts'[1051], and Howarth (Conservative) said that 'we are one of those nations – if not the nation – that have led the way in promoting human rights'[1052]. In the Anti-Terrorism Bill debate of 2001, there were twenty references to human rights, with Key (Conservative) saying, 'imprisonment without charge or trial is a violation of fundamental human rights'[1053]. In the 2022 debate, Cherry (SNP) accused the Bill of creating 'a two-tier system for refugees, which potentially breaches the right to be free from discrimination and enjoyment of one's human rights'[1054]. In 2023, fifteen MPs expressed concerns that the Bill was a breach of human rights: 'it tramples all over human rights'[1055] (McDonald, SNP); 'rides roughshod over human rights'[1056] (Lucas,

[1048] Dehenna Davison (n855).
[1049] Dingle Foot (n887).
[1050] Roseanna Cunningham (n902).
[1051] Jack Straw, 1998 Human Rights Bill, Hansard HC Deb vol 306 cc767-866, accessed 18/12/21.
[1052] Gerald Howarth (n1051).
[1053] Robert Key (n931).
[1054] Joanna Cherry (n855).
[1055] Stuart C McDonald (n880).
[1056] Caroline Lucas (n880).

Green); allows the Government to 'commit flagrant human right abuses'[1057] (Tarry, Labour); and denies refugees 'their most fundamental human rights'[1058] (McDonald, Labour) were some of the substantial accusations levelled at the government in terms of the legislation being a violation of human rights.

It can be seen from this that politicians use negative terminology to describe refugees and asylum seekers, both as an issue to be dealt with (terms such as 'problem', 'emergency', 'crisis') and as groups of arrivals. Collective terms are used metaphorically in terms of refugee arrivals to portray them either as an uncontrollable natural disaster (e.g., 'tide', 'flood', 'wave') or as a military invasion (e.g., 'army', 'hordes'). On the other side of the coin, MPs sometimes use compassionate and sympathetic language, often before introducing or acknowledging the need for restrictive legislation. This runs alongside the 'proud history' discourse – a positive presentation of the British nation as proud protectors of people in need – which often precedes the introduction or justification of punitive measures. Citizenship and race, both in terms of maintaining good race relations and the potential for racial discrimination in the legislation, are themes running through these debates. There is no discussion on immigration without an associated conversation on race. Overall, there is a tendency for politicians to use positive language when referring to themselves and the British nation – the 'proud history' rhetoric – and negative language when describing refugees and asylum seekers, both in terms of derogatory terms for groups of arrivals and for the issue of asylum.

Apart from an outlier of negative terms used in 1905, the use of derogatory language around refugees began near the start of the Age of Hesitancy, specifically in 1968. This coincided with the debate on Kenyan Asians arriving into the UK. From this point on, the use of terms such as problem, threat, and crisis to describe the issue of asylum, and flow or flood to portray asylum seeker arrivals increased incrementally throughout the Ages of Hesitancy and Hostility. Parallel to this, the use of positive terminology has also increased throughout these two periods. The compassionate language is used in conjunction with the 'proud history' discourse to offer sympathy towards refugees, often before the introduction of hostile measures. References to human rights also began from 1968 onwards, and, sparked by high levels of Commonwealth immigration, politicians

[1057] Sam Tarry (n880).
[1058] Andy McDonald (n880).

linked race with immigration from the start of the Age of Hesitancy, that is, from 1962 onwards. The incremental increases in the use of derogatory language portray an anti-immigration sentiment which is a contributing element in the construction of the hostile environment. This shows that UK law-making on asylum and immigration *is* indeed impacted by the values and principles of decision-makers.

8.4 Conclusions

The content analysis of the 'hostile and 'non-hostile' categorisations of the coded data provides rudimentary evidence of increasing hostility over the whole time period from 1905 to 2023, thus contributing to the notion of the temporal construction of the hostile environment. In terms of absolute numbers, the number of hostile data segments – remarks, comments, language use, opinions, references to repressive policies and practices, linking asylum and immigration with other 'problems' such as housing shortages or backlogs at the Home Office – has increased over the whole time period, and the number of non-hostile comments has also increased very slightly. There is positive 'net hostility' in all debates except 1948 and 1998 and this has increased over time. In conjunction with this, the proportion of comments which are hostile has increased, while the proportion of non-hostile comments has very slightly decreased.

In terms of actual numbers, there is an increase in the number of hostile comments as well as a very slight increase in the number of non-hostile comments over the period under review from 1905 to 2023; in terms of all coded data, there is an increase in the proportion of comments which are hostile and a very slight decrease in the proportion of non-hostile comments over the whole time period; and there is positive 'net hostility' in all debates except the 1948 British Nationality Act and the 1998 Human Rights Act debates. The three periods of time identified as significant in the development of the legislation, that is, the Ages of Humanitarianism, Hesitancy, and Hostility, paint three different pictures. In the Age of Humanitarianism, except for 1905, the numbers of hostile and non-hostile comments were low and similar. This changed in 1962, the start of the Age of Hesitancy. Throughout this middle period, the number of comments in both categories were fairly consistent, but the hostile comments far outweighed the non-hostile ones. The Age of Hostility shows variation in and much higher levels of hostility,

with a steep increase and numerous hostile comments in the last four debates, that is, 2014, 2016, 2022, and 2023.

In terms of discourse historical analysis, UK law-making on asylum and immigration appears constrained by domestic party politics. As part of the 'pantomime' of parliament, politicians have a tendency to criticise the legislation under debate, the serving government, and increasingly, the Home Office. The introduction of increasingly hostile legislation is part of UK party politics as politicians regard 'clamping down' on asylum and immigration as a legitimate electioneering claim.

UK law-making on asylum and immigration does take account of international norms and influences but only up to a point: recently, increasingly hostile legislation has been accused of potentially breaching international legal instruments. While there is acknowledgement of asylum as a global issue which warrants international cooperation, there is increasing concern that the UK does not have international agreements in place.

UK law-making on asylum and immigration is limited by domestic issues and constraints. Immigration control and the consequences of asylum seekers and refugees *on the UK* rather than their support and protection is the dominant discourse. As part of the construction of the hostile environment, immigration is associated with a range of domestic matters including lack of housing, school places, and GP appointments.

UK law-making on asylum and immigration is impacted by the values and principles of decision-makers. While the 'proud history' discourse, alongside positive descriptions of refugees, is used by politicians to convey their empathy toward the plight of asylum seekers, this runs parallel with the introduction of increasingly restrictive measures, which contributes to the temporal construction of the hostile environment.

Chapter 9:

General Election Manifestos:

Content Analysis and Discourse Historical Analysis

9.1 Introduction

Having analysed the discursive constructions that have driven parliamentary legislative debates on migration, this chapter explores what can be considered the starting point in the legislative process: election manifestos which pledge parties' future policy and legislative commitments. The chapter follows a similar methodology to the analysis of the parliamentary debates. In doing so, it is also informed by a sizeable political science research which has taken UK political party manifestos as its data corpus[1059]. While there have been some studies of election manifestos on the salience and development of particular issues, such as transport and education policy[1060], none have tracked levels of hostility in the manifestos over time with respect to pledges made regarding asylum and immigration. Perhaps most relevant is March's 2017 study of British left and right populism, which focused on the manifestos of six British political parties – two mainstream parties of the left and right (Labour and Conservative), two populist radical left parties (Scottish Socialist Party and Respect), and two populist radical right parties (BNP and UKIP) – from 1999 to 2015[1061]. His methodology is similar to the methodology used here: 'a novel two-stage measurement technique'[1062], comprising 'a classical content analysis followed by a qualitative analysis of party manifestos'[1063]. Similarly, Kiratli carried out a discourse analysis of UK political party manifestos[1064], where he used qualitative discourse analysis as corrective to 'content analysis relying on

[1059] Jonathan Charteris-Black, 'Britain as a Container: Immigration metaphors in the 2005 election campaign' (2006) 17(5) Discourse and Society 563-81; Gordon Dobson, 'The Textual Representation of a Political Paradigm Shift: A Critical Discourse Analysis of Two Election Manifestos' (2007) Vol.1 WoPaLP 99-124.

[1060] Paul Chaney, 'Mixed-methods analysis of political parties' manifesto discourse on rail transport policy: Westminster, Scottish, Welsh and Northern Irish elections 1945-2011' (2014) 35 Transport Policy 275-85; Michael Pearce, 'The marketization of discourse about education in UK general election manifestos' (2004) 24(2) Text & Talk 245-65.

[1061] Luke March, 'Left and Right Populism Compared: The British Case' (2017) 19(2) The British Journal of Politics and International Relations 283.

[1062] ibid.

[1063] ibid 284.

[1064] Osman Sabri Kiratli, 'Political discourses on Europe and European integration in national election manifestos and party programmes' (2015) 29(2) Cambridge Review of International Affairs 640.

hand or computer coding systems, a primary example of the former being the Comparative Manifestos Project (CMP)'[1065] that can be subject to limitations including 'overlapping and missing categories, dubious comparability of manifestos, … and potential biases and mistakes of human coders'[1066]. Building on these insights, and in line with my overall constructivist approach, I employ both content analysis and discourse analysis, in the same way they were combined in the previous chapter, to examine the discourse of the manifestos from the election campaigns of 1900 up to 2019, to assess how this has contributed to the temporal construction of the hostile environment.

Perhaps the most important finding overall is the dearth of references to immigrant(s) and immigration except for the last three decades. It appears that immigration became an electoral issue from 2005 onwards with a peak in numbers of references in 2015, coinciding with the Brexit campaign. Asylum became a separate election issue from 2001 onwards, which was when asylum applications rose dramatically in the UK. References to the border(s) began in 2005 with a peak of numbers (especially in the Liberal Democrat manifesto) in 2015, coinciding with the European 'migrant crisis'. There were very few references to refugees in any manifestos except in the two most recent elections, in 2017 and 2019, which followed both the European 'migrant crisis' and the Brexit referendum.

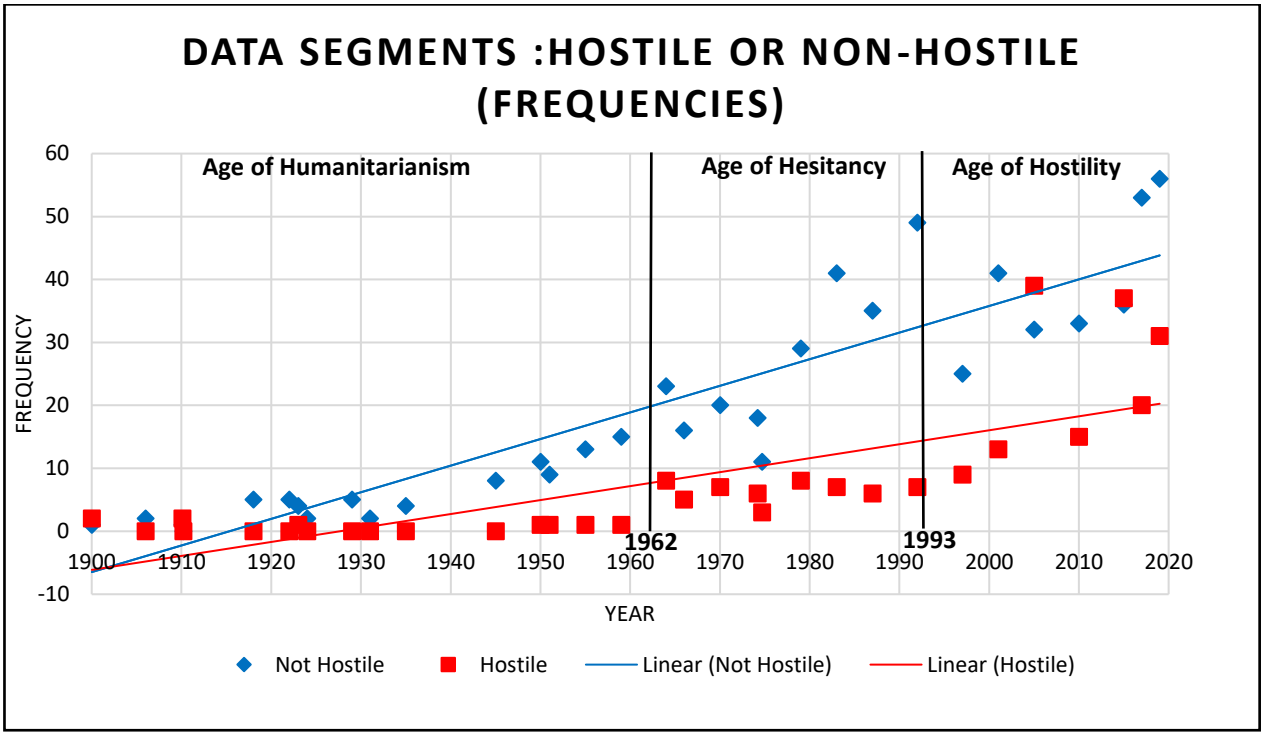
9.2 Content Analysis: Hostile or Non-hostile?

The definitions of hostile, non-hostile and N/A categories for the election manifestos are the same as those used for the parliamentary debates. Examples include 'we will strengthen the enforcement of immigration rules'[1067] (categorised as hostile); 'a Labour government will establish a humane immigration system and end the 'hostile environment''[1068] (non-hostile); and 'we now propose to review the law relating to citizenship'[1069] (N/A).

[1065] ibid.
[1066] ibid.
[1067] Conservative Manifesto 2015, 'Strong Leadership, A Clear Economic Plan, A Brighter More Secure Future'.
[1068] Labour Manifesto 2019, 'It's Time for Real Change'.
[1069] Labour Manifesto 1970, 'Now Britain's Strong – Let's Make It Great to Live In'.

Numbers of data segments allocated to each of the hostile/non-hostile categories for each code and for each election manifesto were recorded, and graphs show the general trends. Figure 9.1 shows the absolute numbers of data segments classified as either hostile or non-hostile in the general election manifestos from 1900 up to 2019.

Figure 9.1: Graph Showing Frequencies of Data Segments Categorised as Hostile or Non-hostile in Each Manifesto



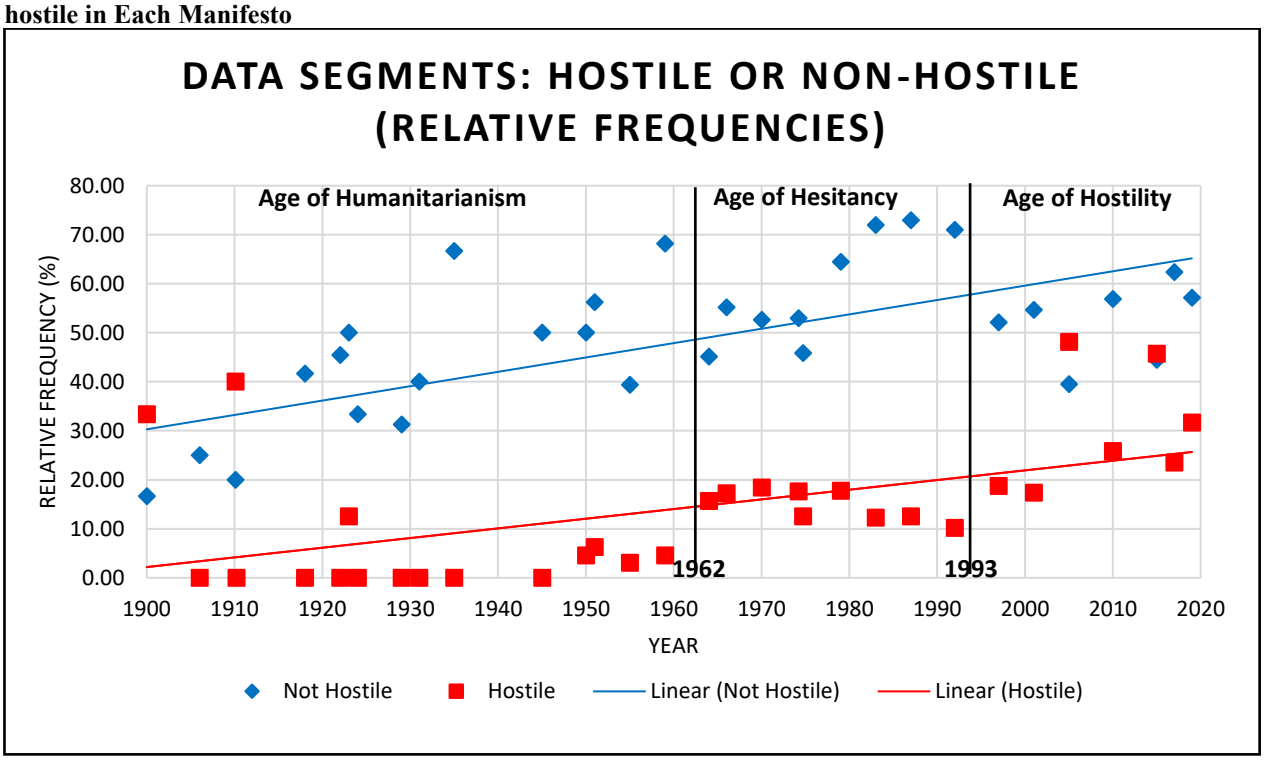
This graph paints a different picture to the one portraying the hostility and non-hostility of the parliamentary debates. The non-hostile statements outnumber the hostile ones in almost every manifesto, the only exceptions being the elections in 1900 and January 1910 (both had just one non-hostile statement and two hostile), 2005 (32 non-hostile statements and 39 hostile), and 2015 (36 non-hostile statements and 37 hostile). While there is some variation in both hostile and non-hostile data from manifesto to manifesto, linear trend lines have been superimposed onto the graph to provide a general indication of the tendency to hostility. Variations aside, there is a general increase of hostility over the whole period under review (the gradient of the 'hostile' trend line is approximately 0.2) with large absolute numbers of hostile comments in the manifestos in 2005, 2015, and 2019. The absolute numbers of data segments deemed to be 'non-hostile' are higher than the hostile ones and are also increasing at a higher rate (gradient is approximately 0.4). So, although there is increased hostility over time, there is increased non-hostility

at twice the rate. This can partly be accounted for by the fact that the manifestos are now much larger documents and hence there are more coded statements overall. However, the important point to note is that the gap between the numbers of non-hostile and hostile statements has widened over time. In other words, there are relatively more non-hostile statements in relation to asylum and immigration in the manifestos over time. This is a key finding as it contradicts the results found in the parliamentary debates, thus suggesting that the hostile environment has been driven more by parliamentarians than by what the political elite believes the electorate wants. Indeed, it could be a recognition of a silent non-hostile majority in the electorate running alongside a louder parliamentary anti-immigration minority.

The graph has been divided into the three broad ages identified in the doctrinal analysis of the legislation: Ages of Humanitarianism, Hesitancy, and Hostility. In the Age of Humanitarianism pre-1962, there were virtually no hostile statements made in any of the manifestos. Non-hostile statements were consistently higher and gradually increased throughout this period. The numbers of hostile statements were still in single figures throughout the middle era, with the number of non-hostile data segments consistently higher and steadily increasing apart from a dip in October 1974. Hostile statements increased in the Age of Hostility with peaks in 2005, 2015, and 2019, and dips in 2010 and 2017. Non-hostile statements dipped in 1997, 2005, and 2010, but sharply rose in 2017 and 2019.

Figure 9.2 shows the relative frequencies of the hostile and non-hostile statements. Like the parliamentary debates data, these have been calculated as percentages: the number of hostile or non-hostile comments as a percentage of all coded data segments in that general election. As data segments classified as N/A have been ignored for these graphs, the two relative frequencies tend to add up to less than 100%.

Figure 9.2: Graph Showing Relative Frequencies of Data Segments Categorised as Hostile or Non-hostile in Each Manifesto



Proportionally, the number of non-hostile statements in the manifestos tends to be above the hostile ones by some margin, the only exceptions being the elections in 1900, January 1910, 2005, and 2015. This is completely contrary to the picture painted in the parliamentary debates where the proportion of hostile comments tended to outweigh the proportion of non-hostile ones. Considering the whole time period under review, there were increases both in the proportion of coded data segments which are hostile (gradient of the trendline is 0.2) and those categorised as non-hostile (trendline gradient is 0.3). Not only are the statements coded as non-hostile consistently higher in absolute terms, but they also comprise a higher proportion of the coded manifesto data segments relating to immigration and asylum.

In the earliest era from 1905 to 1962, there was some variation at the turn of the century before both categorisations evened out, albeit with the proportion of non-hostility higher than that of hostility. In the middle era, there was a reasonably consistent differential between the proportion of hostile comments (varying between 10% and 18%) and the much higher proportion of non-hostile ones (fluctuating between 45% and 72%). In the final period post-1993, there was much more variation in the proportions of both categorisations with the proportion of hostile statements above the non-hostile ones in

2005 and very similar percentages in 2015. This graph indicates higher levels of non-hostility relative to hostility throughout the period, as well as increases in the proportions of both hostility and non-hostility over time. This relative frequency graph reinforces the picture painted in the previous graph, that is, a higher proportion of non-hostility relative to hostility.

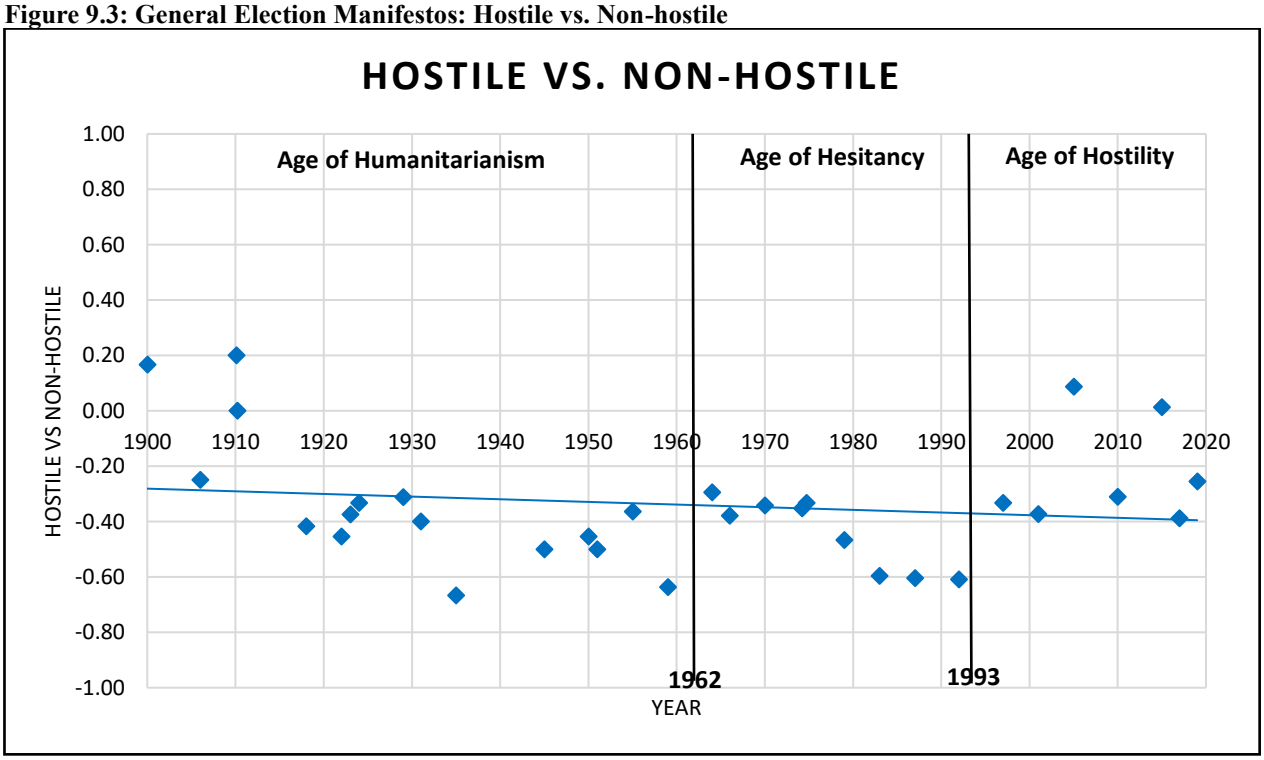
In accordance with the parliamentary debates content analysis, I allocated numerical values to this data to compare the levels of hostility election by election. Non-hostile comments were coded as -1 and hostile comments were coded as 1. Based on these numerical values, I calculated weighted averages for the hostile and non-hostile comments in each general election. The weighted average calculations for each election were as follows:

$$\text{Weighted Average} = \frac{(N_H \times 1)+(N_N \times -1)}{T}$$

where N_H is the number of comments coded as hostile; $N_N$is the number of comments coded as non-hostile; and T is the total number of coded comments in that general election.

The results are shown in the following graph.

Figure 9.3: General Election Manifestos: Hostile vs. Non-hostile



This graph indicates that there was 'net non-hostility' in all general elections except at the start of the period under review (the manifestos for these elections in 1900 and January 1910 were very short and comprised just one non-hostile statement and two hostile statements in each) and at the end when there was very slight net hostility in 2005 and 2015. These are the only instances where the graph rises above zero: in all other election years, the graph is significantly below zero, indicating substantial levels of non-hostility in the manifesto literature. There is a slight downward trend of hostility throughout the period, indicating decreasing net hostility over time. Although there is increased hostility in the third era – the Age of Hostility – this period still shows net non-hostility in most general elections. The overall picture in the general election manifestos is of net non-hostility, the exact opposite of the parliamentary debates, which displayed net hostility. The graph reinforces the contradictory picture of the general election manifestos compared with the parliamentary debates. Trying to appeal to a broad electorate, political parties tend to portray a compassionate perspective in their election literature, contrary to the negative rhetoric of the parliamentary debates. This suggests that the hostile environment has been constructed more by the MPs themselves rather than by what they believe the public wants. It should be noted, however, that election manifestos are a political party's advertisement for office, portraying themselves in their best light and trying to appeal to all facets of society. Once in government, the party in power does continue with restrictive policymaking.

9.3 Hostility and Non-hostility: A Comparison by Party

In terms of the numbers of laws, Table 9.1 below shows how the 26 pieces of relevant legislation which have been introduced in the UK can be broken down by party and by age of development.

Table 9.1: Number of Laws Introduced Split by Party and by Ages of Development

Party	Age of Humanitarianism, 1900 to 1962	Age of Hesitancy, 1962 to 1993	Age of Hostility, 1993 to 2023	Total
Coalition	1	0	0	1
Liberal	2	0	0	2
Labour	2	1	9	12
Con-Lib Dem	0	0	1	1
Conservative	0	5	5	10
Total	5	6	15	**26**

Of these 26 Acts, just two – the 1948 British Nationality Act and the 1998 Human Rights Act – can be said to be compassionate pieces of legislation. The 1948 Act granted all citizens from any country in the British Empire the right to enter the UK free from immigration control, while the 1998 Act brought the European Convention on Human Rights into UK law. The purpose of the other 24 was to introduce restrictive measures in relation to asylum, immigration, and border control. Both the 1948 Act and the 1998 Act were introduced under a Labour government. In summary, the Conservatives have introduced eleven restrictive Acts (including one under the Con-Lib Dem coalition) while Labour have introduced ten (twelve Acts in total minus the two just mentioned), nine of which were brought in under New Labour in the Age of Hostility. The temporal construction of the UK's hostile environment can at least partly be explained by the fact that there has been no effective opposition to the imposition of hostile measures. In fact, quite the opposite: when Labour were in power, they continued and expanded the hostile measures introduced under the Conservatives. *Both* main political parties in the UK have introduced a series of increasingly restrictive legislation when they have been the party in government.

That said, the graphs mapping levels of hostility and non-hostility for the three parties over the three ages of development (Figures 9.4 to 9.7 below) show that the Conservative party has consistently been the most hostile party, followed by Labour, then the Liberal Democrats. The levels of hostility in these graphs were based on the discourse of the party manifestos in which election pledges and statements related to asylum and immigration were categorised as either hostile or non-hostile (or N/A for this categorisation). While it could be argued that it is easier to promote compassion and empathy in opposition, the fact that the most hostile party – the Conservative party – has been the party in government for the majority of the time period under review could be a contributing factor in the development of the UK's hostile environment. A more compassionate and liberal political party may have advocated for a more compassionate asylum regime. However, as we have seen, when the Labour party were in government, they did not revoke any previous restrictive legislation. Moreover, over the thirteen years when New Labour were in power, they continued and expanded the Conservative's restrictive hostile environment policies.

Delving further into the party politics, I extended my content analysis of the election manifestos to examine the manifestos party by party. This produced the following two graphs showing levels of hostility and non-hostility in the three parties' manifestos. Levels of hostility/non-hostility were derived from the coded election data which categorised each coded statement as either hostile or non-hostile (or N/A). Figure 9.4 shows frequencies of hostile statements made in each of the party manifestos over the three ages of development, and Figure 9.5 shows frequencies of non-hostile statements. (Note that although the frequencies of statements cannot be negative, the vertical axes do dip below zero because of the trendlines being superimposed onto the graphs.)

Figure 9.4: Frequencies of Hostile Statements in Each Election Manifesto Split by Party

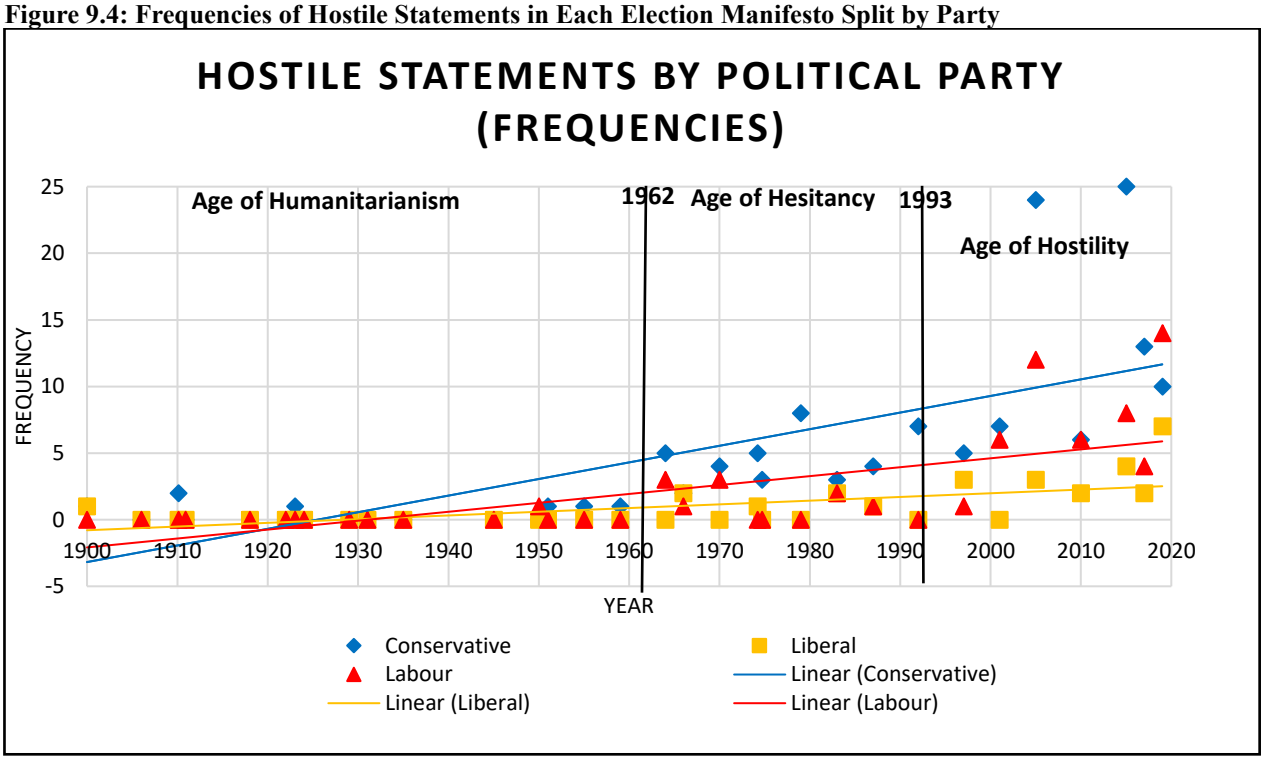
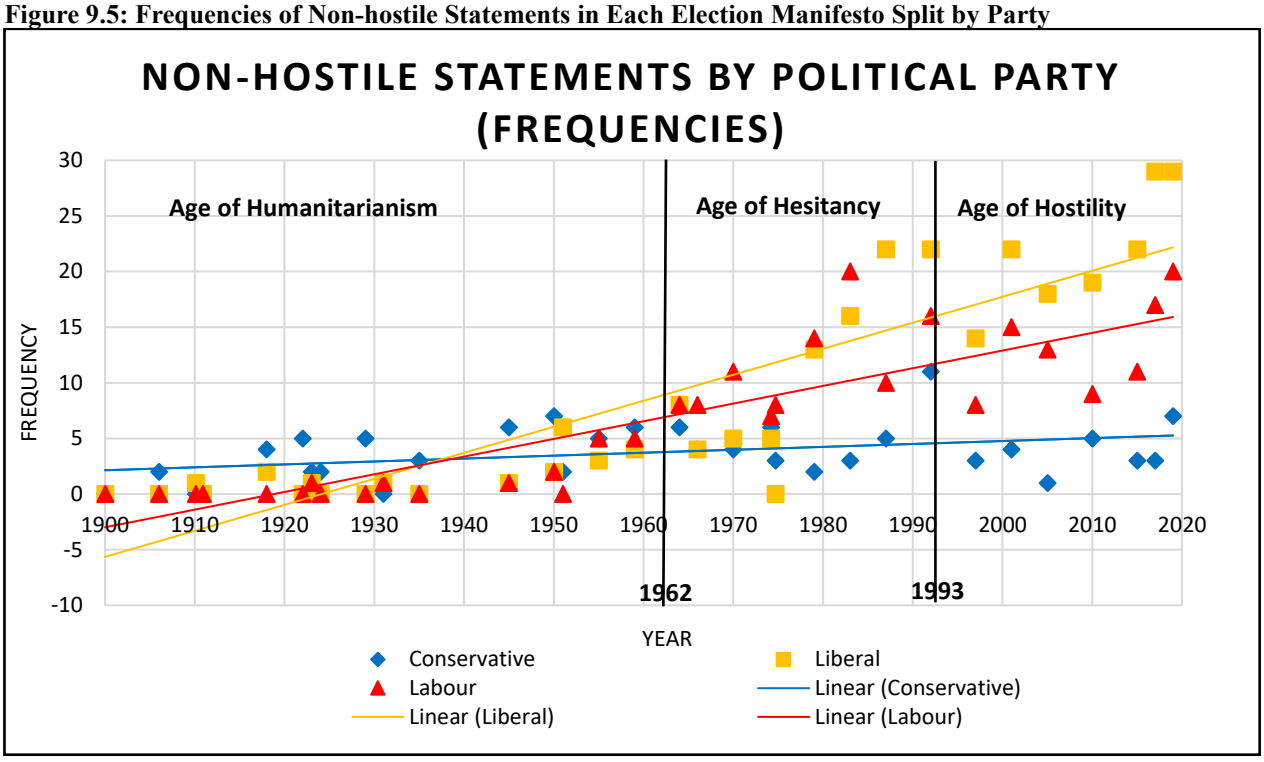


Figure 9.5: Frequencies of Non-hostile Statements in Each Election Manifesto Split by Party



It is clear from the graphs that the numbers of both hostile and non-hostile comments have increased over time. This is partly due to the fact that manifestos have become much larger documents and thus the numbers of coded data segments have increased overall.

Looking at both graphs, we can see that there were very small numbers of coded statements – both hostile and non-hostile – for all three parties in the Age of Humanitarianism. In the Age of Hesitancy, the numbers of hostile comments were still low, although there are now slightly more in Conservative manifestos. In the same period, numbers of non-hostile statements are increasing for all three parties, in particular Liberal, closely followed by Labour. There were many more coded statements in the Age of Hostility for all three parties. Conservative manifestos were particularly hostile in 2005 and 2015 (pledging to withdraw from the Refugee Convention in 2005 and to scrap the Human Rights Act in 2015), and their non-hostile comments remained steady and low throughout this period, thus contributing to an increased differential between hostility and non-hostility in their manifestos. Liberal Democrat and Labour manifestos both saw increasing non-hostile comments, especially from 2010 onwards, and higher numbers of hostile comments in 2019.

In general, the numbers of both hostile and non-hostile statements increased for all three parties over the whole time period under review. However, hostility in Conservative manifestos increased at a rate four times higher compared with non-hostility (gradients of trendlines were 0.12 for hostility and 0.03 for non-hostility). While Liberal hostile comments increased slightly (gradient of trendline was 0.03), non-hostile comments increased at nearly eight times this rate (trendline gradient was 0.23). Labour hostility also increased but non-hostility increased at more than twice the rate (gradient of 'hostility line' is 0.07 compared with 0.16 for non-hostility). So, in Conservative manifestos, levels of hostility increased at a much higher rate than levels of non-hostility, while the opposite is true for Labour and Liberal: in their manifestos, levels of non-hostility increased at a higher rate than hostility. The general picture overall for hostile comments is that the Conservative manifestos were most hostile followed by Labour in the middle then Liberal. This is mirrored in the non-hostility graph which shows the Liberal party as least hostile (that is, most non-hostile comments) then Labour in the middle and lastly Conservative as most hostile (that is, with the least number of non-hostile comments). It would appear that the Conservatives are increasingly presenting themselves as the 'anti-immigration' party while both Labour and the Liberal Democrats are portraying themselves – to the electorate, at least – as more compassionate to this issue.

To take account of the fact that general election manifestos became much larger documents, I have also considered *relative* frequencies (that is, the number of data segments coded as hostile or non-hostile as a percentage of the total number of coded segments in that party manifesto) rather than actual frequencies. The fact that election manifestos have become much larger does not necessarily reflect the salience of immigration as an electoral issue: the picture is much more nuanced. Throughout the Age of Hostility, a monthly poll by Ipsos has tracked public views on immigration by asking people to name the most important issue(s) facing the nation, and in the year before the EU referendum, from June 2015 to June 2016, immigration was the most salient issue, peaking at 56% in September 2015[1070]. This compares with less than 5% in 1994 when this data series began[1071]. Following the Brexit referendum, there was a

[1070] 'UK Public Opinion toward Immigration: Overall Attitudes and Level of Concern', The Migration Observatory, accessed 10/09/24.
[1071] ibid.

decline in the salience of immigration as an issue until 2022 at which point it started gaining prominence once more[1072].

Figure 9.6: Relative Frequencies of Hostile Statements in Each Manifesto Split by Party

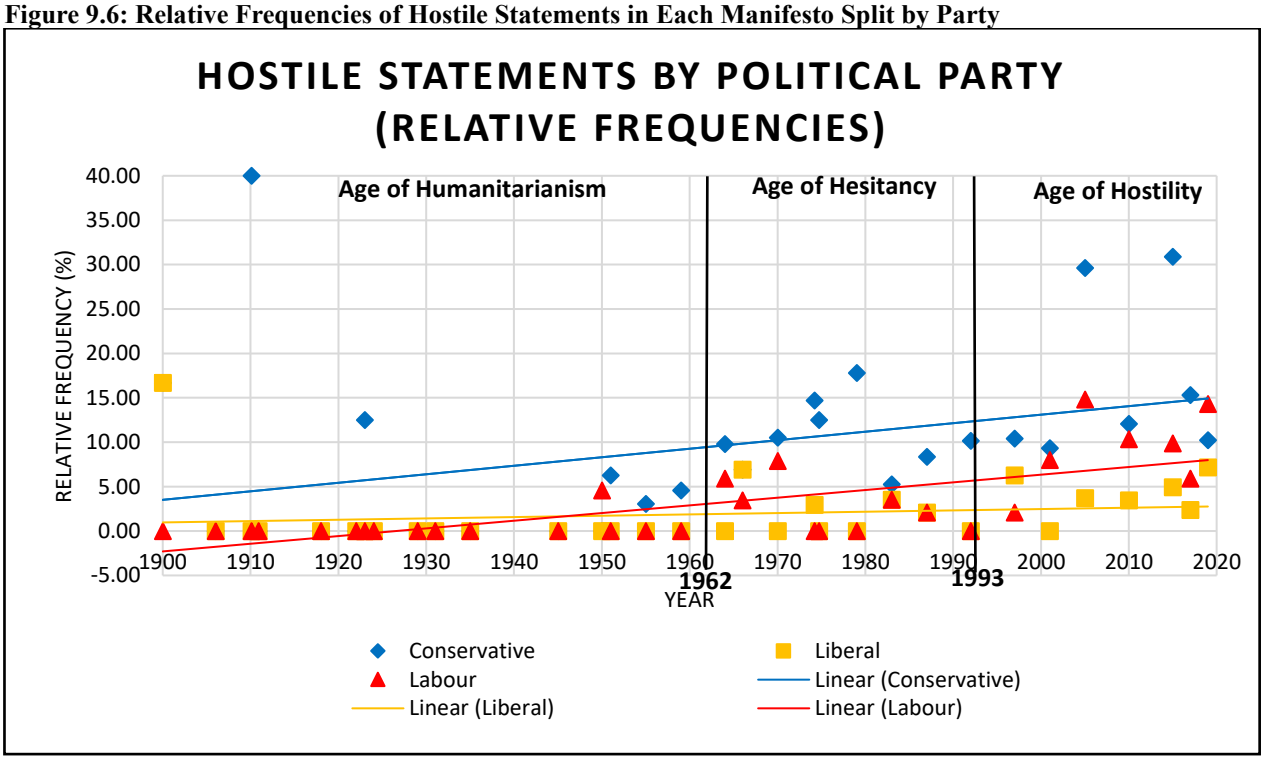
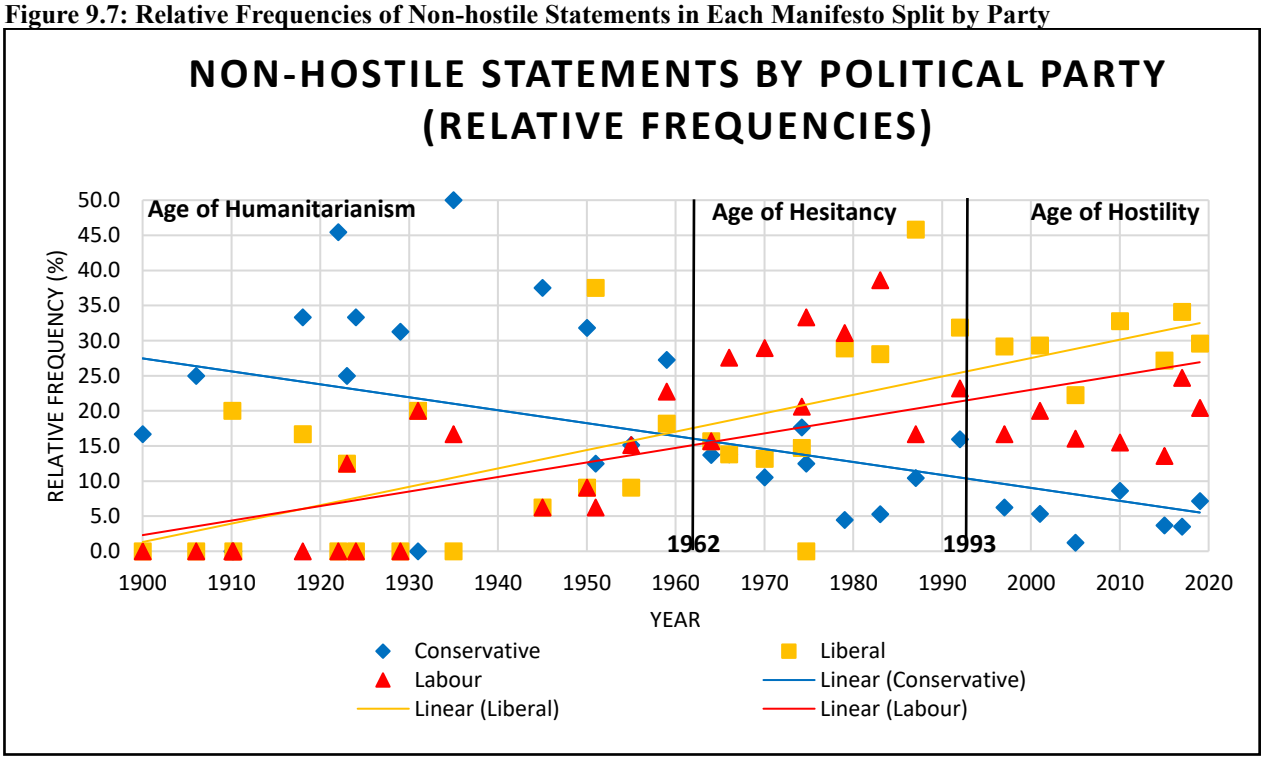


Figure 9.7: Relative Frequencies of Non-hostile Statements in Each Manifesto Split by Party



[1072] ibid.

The picture painted by the relative frequency graphs (Figures 9.6 and 9.7) reinforces that in the actual frequency graphs (Figures 9.4 and 9.5). The proportion of statements that are hostile has increased for all three parties, albeit at a higher rate for the Conservatives (gradient of trendline is 0.10), closely followed by Labour (trendline gradient is 0.09), and lastly Liberal with just a very slight increase overall (gradient is 0.02). The non-hostile proportionality graph paints a much more muddled picture. The percentage of non-hostile statements fluctuates wildly for all three parties in all three ages of development. However, fluctuations aside, the overall trend for the proportion of *non-hostile* statements in manifestos is decreasing for the Conservatives (trendline gradient is -0.18) and increasing for both Liberal and Labour at roughly the same rate (trendline gradients are 0.26 and 0.21 respectively). This reinforces that, according to the discourse of their election manifestos, the Conservative party does appear to be the most hostile party, with levels of hostility increasing over time.

In general, the discourse around immigration and asylum tends to be more sympathetic to the plight of refugees in Labour and Liberal manifestos than in Conservative manifestos. Conservative manifestos refer to the importance of the control and management of immigration and asylum; Liberal and Labour refer to moral obligations towards asylum seekers. While the Conservatives have threatened to scrap the Human Rights Act and withdraw from the ECHR, Labour and the Liberal Democrats have consistently supported these legal instruments. Of the whole 124 years under review (January 1900 to December 2023), a Conservative or a Conservative-led government has been in power for 80 years, that is, 65% of the time. The fact that there has not been a more compassionate party in government throughout this time could be a factor in the development of the UK's hostile environment. Furthermore, despite the less-hostile rhetoric of both Labour and the Liberal Democrats, there is no effective opposition to the introduction of increasingly restrictive measures, and this at least partly accounts for the development of the UK's hostile environment.

9.4 Categories of Related Codes: Initial Observations

Below are some initial observations for each of the six general election manifestos categories. This is examined in more detail in the discourse analysis of the manifestos.

- **Category 1: International Issues**

Overall, 490 data segments were coded to the international issues category, equating to 44% of all coded data segments and ranking it in first place. The codes international cooperation, international institutions, the Commonwealth, and overseas aid are all included in this category, with 43% of the data classified as non-hostile and just 2% as hostile. There were numerous references to international cooperation and international institutions throughout the election manifestos from 1900 up to 2019, and both these codes have upward general trends. Manifestos refer to the need for international cooperation in relation to peace, stability, security, east and west relations, shared responsibilities, the Commonwealth, Europe, and the United Nations. In 2017, both Labour and the Liberal Democrat manifestos referred to the need to work with international partners to address the 'refugee crisis'. There were several references to honouring the UK's commitment to the Refugee Convention, although the 2005 Conservative manifesto pledged to 'withdraw from the 1951 Geneva Convention'[1073]. The Commonwealth code is the only code in the manifestos data corpus to have a downward trendline, indicating a decrease in references to the Commonwealth over time. There were various mentions of overseas aid in the Ages of Hesitancy and Hostility with all three parties pledging their commitment to providing overseas aid. Primarily from the legacy of Empire, the focus of overseas aid in the first half of the Age of Hesitancy was the Commonwealth – 'throughout the years 1958 to 1971 at least 80% of British aid was channelled bilaterally to Commonwealth countries'[1074]. However, later election commitments to overseas aid recognise refugee-generating situations around the world, and they also pledge to provide assistance in those situations. References to overseas aid were not a prominent feature of the parliamentary debates.

- **Category 2: Control and Management**

Overall, there were 234 data segments included in the control and management category, representing 21% of the coded data and ranking it in second position. This category incorporates data segments coded to abuse, asylum, control, and security, and 63% of these data segments are classified as hostile. Apart from one mention of security in 1922, there were no references to any of these four codes in the Age of Humanitarianism. All four codes have an upwards general trend, and they were all particularly prevalent in the

[1073] Conservative Manifesto 2005, 'Are You Thinking What We're Thinking?'.
[1074] Jim Tomlinson, 'The Commonwealth, the Balance of Payments and the Politics of International Poverty: British Aid Policy' (2003) 12(4) Contemporary European History 413.

Age of Hostility. Perceived abuse of the system was not mentioned in any manifestos until the February 1974 election. From that point on, manifestos pledged to deal with illegal immigration, abuse of the system, unfounded claims, bogus visitors, fake colleges, sham marriages, and those who fraudulently pose as refugees. The specific issue of asylum became an election concern from 2001 onwards. There were increasing references to the 'control' of immigration, especially from 2005 onwards, although the 2019 Labour manifesto bucked this trend with its promise to end the hostile environment (indicative of a more Left-wing party at that time). Like the debates, 'control and management' in the general election manifestos is a mainly hostile categorisation, and increased references to control in recent manifestos is an indication of increases in hostility.

- **Category 3: Compassion and Human Rights**

One hundred and fifty-six data segments were coded to the compassion and human rights category, equating to 14% of the coded manifesto data and ranking this category in third place. The category includes data coded to the human rights, obligations, and proud history codes, and most of this data (90%) is non-hostile. The majority of the references were coded to human rights, and all three codes have upward general trends. There were numerous references to human rights in the Ages of Hesitancy and Hostility and almost all of the proud history references appeared in the Age of Hostility. Most of the data coded to human rights referred to upholding individual rights, although the 2015 Conservative manifesto proposed to scrap the Human Rights Act and introduce a British Bill of Rights. There were dotted about the manifestos a few references to moral obligations or international obligations to refugees, and throughout the Age of Hostility there were a few mentions of the UK's proud record, tradition, or history of providing protection for people in need. Mentions of human rights tend to be non-hostile comments, and these have increased in the general election manifestos over time. A notable exception was the Conservative pledge in 2015 to repeal the Human Rights Act.

- **Category 4: Race and Citizenship**

Overall, 139 data segments were coded to this category. This represents 13% of the coded data and ranks the race and citizenship category in fourth position. The category comprises data segments coded to the citizenship and race codes, and 68% of the data is non-hostile with just 12% classified as hostile. Both codes have upward general trends

and most of their data segments were in the middle era, the Age of Hesitancy. British citizenship and race relations were linked with immigration, and strict immigration control was presented as being necessary for good race relations. Some manifesto comments criticised asylum and immigration practices and UK laws (such as the 1971 Immigration Act and the 1981 British Nationality Act) as being discriminatory. Despite the positive overall trend, there were fewer mentions of race in the manifestos throughout the Age of Hostility. Race as a factor related to immigration was most prominent in the Age of Hesitancy when 'New Commonwealth' immigration was portrayed as a 'problem' to be dealt with through the introduction of increasingly hostile legislation.

- **Category 5: Domestic Issues**

Overall, there were 60 data segments included in this category, equal to 5% of the coded data and ranking it in fifth position. The domestic issues category includes data segments allocated to the UK legislation, priority, and problems codes: 55% of these are classified as hostile and 37% as non-hostile. All of the references to UK legislation appeared in the Ages of Hesitancy and Hostility. There were refences to the priority of Britain and British citizens in the 1950s and again in the 2010s, and problems associated with immigration were mostly referred to in the Age of Hostility. All three codes have upwards general trends. Both Labour and Liberal manifestos stated that they were against the 1971 Immigration Act and the 1981 British Nationality Act, and the 2015 Conservative manifesto vowed to scrap the Human Rights Act. In the Age of Hostility there were some promises to put British people first, as well as a few references to the 'problems' caused by high levels of immigration. Statements coded to this category have increased over time as recent party manifestos outline their 'solutions' to the 'problems' of immigration.

- **Category 6: Party Politics**

Although only 34 data segments were coded to this category (3% of all coded data), in reality *all* the data could be coded to party politics as all content of general election manifestos is by definition concerned with party politics and electioneering. This category, therefore, has a much higher status than the numbers suggest. The general election manifestos are by their nature concerned with party politics as the political parties 'set out their stall' for the next election term. Thus, all coded data could be coded

to an electioneering code. This category also includes data segments coded to criticisms, and, of these, 59% were categorised as hostile. There were very few criticisms relating to immigration and asylum policy until the 2019 election campaign when the Liberal and Labour manifestos included thirteen criticisms between them of the Conservative government of the day. In this campaign, the Conservatives were accused of breaching human rights and international obligations. Asylum and immigration have increasingly become election issues, especially during the Ages of Hesitancy and Hostility when the increasing numbers of, firstly, Commonwealth immigrants, and, latterly, asylum seekers, have been portrayed to the electorate as a 'problem' to be addressed with increasingly hostile legislation.

9.5 Discourse Historical Analysis

9.5.1 Concept 1: Internal Politics

- UK law-making on asylum and immigration is constrained by domestic party politics.

Despite the more moderate tone adopted in election literature, policymaking does appear to be influenced by electioneering, and it seems that some restrictive legislation has been introduced as a direct result of an election win, especially when a different party from the one previously in office is elected. For example, the 1971 Immigration Act was introduced following the 1970 general election, which the Conservatives won after six years of Labour; the 1981 British Nationality Act was brought in after the Conservative's 1979 win following five years of Labour; and Labour's first Immigration and Asylum Act was introduced in 1999 after the 1997 general election, which Labour won following eighteen years of a Conservative government.

As we have seen, criticisms of political parties and their policies were widespread throughout the parliamentary debates. However, there were no criticisms of other parties in the manifestos until the Labour manifesto of 1970 which claimed that 'Tory policy would exacerbate the tensions between the rich white and poor black nations in the world'[1075]. It was an accusation of racially discriminatory policies at a time when racial tensions were already high. In 1979, the Liberal manifesto accused the Conservatives of

[1075] Labour 1970 (n1069).

'inflaming people's fears about unrestricted immigration'[1076] even though, they said, the numbers were actually falling[1077]. The Conservatives received further criticism in 1983, this time by Labour, who said that Conservative laws were dividing families and causing immense suffering in the immigrant communities[1078]. The Labour manifesto added that Labour would be more compassionate towards refugees than the Tory government[1079]. It appears that at this time it was the Conservative party, both in and out of power, that received most criticism from rival parties.

In the 2001 election campaign, the emphasis shifted to the issue of asylum. This coincided with large increases in the number of asylum applications in 1999 and 2000 (see Figure 1.2, Asylum Applications in the UK, p.16). With regard to asylum provision, the 2001 Liberal Democrat manifesto criticised both main parties, stating that 'asylum seekers, in particular, have been treated in a disgraceful manner by both Labour and the Conservatives'[1080]. In the same campaign, the Conservative party claimed that the 'problem' was worse in the UK than anywhere in Europe, which they blamed on 'Labour's mismanagement'[1081]. In 2005, the Conservative party stated that the Labour government had 'lost effective control of our borders'[1082]. They claimed that 'more than 150,000 people (net) come to Britain every year, a population the size of Peterborough'[1083], and accused Labour of having no upper limit for legal immigration[1084]. They went on to describe the asylum system as 'in chaos', stating that 'instead of offering a safe haven to those most in need, the current system encourages illegality'[1085]. The Labour manifesto in the same campaign promoted themselves as the party taking security seriously, stating that 'while the Tories would halve investment in our immigration services, we would invest in the latest technology to keep our borders strong and secure'[1086].

[1076] Liberal Manifesto 1979, 'The Real Fight Is for Britain'.
[1077] ibid.
[1078] Labour Manifesto 1983, 'The New Hope for Britain'.
[1079] ibid.
[1080] Liberal Democrat Manifesto 2001, 'Freedom, Justice, Honesty'.
[1081] Conservative Manifesto 2001, 'Time for Common Sense'.
[1082] Conservative 2005 (n1073).
[1083] ibid.
[1084] ibid.
[1085] ibid.
[1086] Labour Manifesto 2005, 'Britain Forward Not Back' 52.

In the 2010 campaign, the Liberal Democrat party described the immigration system as 'in chaos', which they blamed on 'decades of incompetent management'[1087]. They continued with this theme in 2017 when their manifesto said, 'the immigration and asylum systems have suffered from inefficiency and severe backlogs and delays over many years'[1088]. In the same campaign, Labour announced, 'unlike the Tories, we will uphold the proud British tradition of honouring the spirit of international law and our moral obligations by taking our fair share of refugees'[1089]. This single election statement by the Labour party referred to Britain's proud history of protecting refugees while simultaneously criticising the Conservative government. In 2019, the Conservatives were much criticised by both Liberal and Labour. The Liberal manifesto referred twice to the Conservatives' hostility, accusing them of being 'relentlessly hostile in their rhetoric and policy around migration'[1090] and of threatening the Human Rights Act[1091]. It also blamed the Conservative hostile environment of violating the rights of many innocent people, 'most notably the Windrush generation'[1092]. In a similar vein, Labour accused the Conservatives of weakening our borders and fanning the flames of racism, using difference to divide[1093]. They described Conservative migration policies as a 'complete and damaging failure'[1094] and accused the government of failing its international legal obligations to refugees and to people exercising their rights to seek asylum[1095].

Unlike in the parliamentary debates, where criticisms were widespread, there were few criticisms of rival parties in the manifestos until the 2000s, when all parties were prepared to criticise the current government's policies on asylum and immigration prior to outlining their own policies. The increase in criticisms coincided with the introduction of increasingly restrictive measures. In 2005, the Conservative manifesto employed a 'scare statistic' ('…a population the size of Peterborough'[1096]) in its criticism of the Labour government, and in 2017, the Labour manifesto implied that, under the

[1087] Liberal Democrat Manifesto 2010, 'Change that Works for You' 75.
[1088] Liberal Democrat Manifesto 2017, 'Change Britain's Future' 77.
[1089] Labour Manifesto 2017, 'For the Many, Not the Few' 29.
[1090] Liberal Democrat Manifesto 2019, 'Stop Brexit: Build a Brighter Future' 73.
[1091] ibid 74.
[1092] ibid 77.
[1093] Labour 2019 (n1068) 67.
[1094] ibid 71.
[1095] ibid.
[1096] Conservative 2005 (n1073).

Conservatives, the UK had not been taking its fair share of refugees. The Conservatives came under severe criticism in 2019 from both Labour and the Liberal Democrats, being accused of unremitting hostility and racism, and of failing to uphold human rights and international legal obligations. By criticising the current government, opposition parties are implying that their party's asylum and immigration policies would be more effective and efficient. Use of extreme terms such as 'inflaming people's fears', 'immense suffering', 'disgraceful manner', 'in chaos', 'relentlessly hostile', 'fanning the flames', and 'complete and damaging failure' make any criticisms levelled at the government seem like very serious allegations indeed. To the extent that all major political parties engage in political point scoring, UK law-making on asylum and immigration *is* shown to be considerably constrained by domestic party politics.

9.5.2 Concept 2: International Norms

- UK law-making on asylum and immigration takes account of international norms and influences.

Although manifestos of all three parties acknowledged the need for international cooperation, this was particularly prevalent in the Liberal party literature. This contained numerous statements on international cooperation in the last part of the twentieth century: in 1983, the Liberal-SDP Alliance called for 'interdependence between poorer and richer countries'[1097] and 'co-operating with others to reduce poverty and squalor throughout the world'[1098]; in 1987, the SDP-Liberal Alliance proposed to 'extend the common rights of citizenship in Europe'[1099]; in 1992, the Liberal Democrats wanted 'to create a peaceful and stable new world order'[1100]; and in 1997, they promoted 'the freedom of movement of people'[1101]. This notion of general cooperation gave way to cooperation specifically on the issue of asylum in the new millennium: in 2010, the Liberal Democrats pushed for 'a co-ordinated EU-wide asylum system to ensure that responsibility is fairly shared between member states'[1102], and in 2015, they pledged to 'co-operate with other European countries to address the pressure of migration across

[1097] Liberal-SDP Manifesto 1983, 'Working Together for Britain'.
[1098] ibid.
[1099] SDP-Liberal Manifesto 1987, 'Britain United – The Time Has Come'.
[1100] Liberal Democrat Manifesto 1992, 'Changing Britain for Good'.
[1101] Liberal Democrat Manifesto 1997, 'Make the Difference'.
[1102] Liberal Democrat 2010 (n1087) 76.

the Mediterranean'[1103]. In 2017, both Liberal and Labour pledged to work with European nations to address the refugee crisis, and in 2019, all three parties called for better international partnerships, particularly in Europe (Conservative and Labour). The fact that this was the only reference to international cooperation in any Conservative manifesto throughout the Age of Hostility suggests that an international perspective is not a priority for the Conservative party.

As well as cooperation with other states, there were also references in the manifestos to cooperation with UN agencies such as the UNHCR, and to adherence to international legislation such as the 1951 Convention. In 1987, the SDP-Liberal Alliance pledged to 'increase British backing for the UN agencies such as the High Commission for Refugees'[1104]. The 1992 Conservative manifesto promised that they would 'continue to honour our commitment to the 1951 UN Convention'[1105], and in 2001, Labour said, 'we will bring forward proposals to ensure a common interpretation of the 1951 Convention across the EU'[1106]. However, in 2005, there were stark differences in the election pledges of the Liberal Democrats and the Conservatives on the issue of asylum. The Liberal manifesto said:

> We will work within the EU to develop common standards so that all EU countries take their fair share of refugees. We will also end asylum seekers' dependence on benefits, allowing them to work so they can pay their own way and use their skills to benefit everyone.[1107]

In the same campaign, the Conservative manifesto stated:

> On asylum, a Conservative Government will not allow outdated and inflexible rules to prevent us shaping a system which is more humane, more likely to improve community relations, and better managed. So, we will take back powers from Brussels to ensure national control of asylum policy, withdraw from the 1951 Geneva Convention, and work for modernised international agreements on migration.[1108]

[1103] Liberal Democrat Manifesto 2015, 'Stronger Economy, Fairer Society, Opportunity for Everyone' 150.
[1104] SDP-Liberal 1987 (n1099).
[1105] Conservative Manifesto 1992, 'The Best Future for Britain'.
[1106] Labour Manifesto 2001, 'Ambitions for Britain'.
[1107] Liberal Democrat Manifesto 2005, 'The Real Alternative' 8.
[1108] Conservative 2005 (n1073).

In a precursor to their 2023 measures of accepting a specified number of asylum seekers via safe and legal routes and processing applications in Rwanda, in 2005, the Conservatives proposed to process asylum applications outside the UK and to 'take a fixed number of refugees from the UNHCR rather than simply accepting those who are smuggled to our shores'[1109]. They continued in this vein in 2017, stating that they would:

> …offer asylum and refuge to people in parts of the world affected by conflict and oppression, rather than to those who have made it to Britain. We will work to reduce asylum claims made in Britain... We will continue to work with other countries in Europe and the United Nations to review the international legal definitions of asylum and refugee status.[1110]

All three political parties recognised their responsibilities towards developing states and to the provision of overseas aid 'to defeat world poverty'[1111] (Liberal, 1964); 'to developing nations both inside and outside the Commonwealth'[1112] (Labour, 1966); 'in dealing with world poverty'[1113] (Conservative, 1970); and 'for the disaster, famine, and refugee relief activities of voluntary agencies, as well as for their long-term development work'[1114] (Conservative, 1987). In 1992, all three parties linked international aid to human rights, pledging to use aid to promote respect for human rights[1115] (Conservative), increasing aid to countries which respect human rights[1116] (Liberal), and linking aid to human rights records[1117] (Labour). In 2017, the Conservative manifesto linked overseas aid with the UK's global status, stating that 'British aid helps millions and is a powerful statement of Global Britain's place in the world'[1118]. And in 2019, the Liberal Democrats recognised refugee situations around the world and pledged to 'increase overseas financial support for the ongoing refugee crisis, focusing on countries that have accepted millions of refugees'[1119].

[1109] ibid.
[1110] Conservative Manifesto 2017, 'Forward, Together' 40.
[1111] Liberal Manifesto 1964, 'Think for Yourself – Vote Liberal'.
[1112] Labour Manifesto 1966, 'Time for Decision'.
[1113] Conservative Manifesto 1970, 'A Better Tomorrow'.
[1114] Conservative Manifesto 1987, 'The Next Moves Forward'.
[1115] Conservative 1992 (n1105).
[1116] Liberal Democrat 1992 (n1100).
[1117] Labour Manifesto 1992, 'It's Time to Get Britain Working Again'.
[1118] Conservative 2017 (n1110) 39.
[1119] Liberal Democrat 2019 (n1090) 89.

There were various references in the manifestos, particularly the Liberals/Liberal Democrats, to international cooperation or cooperation with the rest of Europe. In recent manifestos, that is, in the latter part of the Age of Hostility, both Labour and the Liberal Democrats have acknowledged the need to work with European nations to tackle the 'refugee crisis' and in the fight against human traffickers. In the Age of Hostility, there were also several references to international legislation, namely the 1951 Convention, and to international institutions, such as the EU, the UNHCR, and the United Nations. While there were general statements of commitment to the 1951 Convention, in 2005, the Conservatives vowed to withdraw from it, and in 2017, they pledged to work with other countries and the UN to review the definitions of asylum and refugees. Manifestos of all three parties tended to express their commitment to providing overseas aid, with statements in more recent manifestos linking aid with human rights. While UK law-making on asylum and immigration does takes account of international norms and influences, there tends to be less evidence of this in the Conservative manifestos than the Labour and Liberal ones.

9.5.3 Concept 3: Domestic Constraints

- UK law-making on asylum and immigration is limited by domestic issues and constraints.

In the Age of Hesitancy, from the 1970s onwards, Conservative manifestos were keen to declare that they would tackle a variety of 'abuses' of the system. This included dealing with illegal immigration, people fraudulently posing as refugees, manifestly unfounded claims, and, at the end of this period, in 1992, people seeking to 'abuse our openness to genuine refugees'[1120]. Also in 1992, Labour proposed a new Act which would 'guarantee sanctuary to genuine refugees but prevent bogus applications for asylum'[1121], although there was no detail on how this would be achieved.

In the Age of Hostility, in the 2001 election campaign, the Conservatives were concerned that Britain had become a 'soft touch'[1122] under a Labour government, while Labour were keen to demonstrate what they had already done to prevent fraud: 'tightening gateways, sharpening sanctions, and a 'two-strikes-and-you're-out' rule'[1123]. In 2015, all

[1120] Conservative 1992 (n1105).
[1121] Labour 1992 (n1117).
[1122] Conservative 2001 (n1081).
[1123] Labour 2001 (n1106).

three main parties were concerned about bogus colleges and abuse of the student visa system, and the Conservative party was also concerned about health tourism. Security, linked to immigration, also became an election issue in the Age of Hostility. In 2005, Labour proposed 'secure borders backed up by ID cards'[1124] and in 2010, they wanted 'stronger international cooperation to tackle security challenges'[1125]. In the same year, the Liberal Democrats vowed to 'secure Britain's borders by giving a National Border Force police powers'[1126]. In their 2019 manifesto, Labour referred to security nine times, mentioning security co-operation with the EU and in relation to human rights, and the Conservative manifesto referred to collective security.

Asylum became an election issue from 2001 onwards. That year, in an attempt to clamp down on numbers of arrivals, the Conservative manifesto stated that asylum claims from 'safe countries'[1127] would be rejected. The 2001 Liberal Democrat manifesto suggested introducing 'fair benefits for asylum seekers to replace the demeaning voucher system'[1128], and in 2005, they proposed a dedicated agency for processing asylum claims; working with the EU; and allowing asylum seekers to work[1129]. They continued with these proposals in 2010, suggesting an independent asylum agency outside the Home Office and a coordinated EU-wide asylum system[1130]. The Liberals vowed to expand the Syrian Vulnerable Persons Resettlement Scheme, to reopen the Dubs scheme, and to end indefinite immigration detention[1131]. In 2019, both Liberal and Labour were committed to establishing safe and legal routes for asylum seekers and to giving asylum seekers the right to work.

Control of immigration became an election issue in the Age of Hesitancy from the 1960s onwards. In 1964, in a reference to Britain being overcrowded, the Conservatives promised to control immigration 'according to the numbers which our crowded country … can absorb'[1132], and in 1966, they referred to the 'problem of immigration'[1133] and

[1124] Labour 2005 (n1086) 54.
[1125] Labour Manifesto 2010, 'A Future Fair For All' 10:7.
[1126] Liberal Democrat 2010 (n1087) 75.
[1127] Conservative 2001 (n1081).
[1128] Liberal Democrat 2001 (n1080).
[1129] Liberal Democrat 2005 (n1107).
[1130] Liberal Democrat 2010 (1087).
[1131] ibid.
[1132] Conservative Manifesto 1964, 'Prosperity With A Purpose'.
[1133] Conservative Manifesto 1966, 'Action Not Words: The New Conservative Programme'.

proposed 'stricter control of entry'[1134]. Similar election pledges were made in more recent manifestos. In 2010, the Conservatives promised to take net migration back to the 'tens of thousands a year, not hundreds of thousands'[1135], while Labour stated, 'we are committed to an immigration system that promotes and protects British values'[1136]. In a similar vein, in 2015, the Conservatives promised that their 'plan to control immigration will put you, your family, and the British people first'[1137]. Furthermore, linking immigration with domestic issues, they observed that 'when immigration is out of control, it puts pressure on schools, hospitals, and transport'[1138]. Control of immigration was mentioned seven times in the 2015 Conservative manifesto, and four times in the Labour manifesto. In 2017, the Conservatives continued their promise to control immigration (seven mentions) and to reduce levels of net migration to the tens of thousands. Labour noted that there were 'unprecedented numbers of refugees'[1139] and the Liberal party stated that 'the rise in hate crime, the abuse of refugees, and the toxic rhetoric on immigration and about immigrants themselves is not the future Liberal Democrats want for Britain'[1140]. In 2019, the Conservatives stated, 'overall numbers will come down. And we will ensure that the British people are always in control'[1141]. However, there was a backlash in 2019 to the government's restrictive policies by opposition parties: the Labour manifesto stated that a Labour government would end the hostile environment, and the Liberal Democrats promised to take powers away from the Home Office.

Throughout the Ages of Hesitancy and Hostility, there were various references in all party manifestos to the UK's asylum and immigration legislation. The focus in the Age of Hesitancy was British citizenship – it was a Conservative pledge in the 1979 general election which led to the introduction of the 1981 British Nationality Act – while contrasting views around the Human Rights Act dominated later elections in the Age of Hostility. In the February 1974 election campaign, the Conservative manifesto commended their own introduction of the 1971 Immigration Act:

[1134] ibid.
[1135] Conservative Manifesto 2010, 'Invitation to Join the Government of Britain' 21.
[1136] Labour 2010 (n1125) 5:6.
[1137] Conservative 2015 (n1067) 29.
[1138] ibid.
[1139] Labour 2017 (n1089) 116.
[1140] Liberal Democrat 2017 (n1088) 69.
[1141] Conservative Manifesto 2019, 'Get Brexit Done, Unleash Britain's Potential' 20.

> By passing the 1971 Immigration Act, against the combined opposition of the Labour and Liberal Parties, we have provided the country with the necessary means for preventing any further large scale permanent immigration and also with important new powers for preventing illegal immigration.[1142]

However, the 1974 Liberal manifesto was less complimentary about this Act, stating that:

> While opposing illegal entry we strongly oppose the retrospective provisions of the 1971 Immigration Act and would take immediate action to remove them and other discriminatory clauses in the legislation.[1143]

In 1979, the Conservatives pledged to 'introduce a new British Nationality Act to define entitlement to British citizenship and to the right of abode in this country'[1144]. On winning the 1979 election, they brought in the 1981 British Nationality Act, which they referred to in their 1983 manifesto: 'by passing the British Nationality Act, we have created a secure system of rights and a sound basis for control in the future'[1145]. However, both Labour and the Liberals were against it, their 1983 manifestos stated, 'we believe the British Nationality Act 1981 to be offensive and discriminatory'[1146] (Liberal-SDP); and 'we will repeal the 1971 Immigration Act and the 1981 British Nationality Act and replace them with a citizenship law that does not discriminate against either women or black and Asian Britons'[1147] (Labour). The Liberals continued their pledge to repeal the 1981 Act in 1987 and again in 1992. In 2005 and 2010, Labour said that they were proud to have brought in the Human Rights Act, and, in 2015, their manifesto stated that a Labour government would stand up for citizens' individual rights and protect the Human Rights Act. In contrast to this, the 2015 Conservative manifesto said that they would scrap it. In 2017 and 2019, both Liberal and Labour promised to retain the Human Rights Act while in 2017, the Conservatives declared a period of reprieve, stating, 'we will not repeal or replace the Human Rights Act while the process of Brexit is underway'[1148].

[1142] Conservative Manifesto February 1974, 'Firm Action for a Fair Britain'.
[1143] Liberal Manifesto February 1974, 'Change the Face of Britain – Take Power – Vote Liberal'.
[1144] Conservative Manifesto 1979, '1979 Conservative Party General Election Manifesto'.
[1145] Conservative Manifesto 1983, 'The Challenge of Our Times'.
[1146] Liberal-SDP 1983 (n1097).
[1147] Labour 1983 (n1078).
[1148] Conservative 2017 (n1110) 37.

There were various references in the manifestos to perceived 'abuse' of the asylum system, with all three parties outlining measures to tackle illegal migration, fraudulent claims, bogus colleges, and health tourism. Asylum seeking and the provision of asylum became an issue in its own right from 2001 onwards, and control of immigration was increasingly mentioned in the manifestos throughout the Age of Hostility. There were several references to UK legislation in the manifestos. While the Conservative party praised the 1971 Immigration Act and the 1981 British Nationality Act, Labour and the Liberal Democrats criticised both Acts as being discriminatory. Labour defended the introduction of the 1998 Human Rights Act, but the 2015 Conservative manifesto said that they would scrap it. In the Age of Hostility, there were a few references to border security or national security; to the priority of Britain and the British people; and to the 'problems' associated with high levels of immigration. Although asylum and immigration are not specifically linked with domestic issues in the manifestos, the perceptions of 'abuse' of the system and increases in references to 'control' imply that UK law-making on asylum and immigration *is* limited by domestic issues and constraints.

9.5.4 Concept 4: Values

- UK law-making on asylum and immigration is impacted by the values and principles of decision-makers.

Throughout election party literature, especially in the Age of Hesitancy, issues of race and citizenship were intertwined with immigration. This was largely due to Commonwealth immigration during this period, which impacted race relations in the UK and the definition of British citizenship. Race relations were linked with immigration control and some manifesto comments implied that current laws and practices were discriminatory. In 1966, Labour linked race and control of immigration, stating, 'in the field of immigration, we shall continue realistic controls … to ensure racial equality'[1149]. In the same campaign, the Liberal manifesto promised a 'non-racialist approach to immigration'[1150], the implication being that the current system was racist. In February 1974, the Labour party said that they would 'eliminate discrimination on grounds of colour'[1151], and in October 1974, the Conservatives stated that 'in the

[1149] Labour 1966 (n1112).
[1150] Liberal Manifesto 1966, 'For All The People: The Liberal Plan of 1966'.
[1151] Labour Manifesto February 1974, 'Let Us Work Together – Labour's Way Out of the Crisis'.

interests of good race relations, … a Conservative government will follow a policy of strictly limited immigration'[1152]. In 1979, in a reference to the patriality clause in the 1971 Immigration Act, the Liberals promised to 'abolish the discrimination against non-patrials which creates second-class citizens'[1153]. The Conservative manifesto proposed a quota system for people outside the EC and asserted that 'effective control of immigration' was 'essential for racial harmony in Britain today'[1154]. In 1983, the Liberals pledged that 'immigration controls will be applied without discrimination on grounds of sex, race, or colour'[1155]. In 1987, they promised to 'repeal the sexist and racist aspects of the Nationality Act 1981'[1156] and stated that nationality legislation should be 'fair to everyone regardless of race'[1157]. Labour's manifesto stated that 'Labour's policy of firm and fair immigration control will ensure that the law does not discriminate on the basis of race, colour, or sex'[1158]. During this time, both the Liberal and Labour parties were advocating immigration controls which were non-discriminatory, thereby implying that the current system was discriminatory. This viewpoint continued into the 1990s with the Liberals pledging to reform immigration legislation to make it free from racial discrimination (1992, 1997) and Labour stating that their laws 'will not discriminate on grounds of sex or race'[1159] (1992). In 2017, Labour said that it would 'develop and implement fair immigration rules'[1160] which would 'not discriminate between people of different races or creeds'[1161]. In 2019, the Liberal Democrats criticised the discriminatory aspects of the hostile environment, stating that 'the hostile environment has unacceptably trampled on people's rights and people are still discriminated against on the basis of their gender, race, age, sexuality, gender identity, religion, or whether they are disabled'[1162].

Although there were a few references to human rights in the Ages of Humanitarianism and Hesitancy, most mentions appeared in the Age of Hostility and were mostly in the

[1152] Conservative Manifesto October 1974, 'Putting Britain First'.
[1153] Liberal 1979 (n1076).
[1154] Conservative 1979 (n1144).
[1155] Liberal-SDP 1983 (n1097).
[1156] SDP-Liberal 1987 (n1099).
[1157] ibid.
[1158] Labour Manifesto 1987, 'Britain Will Win With Labour'.
[1159] Labour 1992 (n1117).
[1160] Labour 2017 (n1089) 28.
[1161] ibid.
[1162] Liberal Democrat 2019 (n1090) 73.

Labour and Liberal manifestos. In their 1983 manifesto, Labour stated that they would 'ensure that immigration officials fully respect the human rights of those seeking entry'[1163], and in 1987, the Liberals were concerned that 'people should have basic human rights and a decent life [that] cannot stop at the Channel'[1164]. In 2015, on the one hand, the Conservatives proposed to 'break the formal link between British courts and the European Court of Human Rights'[1165], while, on the other, Labour said that 'a Labour Government will stand up for citizens' individual rights, protecting the Human Rights Act and reforming, rather than walking away from, the European Court of Human Rights'[1166]. In their 2017 and 2019 manifestos, the Liberal Democrats vowed to vote against any attempts to scrap the Human Rights Act or withdraw from the ECHR, adding that they would strengthen the UK's commitment to international human rights law.

There was some recognition in the manifestos of obligations towards refugees, and acknowledgement that refugees are not the same as migrants. In their 1979 manifestos, both Liberal and Labour referred to their obligations to refugees and migrants, and, in 2001, the Liberal Democrats acknowledged asylum as a separate issue to immigration, vowing that they would 'regularly review immigration policy, separate from our asylum obligations'[1167]. In 2005, Labour stated, 'we can and should honour our obligations to victims of persecution without allowing abuse of the asylum system'[1168]. The 2010 Liberal Democrat manifesto recognised that 'Britain has a responsibility to welcome refugees fleeing wars and persecution around the world'[1169], and, in 2017, the Liberal Democrats stated, 'refugees are human beings fleeing from war zones and persecution and we have a legal and moral obligation to offer them sanctuary'[1170]. Concurring with this sentiment, the Labour party pledged to 'meet our international obligations on the refugee crisis'[1171], stating:

> Refugees are not migrants. They have been forced from their homes, by war, famine, or other disasters. Unlike the Tories, we will uphold the proud British

[1163] Labour 1983 (n1078).
[1164] SDP-Liberal 1987 (n1099).
[1165] Conservative 2015 (n1067) 60.
[1166] Labour Manifesto 2015, 'Britain Can Be Better' 67.
[1167] Liberal Democrat 2001 (n1080).
[1168] Labour 2005 (n1086) 53.
[1169] Liberal Democrat 2010 (n1087) 76.
[1170] Liberal Democrat 2017 (n1088) 77.
[1171] Labour 2017 (n1089) 122.

> tradition of honouring the spirit of international law and our moral obligations by taking our fair share of refugees.[1172]

Not only does this statement refer to Britain's obligations to refugees, but it also refers to Britain's tradition of looking after those in need. This is one of several references in the manifestos to the UK's proud history or tradition of accepting refugees. In 1987, the Conservatives referred to 'Britain's long tradition of giving refuge to the victims of persecution'[1173], and in 2001, they pointed out that 'over the centuries Britain has welcomed people who have been persecuted by oppressive regimes overseas'[1174]. The 2001 Labour manifesto included the statement, 'It is right that people fleeing persecution are able to make a new life as hard-working citizens in a new country. Britain has a long record of providing a home for such people'[1175]. In 2005, the Liberal Democrat manifesto stated, 'for centuries Britain has had a proud record of granting safe refuge to those fleeing persecution'[1176], and in 2010, 'Britain has always been an open, welcoming country'[1177]. In 2015, Labour pledged, 'we will ensure Britain continues its proud history of providing refuge for those fleeing persecution'[1178]. In 2017, the Liberal Democrats said that they were 'proud of the UK's historic commitments to assisting those seeking refuge from war, persecution, and degradation'[1179], and in 2019, they stated, 'the UK has a proud history of providing sanctuary to those in need'[1180].

Throughout the manifestos, especially in the Age of Hesitancy, there were references to discrimination relating to British citizenship. Immigration was linked to the issue of race throughout the Ages of Hesitancy and Hostility, and immigration control was regarded as essential for good race relations (e.g., the 1997 Conservative manifesto stated, 'firm, but fair, immigration controls underpin good race relations'[1181]). There were assurances in the manifestos that immigration legislation should not discriminate on the basis of sex or race, the implication being that current legislation was discriminatory. There were various references to human rights from the 1980s onwards, with Liberal and Labour

[1172] ibid 29.
[1173] Conservative 1987 (n1114).
[1174] Conservative 2001 (n1081).
[1175] Labour 2001 (n1106).
[1176] Liberal Democrat 2005 (n1107) 9.
[1177] Liberal Democrat 2010 (n1087) 75.
[1178] Labour 2015 (n1166) 50.
[1179] Liberal Democrat 2017 (n1088) 77.
[1180] Liberal Democrat 2019 (n1090) 78.
[1181] Conservative Manifesto 1997, 'You Can Only Be Sure with the Conservatives'.

supporting the Human Rights Act and the ECHR, and the Conservatives proposing to scrap the Human Rights Act and withdraw from the ECHR. There was some acknowledgement in the Ages of Hesitancy and Hostility of the UK's moral and legal obligations regarding asylum, and some recognition that refugees and immigrants are not the same. All parties referred to Britain's proud history or tradition of helping people in need. UK law-making on asylum and immigration *is* impacted by the values and principles of decision-makers.

9.6 Conclusions

The content analysis of the hostile/non-hostile categorisations of the coded data in the general election manifestos provides rudimentary evidence of decreasing net hostility over the time period from 1900 to 2019. This is contrary to the conclusions drawn from the parliamentary debates data which showed increasing hostility over the same time period. In terms of absolute numbers, the number of hostile data segments did increase over the whole time period, but the number of non-hostile comments increased at double the rate. There is net non-hostility in almost all manifestos and this net non-hostility has increased over time. The proportion of comments that are hostile has increased but the proportion of non-hostile comments has increased at 1.5 times the rate. In summary: in terms of actual numbers, the number of non-hostile comments has increased at twice the rate as the hostile ones over the period under review from 1900 to 2019; in terms of proportions of coded data, the number of non-hostile comments has increased at 1.5 times the rate of hostile ones; and there is positive 'net non-hostility' in almost all the manifestos and this net non-hostility has increased (in other words, net hostility has decreased) over the whole time period. The three periods of time identified as significant, that is, the Ages of Humanitarianism, Hesitancy, and Hostility, paint three different pictures. In the Age of Humanitarianism, there were virtually no hostile comments and a small but increasing number of non-hostile ones. In the middle era, the hostile comments remained low but there were now many more non-hostile statements, with a significant increase from 1974 to 1979. There was a lot of variation in the Age of Hostility for both categories but, in the main, the number of non-hostile comments was substantially higher than hostile ones.

The picture painted by the content analysis of the general election manifestos is completely contrary to that of the parliamentary debates, that is, decreasing net hostility in the manifestos compared with increasing net hostility in the debates. This is a significant result as it implies that the increasing levels of hostility – and consequently the construction of the hostile environment – has been driven more by parliamentarians than by the public. Furthermore, the incremental construction of the hostile environment is facilitated by the fact that the most right-wing party has been in power for the majority of the time and there has been no effective opposition to the introduction of repressive legislation.

Looking at election pledges on asylum and immigration in the general election manifestos of the three main political parties from a discourse historical analysis perspective, a number of conclusions can be made:

- UK law-making on asylum and immigration *is* constrained by domestic party politics. Party manifestos began to criticise their opponent's (the government in power) policies from 1970 in the Age of Hesitancy, and this increased in the Age of Hostility. From 2001 onwards, asylum was an electoral issue, with all three parties increasingly stating that they could control the UK's borders much better than their rivals.
- UK law-making on asylum and immigration does takes account of international norms and influences. Liberal manifestos advocated international cooperation from 1987 onwards and cooperation specifically on asylum from 2010. However, there was less commitment from the other two parties, especially the Conservatives whose 2019 manifesto was the only Conservative manifesto to mention international corporation throughout the whole of the Age of Hostility.
- UK law-making on asylum and immigration *is* limited by domestic issues and constraints. First mentioned in the 1960s in the Age of Hesitancy, all three parties' manifestos referred to the need for immigration control. Running alongside this, comments on the perceived 'abuse' of the asylum system as well as various 'problems' associated with immigration were particularly prevalent in the Age of Hostility.
- UK law-making on asylum and immigration *is* impacted by the values and principles of decision-makers to some extent. Immigration was linked to race in

all parties' manifestos throughout the Age of Hesitancy, and less so, the Age of Hostility. While there were conflicting viewpoints regarding human rights from the 1980s onwards, all parties incorporated the 'proud history' discourse in their manifestos, including the government of the day which was simultaneously introducing increasingly restrictive legislation.

The analysis in this chapter indicates that the main UK political parties are less hostile in communicating immigration issues to their electorate directly (in their manifestos) than indirectly (in parliament, where, in the 'political pantomime', they pander to the loudest voices). This suggests that the temporal construction of the hostile environment may be driven more by the politicians themselves. This is examined further in the next chapter.

Chapter 10:

Overall Analysis: A Holistic Perspective on the Development of the Hostile Environment

10.1 Temporal Analysis of the Hostile Environment

This thesis has offered an analysis of the development of the hostile environment in the UK through a review of legislation and the legislative process over the long term from 1900 to the present day. Part 2 offered an analysis of the laws as they incrementally became more restrictive, focusing particularly on the 1971 Act, which represented a pivotal moment in this otherwise gradual development. Part 3 offered an analysis of the processes that preceded the formulation of the laws, that is the parliamentary debates that discussed laws in progress and party manifestos that pledged to initiate relevant laws and policies.

This final chapter of the thesis brings together the findings from these earlier chapters towards an integrated holistic understanding of the development of the hostile environment through legislation in the long-term. The analysis undertaken here proceeds on the basis of the discourse analysis adopted throughout. Honing in on a discourse historical approach, this chapter analyses the parliamentary debates and the general election manifestos together. It firstly summarises how the discourse around asylum and immigration in both the debates and manifestos has changed over time, and then considers whether these discourses are complementary or contradictory. This temporal analysis looks for further evidence of increasing hostility and considers what is the driving force, whether it be the political elite in their role as parliamentarians or in their electoral role, communicating directly with the public. Adopting a discourse historical approach, the analysis takes a temporal account of the four derived concepts from 1900 up to 2023, incorporating matrices adapted from Saldaña's matrix for second cycle longitudinal qualitative data analysis[1182] (see Appendix J, p.346 for these matrices). The matrices consider each of the four interrelated concepts across the three Ages of Humanitarianism, Hesitancy, and Hostility, and in accordance with Saldaña's method, the analysis looks for aspects of the discourse which, over these three time periods, is:

[1182] Johnny Saldaña, *The Coding Manual for Qualitative Researchers* (3rd edition) (Sage 2016) 235.

- Increasing/emerging;
- Constant/consistent;
- Decreasing/ceasing;
- Missing;
- One-off events, significant events, or turning points.

By considering these five descriptors, this part of the analysis takes account of change over time and looks for drivers of this change. This temporal analysis summarises the results from the separate analyses of the parliamentary debates and election manifestos and helps integrate them alongside a consideration of the laws as these were analysed in part 2, thus providing a holistic understanding of the temporal construction of the hostile environment.

- **Concept 1: Internal Politics:** UK law-making on asylum and immigration is constrained by domestic party politics. (For matrix, see table 1, Appendix J, p.346.)

Criticisms of the legislation under debate began to tentatively emerge in the **Age of Humanitarianism** and this increased to extensive criticisms in the following two ages. There were also concerns expressed by MPs about the discretionary powers of the Home Secretary as far back as 1919. This could be seen as the precursor to the explicit powers established in law for the Home Secretary that we have seen in the analysis of the 1971 Immigration Act. There were no criticisms of government policy in any general election manifesto in the Age of Humanitarianism.

Linking the legislation under debate with party politics and electioneering began in the **Age of Hesitancy** and was prevalent in the Age of Hostility. There were extensive criticisms by opposition parties of the legislation and the Home Secretary's discretionary powers, especially from 1971 onwards, and Labour and Liberal manifestos began to criticise Conservative policies in this period.

Throughout the **Age of Hostility**, every parliamentary debate included large numbers of criticisms of the legislation and/or the government. Additionally, concerns raised by opposition parties about the discretion of the Home Secretary gave way to extensive criticisms of the Home Office as a whole and mismanagement by the Home Secretary. The immigration and asylum systems also faced criticism in all parties' election

manifestos in the Age of Hostility, and the 2019 Labour manifesto accused the Conservatives of racism.

Throughout the whole time period under review, that is, in all three ages, increasingly restrictive legislation was introduced in parallel with increasing criticisms of the running of the Home Office, with accusations of delays, a growing backlog, bureaucracy, and mismanagement all being levelled at the government department. It appears that the government has increasingly attempted to deal with Home Office inefficiencies by introducing legislation which would reduce asylum applications which would, in turn, help with the running of the Home Office. While it is difficult to distinguish between party political rhetoric and genuine criticism, it does seem that the increased criticism of Home Office mismanagement is justified: a 2023 report by the Institute for Government states that 'deep-rooted institutional and cultural problems undermine the Home Office's performance and approach to crime, immigration and asylum seekers'[1183]. Although the legislation does not explicitly refer to Home Office bureaucracy, the measures introduced increasingly ease the administrative burden at the government department in two ways: 1) by reducing the numbers of asylum applications; and 2) by increasing the checking and monitoring being carried out outside the Home Office.

- **Concept 2: International Norms:** UK law-making on asylum and immigration takes account of international norms and influences. (For matrix, see table 2, Appendix J, p.350.)

In the election manifestos in the **Age of Humanitarianism**, there were references to the importance of international relations and the need for international cooperation, with many positive mentions of the British Empire and the Commonwealth. Commitments to provide international aid to developing countries started with the Labour manifesto in 1931 and continued in all party literature from then on, with statements in more recent manifestos linking aid with human rights. The importance of a lasting peace and a united Europe was highlighted following the two world wars. References to east-west relations in the Age of Humanitarianism were replaced by references to the EC or European cooperation in the Age of Hesitancy. The 1987 debate included multiple references to the Refugee Convention and the UNHCR, and, from the 1998 Human Rights Act

[1183] 'Home truths: Cultural and institutional problems at the Home Office', Institute for Government, accessed 16/09/24.

onwards, there were increasing references to the ECHR. In the 2015 election campaign, the Conservatives vowed to scrap the Human Rights Act, and, in 2017, they said they would not bring the EU's Charter of Fundamental Rights into UK law.

Emerging mentions of terrorist threats began in the **Age of Hesitancy** and continued into the Age of Hostility with terrorism being linked to immigration control. The Ages of Hesitancy and Hostility also saw references to cooperation with other Commonwealth countries tailing off and increasing mentions of the need for cooperation throughout Europe and/or with France. In recent manifestos, that is, in the latter part of the Age of Hostility, both Labour and the Liberal Democrats have acknowledged the need to work with European nations to tackle the 'refugee crisis' and in the fight against human traffickers. Expressions of concern about adverse situations happening worldwide which could generate refugees were made in the Ages of Hesitancy and Hostility, although throughout the whole time period under review, there is only one mention, in the 2022 debate, of climate change as a driver of migration. This is indicative of a general lack of forward planning in asylum and immigration legislation.

In the **Age of Hostility**, many MPs acknowledged the UK's role and responsibility in global events which contribute to people seeking asylum. Throughout the whole time period, that is, in all three ages, UK elite decision-makers have been conscious of international obligations and international legislation in their law-making. The focus of international relations has shifted from the Commonwealth to east-west relations to European cooperation. Adverse global situations are considered as a factor, especially the threat of terrorism. Many MPs have expressed concerns that recent (2022 and 2023) legislation breaches international obligations and there is evidence of a shift away from international instruments in the Conservative manifestos.

While the vast majority of the asylum and immigration laws introduced in the UK have brought in a multiplicity of hostile restrictions, the purpose of the two Acts which stand out as being 'compassionate' – the 1948 British Nationality Act and the 1998 Human Rights Act – was the incorporation of international human rights standards. However, these two Acts are contrary to the progression of increasingly hostile legislation. In terms of international instruments, we see, for example, concerns about proposed derogations

from Article 5(1) of the ECHR in 2001[1184], Article 8 in 2014[1185], and Articles 6,8 and 13 in 2016[1186], culminating in a statement on the front of the 2023 Illegal Migration Act stating that the Home Secretary cannot guarantee compliance with the ECHR[1187].

- **Concept 3: Domestic Constraints:** UK law-making on asylum and immigration is limited by domestic issues and constraints. (For matrix, see table 3, Appendix J, p.353.)

In the **Age of Humanitarianism**, there were emerging references to immigration control as far back as the first immigration debate in 1905. There were some concerns about costs in this period as well as comments on the numbers of aliens being conversely both large and small. Concerns expressed in 1905 about domestic matters such as sweating, overcrowding, and unemployment were not issues in later debates in that period. Election manifestos from 1950 onwards pledged to put the British public first but the idea of British preference diminished in later periods. Notable by their absence from debates in the Age of Humanitarianism were any references to abuse of the asylum system, public opinion, or 'pull factors'.

Mentions of immigration control of, firstly, Commonwealth immigrants, and then asylum seekers, increased in the **Age of Hesitancy**. The notion of closing loopholes and stopping abuse of the asylum system as well as use of the term 'firm and/but fair' also emerged in this period. Language use around the issues of immigration and asylum has changed over time, e.g., it was only from 1974 onwards that general election manifestos referred to 'illegal' immigration and stopping 'bogus' applications. Race was an issue which was prevalent throughout the Age of Hesitancy, and manifestos in this period referred to links between immigration control and good race relations. Throughout the Age of Hesitancy, immigration was consistently linked to domestic matters such as housing (a major concern in 1962) and unemployment, as well as a variety of 'pull factors'. There were references to the numbers of arrivals both to justify increases in and decreases in immigrant numbers. In the manifestos, immigration control was supported

[1184] Amnesty International, 'United Kingdom: Creating a Shadow Criminal Justice System in the Name of "Fighting International Terrorism"' 2.
[1185] Jeremy Corbyn, 2014 Immigration Bill, Hansard HC Deb vol 569 cc156-257, accessed 28/01/22.
[1186] Andy Burnham, 2016 Immigration Bill, Hansard HC Deb vol 600 cc195-285, accessed 18/12/21.
[1187] Illegal Migration Bill ECHR Memorandum 1, accessed 26/08/23.

by all three parties. There were very few references to the priority of British people or to the costs of asylum in this period.

From 1993 onwards – the start of the **Age of Hostility** – the emerging concern was with the increasing numbers of asylum applications, and there was an increasing use of 'shock statistics'. 'Fair' or 'firm but fair' immigration control was mentioned in the manifestos, and Liberal and Conservative manifestos started to detail how they would tackle abuse. The notion of 'safe and legal routes' was only introduced as recently as 2017 (Liberal manifesto) and 2019 (Labour and Liberal). There were extensive references to abuse of the asylum system, closing loopholes, and dealing with bogus applicants and unfounded claims in all parliamentary debates throughout the Age of Hostility. Mentions of immigrants in the backs of lorries in the 2009 debate were replaced with concerns about small boat arrivals from 2020 onwards. Control and management of the system was paramount and links to other factors such as housing and homelessness, cost of the asylum system, and 'pull factors' were all mentioned in the debates. Terrorism and security were issues in the 2001 debate following the 9/11 terrorist attacks. Links between immigration control and good race relations decreased in manifestos throughout the Age of Hostility, and, in 2019, Labour pledged to end the 'hostile environment' and scrap the 2014 Immigration Act.

Throughout the whole period under review, that is, in all three ages, there were increasing references to immigration control and management, and increasing mentions of abuse of the asylum system and illegal migration. Links to other domestic matters, in particular, housing, were widespread throughout. The increasingly restrictive asylum and immigration legislation appears to be more concerned with control, management, and stopping 'abuse of the system' rather than the protection of people seeking safety. In terms of the legislation, this has developed from the initial prevention of entry of 'undesirable immigrants'[1188] contained in the 1905 Aliens Act to the immigration control of Commonwealth immigrants in the 1962, 1968 and 1971 Acts, to a multitude of laws dealing with numerous 'abuses' and detailing many control measures in the Age of Hostility. Exemplary examples of the latter include restrictions on entitlement to housing and benefits in 1996; dealing with 'sham marriages'[1189] and 'clandestine entrants'[1190] in

[1188] Aliens Act 1905, s1(1), accessed 12/12/20.
[1189] Immigration and Asylum Act 1999, s24(1), accessed 19/12/20.
[1190] ibid s32(1).

1999; details on detention and assisting unlawful immigration in 2002; the 'credibility'[1191] stipulation in 2004; increased 'outsourcing' of checking and monitoring in 2014 and 2016; 'inadmissible'[1192] asylum claims in 2022; and 'unlawful'[1193] migration in 2023.

- **Concept 4: Values:** UK law-making on asylum and immigration is impacted by the values and principles of decision-makers. (For matrix, see table 4, Appendix J, p.360.)

Although there were no mentions of human rights in the debates in the **Age of Humanitarianism**, the manifestos in this period began to tentatively refer to, firstly, individual rights, and then, human rights. This is an indication that politicians in this early period were starting to believe that there was concern among the electorate about human rights. There were also emerging references to being against racial discrimination in the parliamentary debates, although no manifestos in this period refer to race. There were references to the UK's proud history or tradition of providing asylum throughout the debates in this period, as well as constant use of derogatory collective terms to describe refugees. Both positive and negative descriptions of refugees used in the 1905 debate tailed off after this.

From 1962 onwards – the start of the **Age of Hesitancy** – the issue of immigration was very much associated with issues of race relations: race was a prominent feature of this whole period. There were also increasing references to the issue as a 'problem'. The 1968 debate, which centred around the Kenyan Asians, saw the first references to 'clandestine immigration' and 'illegal entrants' as well as an emerging recognition of human rights. Constant throughout this period were the use of derogatory collective terms (e.g., flood, wave, invasion), and positive descriptions of refugees generally decreased. However, there were also comments of a compassionate nature and mentions of the UK's proud history or tradition.

The **Age of Hostility** saw emerging concerns, especially in 2014, 2016, and 2022, that the legislation under debate would undermine human rights. There were references throughout the debates in this period to the issues of immigration and asylum as a

[1191] Asylum and Immigration (Treatment of Claimants, etc) Act 2004, s8, accessed 19/12/20.
[1192] Nationality and Borders Act 2022, s16(1), accessed 16/10/23.
[1193] Illegal Migration Act 2023, s1(1), accessed 16/10/23.

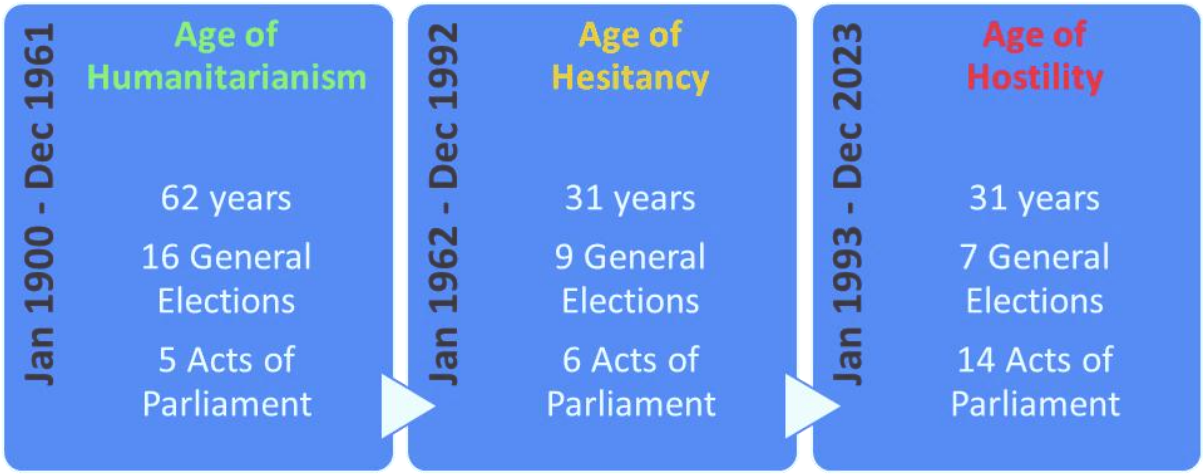
‘problem’ or ‘crisis’, and dehumanising collective terms, such as flow, swamping, and tide, were widely used. The issues of race and immigration continued to be interlinked throughout the Ages of Hesitancy and Hostility, with an emphasis on immigration control being necessary for good race relations. The manifestos in the Age of Hostility made statements supporting human rights, protecting refugees, and condemning racial discrimination. In 2001, following the 9/11 attacks, immigration was associated with terrorism and mentions were made of an emergency, dangers, and threats.

Throughout the whole period under review, that is, in all three ages, restrictive legislation has been introduced in conjunction with statements made referring to the UK's proud history of providing protection for refugees. Race was a major factor throughout, especially in the Age of Hesitancy. The language used by elite decision-makers in terms of alarmist descriptions of the issue, dehumanising collective terms, and derogatory or suspicious categories of individual asylum seekers all contribute to a negative interpretation of the issue of asylum provision in the UK. It is clear that much of the legislation responds to particular movements (e.g., in 1962, immigrants from the ‘New Commonwealth’). Moreover, the analysis shows that the process from identifying the ‘problem’ to constructing the ‘solution’ has incorporated race as a contributing factor, as evidenced by the airing of racist discourse in parliament through the years. At the same time, the analysis also shows that, while highly incendiary statements might have been more accepted in earlier ages, a ‘toning down’ of the language over the years has not meant more humanitarian laws but rather more restrictive ones.

10.2 A Holistic Analysis across Three Ages

Over the three periods examined, a number of elections were held and various laws adopted (see Figure 10.1 and Appendix K, p.365).

Figure 10.1: Figures at a Glance: Summary of General Elections and Immigration Legislation



This research has adopted an approach of temporal constructivism, considering change over time, to leverage discursive data from these sources in order to demonstrate how the UK's hostile environment has been incrementally constructed. As we see from the doctrinal analysis in chapter five, UK legislation on asylum and immigration tends to be introduced retrospectively to deal with specific events or issues (such as Russian pogroms in 1905; transporters carrying undocumented migrants in 1987; or asylum seekers arriving in small boats in 2023). While it could be argued that this is the point of legislation, there does seem to be a lack of forward planning in this issue area. Moreover, the increasingly hostile approach to asylum governance can be demonstrated through a series of contradictory responses (e.g., the implementation of the *Kindertransport* scheme prior to WW2 compared with the removal of the Dubs amendment from the EU Withdrawal Agreement; or accepting Vietnamese boat people compared with the current unreceptive attitude to asylum seekers arriving by boat).

The doctrinal analysis of the legislation also revealed that UK law with respect to asylum and immigration has become more and more hostile and restrictive over time. Incremental changes in policy and legislation introduced over more than a century have led to the exceptionally restrictive measures contained in today's hostile environment rules and laws. The doctrinal analysis led to the whole period under review from 1900 up to 2023 being split into three separate ages of development, characterised by significant pieces of legislation which epitomise the increasingly repressive laws and feed into the temporal construction of the hostile environment. The 1905 Aliens Act was the start of restrictions of any movement of people into the country; the 1962 Commonwealth Immigrants Act was the start of the control of Commonwealth

immigration; and the 1993 Asylum and Immigration Act was the beginning of increasingly hostile legislation on asylum control. This analysis has shown that the importance of asylum as an issue warranting legislation in its own right – as opposed to subsumed within general immigration law – only grew when the numbers of people seeking asylum in the UK began to increase[1194]. As well as increased restrictions on entry and access to benefits, there has also been more and more checking and monitoring, much of which is now carried out by members of the British public as part of the 'governmentalisation' of immigration control. The analysis of parliamentary debates in chapter eight revealed that the introduction of increasingly restrictive laws was often more concerned with other factors such as UK party politics and electioneering; Home Office delays and backlogs; housing shortages; and race relations (especially in the 1950s, '60s, and '70s). Rather than the protection of refugees, the control of asylum seekers and the effect that more asylum seekers would have *on the UK* was the dominant discourse.

The introduction of the 1971 Immigration Act was noteworthy in that it signified a move from Commonwealth preference to European preference; it launched the Immigration Rules, which are still used to make changes to asylum and immigration laws; and it conferred unprecedented discretionary powers on the Home Secretary which are still enjoyed today. A detailed study of the 1971 Immigration Act (chapter six) shows how this important piece of legislation shaped later policies and laws, reminding us that the contemporary hostile environment would not be possible without this historic repressive legislation.

10.2.1 Age of Humanitarianism, 1900 to 1962

International legislation introduced in the Age of Humanitarianism was dominated by the international recognition that the atrocities of the two world wars could not be repeated. The priority was dealing with the refugees generated by the wars, and consequently the contemporary international regime for the protection of refugees began after WW2 with the establishment of the UNHCR and the 1951 Refugee Convention. In the UK, besides the initial introduction to alien arrival restrictions contained in the 1905 Aliens Act, the most influential element of the UK's legislation in this period was the

[1194] Alyssa Girvan, 'The History of Immigration Policy (1905-2016), Timeline Resource', accessed 12/02/21.

introduction of the hugely generous 1948 British Nationality Act. This Act – brought in under the first (overall majority) Labour government – created the status of 'Citizen of the United Kingdom and Colonies (CUKC)'[1195], a status which allowed all subjects from all parts of the British Empire the right to live and work in the UK. This, in turn, sparked the beginning of Commonwealth immigration into the country, led by the arrival of the Empire Windrush that same year[1196]. The 1948 Act led to increases in 'New Commonwealth' immigration[1197], which led to issues around diversity and multiculturalism. Race relations became a pressing issue of the day, as evidenced by the 1958 race riots in Nottingham and Notting Hill[1198].

Driven by the horrors of the world wars, this first period was an Age of Humanitarianism. Indeed, these world events underline how UK asylum policy was heavily intertwined with external relations in terms of international institutions and instruments at that time. Although the parliamentary discourse then was contrary to a humanitarian ethos, the UK legislation introduced post-WW2 was a compassionate piece of legislation. However, the fact that this led to higher levels of Commonwealth immigration was the spark which ignited the racist legislation in the Age of Hesitancy.

10.2.2 Age of Hesitancy, 1962 to 1993

The racial tensions of the 1950s became the backdrop for the second period, which was dominated by race, in terms of race relations, discriminatory legislation, and race-related rhetoric. Racially discriminatory legislation was introduced in the 1960s and 1970s in conjunction with continued arrivals from the New Commonwealth; the rise of right-wing groups such as the National Front; and racist rhetoric, most notably by right-wing Conservative MP, Enoch Powell. There is some debate as to cause and effect, that is, as to whether such legislation was the cause of an increase in racial tensions or vice versa[1199]. This period also saw the start of a long-lasting 'blame game' of scapegoating immigrants and refugees for all manner of issues, including 'problems' around multiculturalism and lack of housing. The situation – of racial tension and scapegoating

[1195] British Nationality Act 1948, s 12, accessed 14/12/20.
[1196] The History Press, 'Windrush: A landmark in the history of modern Britain', accessed 19/02/21.
[1197] Randall Hansen, *Citizenship and Immigration in Post-War Britain: The Institutional Origins of a Multicultural Nation* (OUP 2000) 29.
[1198] Christian Joppke, *Citizenship and Immigration* (Polity Press 2010) 101.
[1199] Ian R G Spencer, *British Immigration Policy since 1939: The Making of Multi-Racial Britain* (Routledge 1997) 100; Randall Hansen (n1197) 10.

– was exacerbated by the fact that right-wing politics became more mainstream under Margaret Thatcher's Conservatives, who came to power in 1979 and were in power for the remainder of this period and beyond.

The influence of external relations continues in this age with the introduction of the 1971 Immigration Act and the shift from the Commonwealth to Europe seen as a pivotal moment. Race was most certainly a factor in this shift, as is evidenced in the 'patriality' clause in the 1971 Act, and the conflation by both main political parties of race relations and immigration control. Both internal factors, in terms of race relations, and external factors, in terms of the UK's geopolitical position in respect of moving away from the Commonwealth and towards the European Union, were important in this period, and both contributed to the introduction of further immigration control measures.

10.2.3 Age of Hostility, 1993 to 2023

The start of the Age of Hostility saw a change of government and the birth of New Labour, but this was not to be a change in direction for asylum and immigration legislation. New Labour were in power during the first half of the Age of Hostility, and during their time in office, they introduced a steady stream – between 1998 and 2009 there was a new Act every one or two years – of increasingly restrictive legislation. These Acts on asylum, immigration, and border control continued and incrementally expanded the restrictive policies which had been introduced in the previous period under the Conservatives. Coinciding with an increase in asylum applications between 1999 and 2002 (see Figure 1.2, Asylum Applications in the UK, p.16), this was really the start of the hostile environment, a harsh regime of reduced welfare benefits and restrictions on entry, designed to reduce the number of people claiming asylum in the UK. The related issues of asylum and immigration continued to be intertwined in the legislation, and the legislation itself – incorporating a plethora of different rules, regulations, restrictions, and penalties – became increasingly complicated. Asylum and immigration were also linked with security concerns and anti-terrorism measures following 9/11 and 7/7[1200]. In 2016, the UK voted to leave the EU, and, despite the fact that the UK was largely unaffected by the 2015 European migrant crisis (numbers of asylum claimants entering the UK did not significantly increase at this time), free movement, immigration,

[1200] Gareth Mulvey, 'When Policy Creates Politics: The Problematizing of Immigration and the Consequences for Refugee Integration in the UK (2010) 23(4) Journal of Refugee Studies 448.

and asylum, muddled together as one, were the defining issues of the Brexit campaign. Immigrants and asylum seekers were used by the 'Leave' campaign as a reason to exit the EU. This was the latest example in a long-established 'blame game': immigration and asylum are political concerns which are used by politicians to 'lay the blame' or deflect from other potentially unpopular policies[1201]. In conjunction with this, bespoke politically motivated resettlement schemes, such as those implemented for refugees from Syria (introduced in 2014 under the Conservative-Liberal Democrat coalition), Afghanistan and Ukraine (both introduced in 2022 under the Conservatives), have been introduced, running parallel with increasingly restrictive legislation designed to stop asylum seekers arriving independently.

This third age of intense restrictionism was initiated by increases in asylum applications in the 1990s, and external relations are now emphasised more in terms of how they affect the UK (in terms of numbers arriving). The introduction of increasingly hostile legislation, facilitated by the fact that it has been introduced by both parties on the centre-left and centre-right, has culminated in the 2023 Act, which potentially breaches the ECHR. The passing of such a repressive piece of legislation would have been unthinkable without the cumulative effect of the introduction of hostile laws over time.

10.2.4 Parliamentary Debates and General Election Manifestos

Delving further into the discourse of the parliamentary debates, a content analysis revealed increasingly high levels of hostility, both in absolute and relative terms, over time. Apart from the debates on the 1948 British Nationality Act and the 1998 Human Rights Act (both compassionate pieces of legislation), all debates displayed net hostility, that is, hostile comments outweighed non-hostile ones by some margin, and this net hostility increased over time. However, the converse was true in the general election manifestos where non-hostile comments (related to asylum and immigration) outweighed hostile ones. A more detailed discourse analysis of the debates showed that new legislation was about 'closing loopholes'; it was often more concerned with party politics and electioneering; it was frequently about dealing with Home Office delays and backlogs; it was tied in with other domestic issues such as housing; and it was intertwined with race, which was historically a contributing factor to immigration

[1201] Sarah Looney, 'Breaking Point? An Examination of the Politics of Othering in Brexit Britain' (2017) TLI Think! Paper 69/2017 3.

legislation. Although race – in terms of race relations and racial discrimination – is not currently such a major issue, it has consistently been a prominent feature in the past. Historical racially discriminatory legislation has fed into and contributed to the current hostile environment. The protection of asylum seekers was not a top concern nor were the UK's international obligations. There are very few references to international legislation in UK domestic law on asylum and immigration, an indication that international laws are not a high priority for UK policymakers. Indeed, there is a general consensus that 'the right to decide an entrance policy is a fundamental right of all states'[1202].

The legislation with respect to issues of asylum, refugees, and immigration tends to be reactive rather than forward-thinking. New laws and policies being introduced are often to deal with closing a loophole or legislating against perceived or actual abuses of the system. In addition to the reactive nature of the legislation, the parliamentary discussions show that members of the government do not tend to offer any evidence that the policies they are introducing will work. In general, new legislation is not based on evidence but often has more to do with party politics and electioneering. The legislation under debate is criticised by politicians on both sides of the House, with the government increasingly being accused of using issues of asylum and immigration as a distraction tactic. The 'numbers game' category shows that MPs from all parties use statistics both as an argument for and against accepting more refugees and migrants. Hostile environment policies, involving repressive measures such as detention and no access to work or benefits, apply equally to all asylum applicants, and the fact that these hostile deterrence measures affect genuine asylum seekers as well as 'bogus' ones is not a prominent feature of the debates.

It is clear from the analysis of the parliamentary debates that the role of the Home Office and the discretion of the Home Secretary are both highly significant. The Home Office has sole responsibility for the day-to-day operation of asylum provision and immigration, and there were very few mentions in the debates of cooperation or coordination with other government departments. It is also clear that the Home Office is plagued by delays, backlogs, and bureaucratic inefficiencies, and much of the legislation

[1202] Liza Schuster, *The Use and Abuse of Political Asylum in Britain and Germany* (Frank Cass Publishers 2003) 38.

being introduced is to 'help' with these inefficiencies by reducing the number of asylum applications. As well as immigration, the remit of the Home Office is public order, prisons, and policing, and this could be a relevant factor in the development of the hostile environment. The fact that the same government department is in charge of both policing and immigration may account for the emphasis placed on control and management procedures – rather than support and protection – when it comes to issues of asylum and immigration.

Apart from statements proclaiming the UK's proud history of protecting those in need, there are, in fact, very few references to protection of refugees in the parliamentary debates. Rather than looking for ways to help and protect refugees, much of the discussion revolves around the politics, the administration, and trying to prevent asylum seekers from reaching the UK. The language around the issue of asylum tends to portray it as a problem, burden, crisis, or emergency, and often links it with other matters such as housing shortages and homelessness. While these are legitimate concerns, it would appear that refugees and asylum seekers are being used as scapegoats in connection with such matters.

Mentions of race relations and race discrimination were widespread throughout the parliamentary debates, especially in the Ages of Hesitancy and Hostility. Issues of race and immigration are closely connected, and asylum and immigration legislation takes account of racial factors, both internationally (e.g., the Kenyan Asians in 1968) and at home (e.g., to counteract the rise of right-wing parties such as the BNP and UKIP). Throughout the debates, there were various references to the UK's international obligations to the Refugee Convention and the ECHR as well as international cooperation worldwide, with Europe, and with France. While many MPs acknowledge the UK's international obligations, there appears to be a growing concern with regard to the UK government's interpretation of the Refugee Convention and UK legislation potentially being in breach of these international obligations, especially in the 2022 Nationality and Borders Bill and the 2023 Illegal Migration Bill debates.

The discourse surrounding the issues of asylum and immigration was less hostile in the general election manifestos than it was in the parliamentary debates, although there were increasing commitments in the manifestos to strict immigration control. The Labour and

Liberal manifestos tended to be more sympathetic to the plight of refugees than the Conservative manifestos.

Conducting a temporal analysis across the three ages of development identified four concepts related to the issue of the UK's hostile environment for asylum seekers, namely:

- Concept 1: Internal Politics: UK law-making on asylum and immigration is constrained by domestic party politics. The steady stream of increasingly restrictive legislation is more concerned with responding to Home Office inefficiencies rather than the provision of asylum and protection of refugees. Moreover, the development of the UK's hostile environment can at least partly be accounted for by the fact that a right-wing government has been in power for the majority of the time, and there is not an effective, more compassionate opposition to its restrictive hostile environment policies. While laws do not explicitly refer to Home Office bureaucracy, measures introduced, especially in the Age of Hostility help with Home Office administration by 1) reducing numbers of applications; and 2) 'outsourcing' checking and monitoring. A key point is that increasing levels of hostility are more evident in parliament than in manifestos, suggesting that they are driven more by politicians themselves than by what they believe the public wants.
- Concept 2: International Norms: UK law-making on asylum and immigration does take account of international norms and influences, although there are very few references to international legislation in UK domestic law. While elite decision-makers are aware of international legislation and obligations, there has been a shift from acknowledging the UK's commitment to and responsibilities under the Refugee Convention to concerns that the legislation being introduced might contravene the convention. Elite decision-makers acknowledge the role and responsibility of the UK with regard to global events which could generate refugees. However, they tend not to make proposals to deal with these adverse situations or to address the root causes of forced displacement. The influence of international factors is more evident in the Ages of Humanitarianism (the two world wars) and Hesitancy (decolonisation and the move by the UK from Commonwealth preference to European preference). From an international point of view, the Age of Hostility is more concerned with the effects of immigration *on the UK* (e.g., numbers of asylum seekers arriving).

- Concept 3: Domestic Constraints: UK law-making on asylum and immigration is limited by domestic issues and constraints. Increasingly, the consequences on the UK of accepting more asylum seekers is the dominant discourse and the protection needs of vulnerable individuals is secondary to this. Asylum has become an election issue in its own right (rather than within immigration in general) with an increasing emphasis on control and management; tackling 'abuse' of the asylum system; and illegal migration. The emphases placed on control, management, and tackling 'abuse' have increased in a piecemeal fashion over the ages from the introduction of the control of 'undesirables' in 1905 to the very many restrictive Acts passed in the Age of Hostility to legislate for all sorts of abuses and control measures from 'sham marriages' to small boat arrivals.
- Concept 4: Values: UK law-making on asylum and immigration is impacted by the values and principles of decision-makers. The 'proud history' discourse has been used consistently by elite decision-makers, often preceding the introduction or justification of restrictive measures. Parallel to this, there is a tendency for decision-makers to use negative and derogatory language when describing the issue of refugees and asylum seekers, thus contributing to portraying asylum provision in the UK as problematic. The use of such language is a possible indicator that UK lawmakers do not hold asylum seekers or the issue of asylum in high regard. The 'toning down' of derogatory language, which was prevalent in the earliest period, has not been reflected in a reduction in hostility, rather this has increased, particularly throughout the Age of Hostility. Race has consistently been a factor which has been linked with immigration control, especially in the Age of Hesitancy. Sparked by immigration from the 'New Commonwealth', the development of the UK's asylum and immigration legislation has historically been influenced by decision-makers' concerns around race relations and multiculturalism.

The next section highlights some examples of the incremental changes which have taken place in the construction of the UK's hostile environment. These have been identified from the data presented in this thesis.

10.3 Examples of Incremental Change in the Construction of the Hostile Environment

There are many instances of incremental change in the temporal construction of the hostile environment. Not only do these examples demonstrate how the hostile environment has developed incrementally over time, but they also highlight the shocking differences between earlier and later policies.

Firstly, incremental limits have been placed on the entitlement to British citizenship from the generous 'Citizen of the United Kingdom and Colonies' included in the 1948 British Nationality Act; to restrictions on citizenship in the 1981 Act; to powers given to the Home Secretary in the 2022 Act to deprive a person of UK citizenship without giving them notice. In addition, there have been a series of incremental decreases in asylum seekers' access to welfare benefits, from housing only to be provided on a temporary basis in the 1993 Act; to restrictions on social security benefits in 1996; support removed for those who had not claimed asylum as soon as possible in 2002; and disqualification from housing benefit in 2016.

Secondly, incremental changes have increased state power with respect to 'deterrence measures' such as detention and deportation. Asylum seeker detention has developed incrementally from its initial introduction in the 1971 Immigration Act, which allowed border officials to temporarily detain asylum seekers to ascertain their patriality; to detention at ports and airports in 2007; to the detention of all 'irregular' arrivals included in the 2023 Illegal Migration Act. Powers of deportation have also increased incrementally from the white-list of safe countries for return included in the 1996 Act to the latest return policy of the deportation of all 'irregular' asylum seeker arrivals to Rwanda. (The first definition of an 'illegal entrant' appears in the 1971 Immigration Act.) There have also been incremental increases in the use of non-state agents in the control and management of asylum and immigration. The governmentalisation of checking immigration status has gradually expanded from right to work checks in 1996; to a duty to report sham marriages in 1999; to checks on the right to rent in 2014. This has meant a gradual extension of internal borders in the UK.

Throughout the time period under review, there have also been incremental increases in penalties and punishments for non-compliance with the legislation, from fines imposed on airlines and shipping companies in the 1987 Act; penalties for carrying clandestine entrants in 1999; the 2002 Act making it an offence to help asylum seekers enter the UK; further penalties in 2004; and the 2022 Act updating the penalty for assisting unlawful

immigration to imprisonment for life. There have also been incremental increases in the discretionary powers of the Home Secretary from the initial discretion to grant or refuse leave to remain and to amend the Immigration Rules included in the 1971 Act to the *duty* included in the 2023 Act to remove asylum seekers who have arrived in the UK unlawfully.

These examples demonstrate how the incremental build-up of hostility has occurred over time through the introduction of increasingly hostile rules and measures, and, as such, they provide evidence of the temporal construction of the UK's hostile environment. They are the results of the incremental changes the thesis has analysed in the discourse of the law, debates and manifestos that unfolded across the conceptual fields examined.

Chapter 11:

Conclusions and Reflection

11.1 Conclusions

It is clear that a plethora of asylum and immigration laws have been introduced under (mainly) Labour and Conservative governments. This legislation tends to be retrospective in that its purpose is to deal with a certain aspect of asylum and immigration governance, such as the 1987 Immigration (Carriers' Liability) Act which was introduced to impose penalties on those helping undocumented migrants entering the country and the 2023 Illegal Migration Act intended to 'stop the boats'. While it can be argued that this is the purpose of legislation – to identify an issue and introduce legislation to deal with it – there appears to be no forward planning when it comes to asylum legislation. For example, despite global warming being a potential driver of migration, there was only one mention of climate change throughout the whole of the debates and manifestos (in the 2022 debate on the Nationality and Borders Bill). In addition, the increasingly restrictive legislation creates a hostile environment for asylum seekers in the UK in terms of reduced welfare benefits and increased constraints on entry.

Different theoretical and thematic aspects of the study are addressed in the literature in terms of the constructivist framework of the research; factors relevant to the development of hostile measures; and discourse analyses which have investigated specific refugee-related discourses. Through the holistic temporal analysis adopted here, this research extends these aspects with its approach of 'temporal constructivism', which stresses the importance of incremental change, and through its analysis of debates and manifestos, which identifies other relevant factors in the construction of the hostile environment. While legislation is introduced retrospectively to deal with specific issues, this runs parallel to ongoing incremental increases in repressive measures. In other words, laws are introduced to respond to specific circumstances at home and abroad but running through this retrospective legislation are increasingly repressive rules and regulations on, for example, detention, deportation, and dispersal; rights of appeal; illegality with respect to helping asylum seekers; and fines and penalties for non-compliance. This is the most important factor to explain where we are today: the latest

hostile legislation introduced in 2022 and 2023 would not have been possible without the incremental build-up of hostile laws over a long period of time.

Overall, the discourse surrounding the issues of asylum and immigration is less hostile in the general election manifestos than it is in the parliamentary debates. There are fewer criticisms of other parties and their policies, compared with the debates where criticisms of policy and legislation are widespread. There are positive comments on cooperating with other nations; adhering to international legislation (one notable exception being the Conservative pledge in 2005 to withdraw from the 1951 Convention); upholding human rights; and providing overseas aid. Contrary to the positive discourse, there are increasing commitments in the manifestos to strict immigration control which is sometimes linked to good race relations. Although there is a more humane rhetoric than in the parliamentary debates, firm and fair measures of control are seen as essential to combat abuse of the asylum system. In general, the election manifestos tend to express more compassion and use more moderate language than in the parliamentary debates. The manifestos – trying to appeal to a broad electorate – use much less inflammatory language. The parliamentary debates comprise an element of what I call 'pantomime politics' – incorporating strategies such as the use of excessive and dramatic language and 'shock statistics' – which tends to be absent from the more sombre tone in the manifestos. All three parties, but especially Liberal and Labour, are inclined to express more compassion in their manifestos than in the rhetoric of the debates. This suggests that the restrictive hostile environment is driven more by the politicians themselves than by what they believe the electorate actually wants.

Asylum seeking in the UK has been framed as a 'problem' and asylum legislation is more concerned with control and management rather than protection. Government rhetoric has increasingly portrayed asylum seekers as undeserving, bogus, illegal, and a burden on the state. It is the *incremental* nature of the construction of the hostile environment which has made it what it is today. It is this incremental construction – a 'temporal constructivism' – that explains the progression of the UK's hostile environment. Although big events (such as the end of WW2, the Cold War, or 9/11) have unquestionably had an influence on the development of the UK's asylum and immigration legislation, it is the incremental 'under the radar' construction which is the main contributing factor in this development. While traditional constructivism attaches an importance to crises and critical junctures, this research acknowledges that

incremental change is more important in the development of the UK's hostile environment for asylum seekers.

It is the incremental nature – which I have termed 'temporal constructivism' – of the development of the legislation that has first and foremost shaped where we are today. Building on traditional concepts of constructivism, with its emphasis on identity, rules, and representation, this thesis proposes a theoretical approach of temporal constructivism which emphasises the importance of incremental change to explain where we are now in terms of the UK's contemporary hostile environment. This temporal constructivism, with its emphasis on small incremental changes (rather than path-changing critical junctures or major overhauls) contributes to an understanding of the UK's contemporary hostile environment. It should be noted that it is not a linear construction – there are elements of hostility in earlier Bills – but an incremental one in that previous hostile measures are subsequently extended in later legislation. Piecemeal changes have been introduced by both main political parties, and at no point has there been a change in direction or a reversal of restrictive measures. While some measures have been criticised at times, the critique has not been so monumental as to result in a regime collapse or a complete 'starting from scratch'. At each stage, the government in office have succeeded in introducing a restrictive measure which has later been extended at the introduction of the next piece of restrictive legislation and so on. While there have been some protests and criticisms, none of these have been so influential as to stop this progression of hostility in its tracks.

The UK's hostile environment has been constructed through the discourse used to describe the issue as a 'problem'; through the negative discourse used to describe asylum seekers, in terms of both collective terms (such as flood or invasion) and adjectives used for individuals (such as illegal or bogus); through the increasingly restrictive laws and practices (including detention and deportation) which have been introduced incrementally; and through the increasingly restrictive internal and external border controls culminating (as of 2023) in the 'stop the boats' policy.

A key finding is that the parliamentary debates and election manifestos exhibit opposing tendencies in relation to hostility which tends to indicate that the hostile environment is cultivated more in parliament than in public. In addition, the discourse in Labour and Liberal manifestos tended to be more compassionate than in Conservative ones. Of the

whole period under review from 1900 to 2023, a Conservative or Conservative-led government was in power for eighty years, that is, 65% of the time. The fact that there has not been a more compassionate party in government could be a factor in the development of the UK's hostile environment. That said, it appears that it may be easier to express compassion in opposition, as, when Labour were in government, they continued with the restrictive measures introduced under the Conservatives. Throughout the whole time period under review, the Conservatives have introduced eleven restrictive Acts and Labour (despite being in power for much less time) have introduced ten. This suggests that the development of the UK's hostile environment can partly be explained by the fact that there has been no effective opposition to the imposition of hostile measures. Related to this, the UK's parliamentary process is a factor in the development of the hostile environment. The five-year parliamentary term means that there tends to be no long-term planning when it comes to asylum and immigration legislation. Rather, it is short term electioneering and a series of reactive laws which comprise today's hostile environment. In addition, the two-party 'first past the post' system and parliamentary voting based on a simple majority means that government legislation is at the whim of just two political parties. Legislation is always voted through and is never repealed by a new government.

There are three main conclusions from the evidence provided in this thesis, namely, that the UK's contemporary hostile environment is the product of an incremental construction of repressive measures over a period of time; that there are various associated reasons for this incremental construction; and that this incremental construction of hostility has been driven by successive UK governments (as opposed to being public or media driven). This thesis concludes that the UK's hostile environment for asylum seekers and refugees has been incrementally constructed by successive governments building on previous policies and legislation; it has been facilitated by the discourse surrounding the issue; and new asylum and immigration legislation has been associated with other factors (such as electioneering and party politics, Home Office inefficiencies, and race relations), rather than the protection of refugees. Specifically, referring back to the research questions:

Why has the UK adopted increasingly restrictive measures in the governance of asylum and immigration throughout the period 1900 to 2023? As detailed above, there are a number of reasons for the temporal construction of the UK's hostile

environment, including the retrospective introduction of legislation in respect of specific issues; introducing measures to deal with other domestic factors such as housing shortages; attempting to reduce the numbers of asylum seekers in the UK in order to deal with asylum backlogs or perceived mismanagement of the Home Office; and the political perspective in that a centre-right Conservative party has been in power for most of the time and there has been no effective opposition to the introduction of hostile legislation.

How has UK asylum and immigration legislation developed since the start of the twentieth century, and why has it developed in this way? The UK's asylum and immigration regimes have developed in an incremental fashion, building and expanding on previous measures, a development which I have called 'temporal constructivism'. Small, almost insignificant changes have built up over the years into the extremely hostile legislation of recent years. This has been facilitated by both centre-left and centre-right parties and has been facilitated by the two-party system of government in the UK. Both main parties have introduced repressive measures which have not been repealed by a new government when taking office.

How and why has the discourse of elite decision-makers facilitated the development of the UK's hostile environment legislation for asylum seekers and refugees? The parliamentary discourse around asylum seekers and refugees has been increasingly negative, portraying both the issue of asylum and asylum seekers as problematic. The negative rhetoric used by politicians in parliament – which has been much more negative than that used in election manifestos – has normalised the notion of a hostile environment for asylum seekers and consequently facilitated its construction. The normalisation of a hostile environment by parliamentarians over a number of years has made the contemporary hostile environment easier to construct.

11.2 Reflection on the Current Situation

The key challenge with respect to refugee protection for any UK government is how to balance human rights obligations and duties with other responsibilities, both domestic and international. The balance reached by any government depends on many factors, including the political persuasion of the party in power. We observed at the start, in Suella Braverman's speech, a restrictive refugee policy centred around two main

imperatives, to ‘stop the boats’ and the Rwanda policy. As of 4 July 2024, a new Labour government is in office[1203] and they have already announced that they will not proceed with the plan to send asylum seekers to Rwanda for asylum processing and protection[1204]. While this appears to be a step in a more humanitarian direction, asylum seekers arriving irregularly are still being detained and there is no indication that the 2023 Illegal Migration Act will be repealed. The imperative to ‘stop the boats’ is still high on the agenda, although the rhetoric has changed slightly from the Conservatives’ ‘stop the boats’ to Labour’s ‘smash the gangs’[1205], referring to their promise to tackle people smuggling gangs. Accordingly, new legislation, a Border Security, Asylum, and Immigration Bill ‘to modernise the asylum and immigration system, establishing a new border security command and delivering enhanced counter terror powers to tackle organised immigration crime’[1206], was announced in The King's Speech.

While it is early days in the new government’s tenure, it does seem that they intend to continue with the incremental tweaking and tinkering of the current hostile environment regime. We have seen, historically, that legislation has been introduced retrospectively to plug loopholes and prevent asylum seekers reaching British shores, whether it be in the backs of lorries, on the Eurotunnel, or crossing the English Channel in small boats. However, such legislation does not stop the movement of people, rather they look for alternative and often riskier routes, and the next route could be longer and even more perilous boat journeys to the UK. There are no signs that there will be a regime change by the new government to a more caring and dignified asylum system, perhaps incorporating a more holistic approach which tries to understand why people leave their country of origin, and more humane measures such as refugee/humanitarian visas, better integration, and allowing asylum seekers to work. It would be heartening to believe that the new Bill being introduced by a new Labour government is a more compassionate and empathetic piece of legislation, but history tells us that this is not an assumption that can reasonably be made.

[1203] House of Commons Library, ‘General election 2024 results’, accessed 05/11/24.
[1204] BBC News, ‘Starmer confirms Rwanda deportation plan “dead”’, accessed 05/11/24.
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Appendices

Appendix A

Stages of the Passage of a Bill through Parliament and Parliamentary Stages of the Nationality and Borders Act 2022

1) Stages of the Passage of a Bill through Parliament (introduced in the House of Commons)[1207]

Stage	Brief Description
First reading (Commons)	Formal introduction – no debate on the Bill
Second reading (Commons)	Debate on general principles of the Bill
Committee stage (Commons)	Line by line examination of the Bill
Report stage (Commons)	Chance for House to discuss and amend the Bill
Third reading (Commons)	Opportunity for final debate on the Bill
First reading (Lords)	Formal introduction – no debate on the Bill
Second reading (Lords)	Debate on key principles of the Bill
Committee stage (Lords)	Line by line examination of the Bill
Report stage (Lords)	Chance for House to discuss and amend the Bill
Third reading (Lords)	Opportunity to 'tidy up' the Bill
Consideration of amendments	Each House considers the other's amendments
Royal Assent	Bill becomes an Act of Parliament

[1207] 'How does a bill become a law? Guide to the passage of a Bill': Summary of description provided on Parliament website. The second reading debates are analysed using NVivo.

2) Parliamentary Stages of the Nationality and Borders Act 2022 (Government Bill: Originated in the House of Commons, Session 2021-22: Stages)[1208]

Date	House	Description	Details
6 July 2021	Commons	1st reading	Formal introduction, no debate.
From 19 July 2021	Commons	2nd reading	2 sittings: 9 hours of debate: 19/7/21 (4 hrs) & 20/7/21 (5 hrs).
19 July 2021	Commons	Ways and Means resolution	No publications.
19 July 2021	Commons	Money resolution	No publications.
20 July 2021	Commons	Programme motion	No publications.
From 21 September 2021	Commons	Committee stage	16 sittings: 37.5 hours of debate: 21/9/21 (4 hrs); 23/9/21 (4 hrs); 19/10/21 (5 hrs); 21/10/21 (4.5 hrs); 26/10/21 (6 hrs); 28/10/21 4.5 hrs); 2/11/21 (5 hrs); 4/11/21 (4.5 hrs).
7 December 2021	Commons	Programme motion	No publications.
From 7 December 2021	Commons	Report stage	2 sittings: 8 hours of debate: 7/12/21 (5 hrs) & 8/12/21 (3 hrs).
8 December 2021	Commons	3rd reading	1 sitting: 3 hours of debate: 8/12/21 (3 hrs).
9 December 2021	Lords	1st reading	Formal introduction, no debate.
5 January 2022	Lords	2nd reading	1 sitting: 6 hours of debate: 5/1/22 (6 hrs).
From 27 January 2022	Lords	Committee stage	9 sittings: 42.5 hours of debate: 27/1/22 (6.5 hrs); 1/2/22 (7 hrs); 3/2/22 (8 hrs); 8/2/22 (12 hrs); 10/2/22 (10 hrs).

[1208] Nationality and Borders Act 2022; Government Bill: Summary of stages on Parliament website from first reading to Royal Assent. The second reading debate is analysed using NVivo.

From 28 February 2022	Lords	Report stage	5 sittings: 24.5 hours of debate: 28/2/22 (6.5 hrs); 2/3/22 (7.5 hrs); 8/3/22 (10.5 hrs).
14 March 2022	Lords	3rd reading	1 sitting: 1 hour of debate: 14/3 22 (1 hr).
22 March 2022	Commons	Programme motion	No publications.
22 March 2022	Commons	Consideration of Lords amendments	1 sitting: 6 hours of debate: 22/3/22 (6 hrs).
4 April 2022	Lords	Consideration of Commons amendments	1 sitting: 7 hours of debate: 4/4/22 (7 hrs).
20 April 2022	Commons	Consideration of Lords amendments	1 sitting: 4 hours of debate: 20/4/22 (4 hrs)
26 April 2022	Lords	Consideration of Commons amendments	1 sitting: 4 hours of debate: 26/4/22 (4 hrs).
27 April 2022	Commons	Consideration of Lords message	1 sitting: 1 hour of debate: 27/4/22 (1 hr).
27 April 2022	Lords	Consideration of Commons amendments	1 sitting: 1.5 hours of debate: 27/4/22 (1.5 hrs).
28 April 2022	Neither	Royal Assent	Announcement in both Houses, no debate.
6 July 2021 to 28 April 2022 (nearly 10 months)	**House of Commons and House of Lords**	**2022 Nationality and Borders Bill**	**House of Commons: 68.5 hours** **House of Lords: 86.5 hours** **Total hours of debate: 155 hours**

Notes

- The first readings in both Houses and the Royal Assent are single sentence statements.
- Apart from these, all other stages outlined above are lengthy discussions, meetings, or reports.
- The House of Commons second reading debate has been coded and analysed using NVivo.
- The House of Commons second readings have been used consistently throughout the project for all Bills from 1905 up to 2023.

Appendix B

List of Key Legislation Examined, 1900 to 2023[1209]

(international instruments are included in italics)

Year	Act of Parliament	Political Party in Government[1210]
1905	Aliens Act	Liberal
1914	British Nationality and Status of Aliens Act	Liberal
1919	Aliens Act	Coalition
1947	Polish Resettlement Act	Labour
1948	British Nationality Act	Labour
1951	*Refugee Convention (and 1967 Protocol)*	Labour
1953	*European Convention on Human Rights*	Conservative
1962	Commonwealth Immigrants Act	Conservative
1968	Commonwealth Immigrants Act	Labour
1971	Immigration Act	Conservative
1981	British Nationality Act	Conservative
1987	Immigration (Carriers' Liability) Act	Conservative
1988	Immigration Act	Conservative
1993	Asylum and Immigration Appeals Act	Conservative
1996	Asylum and Immigration Act	Conservative
1997	*Dublin Convention*	Labour
1998	Human Rights Act	Labour
1999	Immigration and Asylum Act	Labour
2000	*EU Charter of Fundamental Rights*	Labour
2001	Anti-Terrorism, Crime and Security Act	Labour
2002	Nationality, Immigration and Asylum Act	Labour
2003	*Dublin II*	Labour
2004	Asylum and Immigration Act	Labour
2006	Immigration, Asylum and Nationality Act	Labour
2007	UK Borders Act	Labour
2008	Criminal Justice and Immigration Act	Labour
2009	Borders, Citizenship, and Immigration Act	Labour
2013	*Dublin III*	Con-Lib Dem
2014	Immigration Act	Con-Lib Dem
2016	Immigration Act	Conservative
2022	Nationality and Borders Act	Conservative
2023	Illegal Migration Act	Conservative

[1209] Alyssa Girvan, 'The History of Immigration Policy (1905-2016), Timeline Resource'.
[1210] Historic UK, 'Prime Ministers of Great Britain'.

Appendix C

Summary of Grants of Protection and Resettlement Visas[1211]

Resettlement and Protection	Year ended 30 June 2024	Year ended 30 June 2023
Grants of Protection		
Refugee protection	62,089	19,476
Humanitarian protection	4,365	948
Alternative protection	1,524	464
Total grants of refugee status or other protection	**67,978**	**20,888**
Resettlement		
Ukraine visas	35,833	102,807
Hong Kong BN(O) visas	33,067	43,368
Family reunion visas	16,244	4,671
Other resettlements (inc. 7,706 (2024) & 2,570 (2023) under the Afghan schemes)	8,198	3,408
Total resettlement visas	**93,342**	**154,254**
Overall Total	**161,320**	**175,142**
% Grants of Protection	42%	12%
% Resettlement visas	58%	88%

[1211] gov.uk, 'How many people do we grant protection to?'.

Appendix D

Bullet Point Summaries of the Second Reading Parliamentary Debates from Initial Inspection

Year	Bullet-Point Summary of Debate
1905	**Aliens Act** • Increasing numbers • Evils of sweating and overcrowding/Bill diverts attention from evils of sweating and overcrowding. • Menace to law and order • *Class* of aliens – refuse/undesirable/riffraff/scum/useless dregs/refuse of Eastern Europe/derelicts of Europe/refuse heap of Europe/poorest class/floating scum/pauper and diseased alien immigration • Russian Jews • Small number and proportion cf. other countries • Sham remedy for sweating • Panic legislation • New departure in British legislation • Asylum – noble tradition of British policy/sacred principle of asylum/historical reputation as a sanctuary • Right of political asylum should not be restricted. • Shop window Bill for general election/party measure • Disease • Enormous numbers/flood of undesirables/continuous influx/great travelling mass/swamped/army of locusts/unrestricted flow/burden. • Overcrowded island
1914	**British Nationality and Status of Aliens Act** • A British subject anywhere is a British subject everywhere. • Uniform nationality all over the Dominions of the Crown
1919	**Aliens Act** • Great and noble traditions – political refugees/sanctuary/dignity, grandeur, and nobility of asylum/old British traditions of fair play, justice and liberty/right of asylum/proud • Dumping ground for the refugees of the world/parasites/swarm into England/asylum for all the ne'er-do-wells and parasites of the world/scum of the earth/evils/undesirable riffraff/muck, rubbish and refuse of the Continent/armies of aliens/crowds of criminal and undesirable aliens/flood. • Britain for the British • Pre-1905 policy was 'let them all come'. • 1905 to 1914 – period of weak administration by weak Home Secretaries • Housing • Germans

	• Obstacle to international goodwill/contrary to the league of Nations/contrary to the spirit of internationalism • Policy of hate/hatred, suspicion, and animosity/clear-them-all-out policy
1947	**Polish Resettlement Act** • Numbers • Costs including pensions. • Lack of cooperation with the Polish Government is a reflection on our government's foreign policy. • Contrasting views – they should not be given preferential treatment cf. we have a deep moral obligation to the Polish forces
1948	**British Nationality Act** • Terminology – 'British citizen' cf. 'citizen of the UK and Colonies (CUKC)' • Privilege to be a British subject/proud and honoured. • Identity • Citizenship/nationality • Heavy strain on nationality laws all over the world – flotsam and jetsam of refugees and exiles/tremendous population movement in the Commonwealth • Metropolitan country/greatest in the world/greatest and most liberal in all history/great metropolitan tradition of hospitality
1962	**Commonwealth Immigrants Act** • Racial discrimination/colour bar/discriminatory/a colour Bill/bare-faced, open race discrimination/colour prejudice/based on racial factors alone/reason is coloured immigration/colour bar, especially West Indians, Indians, and Pakistanis • Most densely populated little island in the world/thickly populated country/fewer countries more densely populated/matter not of colour but of room/small island, terribly overcrowded already/overpopulated/very overcrowded island. • Control of immigration from the Commonwealth/immigration of aliens – controlled since 1905/control the flow/to check a flow which may become a flood/control a flow which may become dangerous. • Enormous flood of people/flood…is rising/ increasing influx of migrants/swelling tide of immigration/crowding in/flocking in • Noble record of introducing refugees to our shores • Numbers/sheer weight of numbers/vast numbers • Domestic issues – social relations/housing and overcrowding/employment and unemployment/homelessness/tremendous social problems /crime/economy. • Honey pot • Departure from the long and cherished tradition of keeping shores open to all Commonwealth citizens/weakens ties with the Commonwealth/loss of the open door
1968	**Commonwealth Immigrants Act** • Treatment of the group of Asian citizens in East Africa and especially in Kenya/Kenyanisation/flood of immigrants to this country from Kenya/British citizens with British passports – we are morally and legally responsible for them. • Hasty or panic legislation/panic reaction • UDHR art. 15 – assures right to nationality, which we are now in effect taking away/creating a whole new class of stateless persons/transforming British citizens into refugees/statelessness. • Racial discrimination • Already a crowded island/overpopulated.

	• Flow of successive waves of immigrants/growing influx/problem of numbers • Immigration control
1971	**Immigration Act** • Numbers/large wave of immigration/new immigration influx/trickle…will develop into a flood/no other country has faced an immigration problem at all comparable with our own. • Control/regulation/firm control/orderly and sensible system of immigration/control of entry • Patriality/citizenship • Prejudice/racist/biased in favour of white people/deliberate policy of racial discrimination/problem of coloured immigrants/clearly racialist/desirable to restrict the number of coloured immigrants/too many non-whites. • Domestic issues – housing/overcrowding/education/unemployment/race relations • The idea of limiting immigration, especially from the Commonwealth, goes against the grain of a great deal of our tradition/turning our back on the Commonwealth/proud history of the British Commonwealth
1981	**British Nationality Act** • Citizenship/right of abode/naturalisation • Nationality/national identity/ immigration – steadily changing the character and identity of the nation. • Hong Kong • Immigration control/controlling Commonwealth immigration. • Numbers game/small, heavily populated island • Racist/discriminatory policy/Bill discriminates against the black population in the Commonwealth and already in the UK/discriminating against ethnic minorities/ illiberal, racist, and discriminatory/racist and sexist. • Discretionary powers for the Home Secretary/arbitrary and frightening discretionary power of the Home Secretary/huge increase in the discretionary powers of the Home Office • The Bill represents the final disgrace in the UK's withdrawal from the Empire/one more nail in the coffin of our reputation as a liberal world power
1987	**Immigration (Carriers' Liability) Act** • People flooding into England/trickle becomes a flood/steady and persistent influx/wave of so-called refugees. • Sri Lanka/Tamils/64 Tamils arriving at Heathrow. • Work with other countries to come to a more sensible international understanding/our European partners/international rather than unilateral action. • Stop abuse of asylum procedures/abuse of our refugee programme/genuine problem of abuse/preventing abuse of UK's generous and liberal immigration and refugee policy/proper controls over the bogus/suspected abuse/serious threat to immigration control • Orderly entry of immigrants and refugees/properly ordered and regulated system for dealing with asylum/decent, humane, and orderly consideration of genuine asylum applications/firm immigration control • Surrogate immigration officers or entry clearance officers/additional arm of the Immigration Service/Government's privatisation of immigration law – handing responsibility to the airline. • General election – playing the race card/electoral advantage.

	• UK has always adopted a generous and liberal policy towards those seeking asylum/proud of our record of support for the UN convention/long and honourable tradition of giving asylum to victims fleeing political and religious persecution/ tradition of asylum/traditionally a haven for refugees
1988	**Immigration Act** • Crowded island/burden on our community • Firm immigration control/firm but fair controls on immigration/tighter immigration control/serious backlog/even-handed and fair • General atmosphere for anyone seeking political asylum in Britain is unremitting hostility bordering on racism. • Anti-immigration posturing by the Conservative party. • Flood of people arriving at Heathrow/immigrants – kind of plague or contagion/swamped with people/'plague' of overstayers. • Heightens racial tension/increases sense of distrust and alienation among immigrant communities/intolerably illiberal, discriminatory, and racist/message of the Bill – black and Asian people, 'you are not welcome here'. • Diminish and tarnish our international reputation. • Serious erosion of human rights
1993	**Asylum and Immigration Appeals Act** • Long and honourable tradition in the UK of offering political asylum/record of providing sanctuary/haven for those fleeing war and tyranny/historically, we stand head and shoulders above almost any other nation in our reception of genuine asylum seekers. • Bogus applicants/serious abuses of our procedures/cracking down on bogus asylum and immigration claims/abuse of the system on a grand scale/Bill brands asylum seekers as liars and as bogus • Swell of numbers/numbers are enormous/magnitude of the refugee problem/ system is overloaded/unrestricted influx/worldwide pressures/huge numbers. • Streamlined procedure/sieve them out at the port of entry/sifting out unfounded cases/vital filter. • Moral duty/moral responsibility/Bill is against human decency and human rights. • Racially discriminatory • Fortress Europe • Fingerprinting – criminalising of those seeking asylum/breach of human rights. • Housing – Government blame those seeking asylum for the housing crisis. • Immigration service – shambles and crisis for the past thirteen years • Migrants, asylum seekers, and refugees used as scapegoats for Governments of ill-repute/to deflect failures of capitalism on to those who have been most cruelly exploited by the process
1996	**Asylum and Immigration Act** • Tolerant society/our race relations are as good as - if not better than - those of any other country in Europe/proud record of giving refuge/safe haven/proud record on good race relations/historic tradition of providing asylum/beacon of liberty • Racketeering/bogus asylum applicants/current massive level of abuse/flood of so-called 'bogus applicants' • Must be a haven, not a honey pot. • Balance between firmness and fairness

	• Political/to garner votes/race card in the run up to the general election/party political motives. • Relatively crowded island/numbers/overwhelmed. • Greater international cooperation/international legal obligations • Discrimination/racial prejudice/moral vacuum/issues of race/xenophobia/appealing to some backward populism. • Create a category of non-person. • Delays and backlog at the Home Office/enormous delay • Whitelist - breach of Art 3 of the 1951 convention
1998	**Human Rights Act** • Basic civil and political rights • Case law – Chahal/Soering • Incorporates ECHR into British law. • Universality of human rights/rights-based society • There are more things that unite us and more experiences we have in common than there are those that separate us.
1999	**Immigration and Asylum Act** • Most fundamental reform of immigration and asylum law for decades/modern, flexible, and streamlined system/reform and modernisation • Fairer, faster, and firmer • Increasing number of asylum seekers/ reducing the flow of people making applications/flow of asylum seekers is becoming stronger. • Illegal immigration/clandestine entrants/majority seeking political asylum are not entitled to it/great majority are bogus applications. • Strengthening international cooperation to tackle illegal immigration. • Detention – small number of cases/last resort/people not suspected of a criminal offence can be detained/no provision to prevent detention of children/no time limits. • Cash benefits act as a 'pull factor'/benefits are a magnet for abuse. • Proud tradition/long and distinguished history of tolerance and generosity/ tremendous record of welcoming/safe haven • Scapegoats/stereotypes • Public rhetoric of tough talking • International obligations/international agreements/ burden of asylum seekers is not in this country or in Europe/no commitment to greater cooperation from foreign port authorities. • Asylum system is where most mistakes have been made/need to restore integrity to our asylum system
2001	**Anti-terrorism, Crime and Security Act** • 11 September attacks/urgent and appropriate action/proportionate and reasonable measures/anti-terrorist legislation/public emergency threatening the life of the nation. • Encroaches on civil liberties and human rights/draconian legislation/imprisonment without charge or trial – violation of fundamental human rights. • No other European country is derogating the ECHR. • Terrorists use our immigration and asylum laws
2002	**Nationality, Immigration and Asylum Act**

	• Warm welcome/strengthen the welcome/long and proud tradition/sanctuary/safe haven/proud of values and history/humane/decent and fair country/UK is a much more attractive destination than many other European countries • Systems which operate fairly, competently, and robustly/measures carried out properly, competently, and speedily/balanced approach/managed migration/proper, firm, and sensible border controls/fairness and tolerance. • Gateway with UNHCR/global issue/bilateral agreement with France/world events/greater emphasis on working with our European partners/we must secure international agreements on asylum/we must eradicate poverty in the developing world/problem has been created by the West by making other countries poor • Asylum shopping and benefit shopping/Britain's so called pull factors • GP's – swamped/overburdened/overwhelmed. • Current system – chaotic/mess/unmanageable • Problem is one of numbers/numbers are substantial. • Asylum policy based on deterrence rather than understanding why asylum seekers come to the UK. • More people are detained for longer and with less scrutiny in this country than any other European country. • French elections (Jean Marie Le Pen)/BNP/NF
2004	**Asylum and Immigration Act** • Significant rise in number of people applying for asylum/enormous movement of people across borders/unprecedented/massive increase in volume/gross overflow. • We will work with UNHCR/helping genuine refugees worldwide. • Illegal immigration/abuse of the system/undocumented arrivals/misuse • Warm welcome to people from around the world/long and honourable tradition of giving safe refuge/proud tradition. • Current system - lacks efficiency/beginning to lack humanity/state of almost total collapse/delay and inefficiency/borders are not secure/chaotic/complete shambles. • Bill would make children destitute/uses children as a tool to try to remove asylum seekers/children being used as a political tool/withdrawal of support - inhumane in the extreme/repressive and oppressive. • Scapegoats asylum seekers/uncaring, arrogant, and aggressive attitude that rich countries take towards the victims of poverty. • Knee-jerk mode of response/concerned with appeasing leader writers at the Daily Mail and Daily Express
2006	**Immigration, Asylum and Nationality Act** • Abuse of the system/uncontrolled immigration • Home Office is advised by the Foreign Office about conditions in any country. • Immigration control/border management • International cooperation, not fortress Britain/EU partners/working with UNHCR/international obligations/international context – Zimbabwe. • Current system - out of control/complete lack of communication between Home Office and Foreign Office/utter chaos/backlog/delays/administrative slowness and inefficiency/should be more joined up government - Home Office and Foreign Office should work together. • Two-year cycle of big announcements, bold promises, and botched policies • Pressures on housing, healthcare, and schooling/link between immigration and housing

	• This bill is hostile to asylum seekers. • Britain's reputation across the world as a safe haven/justice, decency, and fairness/proud tradition/tolerance and compassion/record on being party to the 1951 convention
2007	**UK Borders Act** • Illegal immigration • Terrorist threat • Globalisation/global migration and mass movement/pressure on our borders • Current system - embarrassing shambles/not for fit purpose/uncontrolled and chaotic/in crisis/borders are not secure/problems are administrative not legislative/at ports and airports, we do not have a barrier, we have a sieve/government's use of migration as a political football/headline-driven targets and gimmicks. • EU/Frontex/we need to work with our partners in Europe. • Numbers game/weight of numbers/severe strain on social services, housing, schools, and hospitals • BNP/NF • Bill – ambitious plan of reform/reactive, hasty, and driven by a media agenda/ piecemeal legislation/powers and laws but no policy, no strategy • Big problem - one migrant a minute coming into this country
2008	**Criminal Justice and Immigration Act** • Number of asylum seekers is at its lowest level since 1993. • Human Rights Act is an impediment to our ability to deal with terrorism
2009	**Borders, Citizenship and Immigration Act** • Bill (positive) - biggest overhaul of Britain's immigration system/strengthening our borders/controlling migration/control numbers/clear and fair system/earned citizenship/firm, fair, and fast/sift the illegal/better control. • Bill (negative) - haphazard mix of a few ideas/hotch-potch of measures/more piecemeal reforms/almost one Bill a year/knee-jerk policy making/rag-bag Bill/short-term dog-whistle politics/more unnecessary new bureaucracy. • Overwhelming tide of migration/out-of-control immigration • Current system - in crisis/chaotic, illogical, and ill-managed/biggest problem - porous borders • Globalisation/mass travel • Welfare of children/children in detention centres/widespread revulsion at the locking up of children • BNP/UKIP • Fairness is a great British trait/sense of fair play. • Cooperation with other countries, primarily in Europe, but also elsewhere/international cooperation
2014	**Immigration Act** • Immigration system inherited from last Government was chaotic and dysfunctional/shambolic/chaos, unfairness, inefficiency, and poor administration. • Pull factors/access to services. • Bill - making the UK a more hostile place/fairness/tough but fair/fair and just/blaming migrants for problems that are not of their construction/unworkable and unrealistic/illiberal/rushed and incoherent/dog-whistle politics/immigration policy of destitution.

	• NHS surcharge - blaming foreigners to distract from the Government's £20 billion of cuts to the NHS and the cost of reorganisation/health tourism. • Many see the UK as a soft touch/easy immigration route into the EU. • Culture of disbelief in the Home Office • Very difficult to enter the country legally. • We detain more people than any other European country except Greece, and Greece detains people only for very short periods/indefinite detention. • Racially discriminatory rental policy/landlord checks will lead to racial profiling. • Proud record/we are a country of immigrants/welcoming place for those genuinely fleeing persecution. • Obligations nationally and internationally • Hostile environment/anti-immigrant rhetoric • Demand to come to this country from less economically developed countries is almost unlimited/grossly overcrowded country. • Responsibility for economic imbalance around the world
2016	**Immigration Act** • Bill (positive) – fair/balanced and sustainable/right balance/in the national interest/fairer, stronger, and more effective/control over our borders • Inherited system - chaotic and uncontrolled • Unprecedented levels of people smuggling • Bill (negative) - legislation to get headlines/half-baked divisive measures/drastic, desperate measures to give the impression of action/pandering to prejudice/making Britain a more hostile and unwelcoming country/unpleasant and insidious/immigration theatre/politically motivated/creating a culture of fear/regressive, illiberal, ill-considered, and inhumane/shambles/horribly un-British/not fit for purpose/sledgehammer of a Bill/ill-considered, deeply divisive and lacking in compassion and any human decency/draconian/not grounded in evidence • Outsourcing immigration control to landlords/amateur immigration control/nation of immigration officers/amateur enforcement decisions/Government agents • Immigration - number one issue for voters • A lot to be proud of/beacon of hope/safety and refuge - great hallmark of this country for many years/melting-pot nation/proud history/beacon of opportunity/proud history of offering asylum • Destitution - immigration policy of choice • People are storming the Channel Tunnel/storming the port of Calais/storming the frontier. • One word that nobody has used – compassion. • Home Secretary – 'othering' on migration and immigration
2022	**Nationality and Borders Act** • The British people have had enough of open borders and uncontrolled immigration. • Costs the taxpayer more than £1 billion a year. • Home Office – failed asylum system/broken immigration system/length of time to make decisions/backlog/bureaucratic/waiting times/mismanagement/ incompetence/a hostile environment pervades the Home Office • Economic migrants pretending to be genuine refugees/the system is being abused and gamed/illegal migration to the UK/travelling through safe countries across the EU/UK as a destination of choice/endless cycle of baseless claims/close down the loopholes.

	• Controlling immigration/take back control of our (sovereign) borders. • Increase fairness of our system/fair, fast and affordable system • Creating safe and legal routes • National pride/our proud record/British tradition • Small boats/dangerous Channel crossings • Border security/national security • Human rights are at risk/discriminatory two-tiered approach to asylum/contrary to the Refugee Convention • Unaccompanied children • Requires international cooperation/France/our international obligations. • Bill – morally outrageous/anti-refugee/abysmal/shameful/flawed/heartless/hostile/ inhumane.
2023	**Illegal Migration Act** • Statement on the first page of the Bill that it may not be compatible with the ECHR. • Uncontrolled and illegal migration/unprecedented/unlimited • Stopping the boats/small boats crisis/dangerous small boat crossings/moral duty to stop the boats. • Humanitarian and financial costs/£6 million a day on hotels to house 'illegal arrivals' • Memorandum of understanding with Rwanda/world-leading Rwanda partnership/safe third country • Modern Slavery Act 2015/people smuggling and human trafficking/traffickers' charter/returns agreements/people smuggling gangs. • Backlog of outstanding claims/backlog of 160,000 cases/(global) safe and legal routes • Undermining international cooperation, international obligations, and international law (refugee convention, trafficking convention)/global migration challenge • Strong border security/border security is national security. • Refugee ban Bill/despicable/abhorrent and unlawful/inhumane and immoral • Invasion/swarm/exponential increase in numbers of arrivals/exponential growth in human trafficking/rhetoric/hostility and hatred • British people support the Bill. • Protection of children and victims of human trafficking/vulnerable children/unaccompanied children/detention of children • Annual cap on numbers/capping of safe and legal routes/quota

Appendix E

Parliamentary Debates Codes and Codebook: List of 26 Codes, with a Description, Key Words and Data Examples, used in the Second Iteration Coding of the Parliamentary Debates

Parliamentary Debates: Codes

- Criticisms of Policies and Legislation (Criticisms)
- Perceived Abuse of the Asylum System (Abuse)
- Race Relations or Racial Discrimination (Race)
- Control of the Immigration and Asylum System (Control)
- Home Office: Administration and Discretionary Powers (Home Office)
- How the Issue of Asylum is Described or Portrayed (Issue – Portrayal)
- Domestic Matters associated with Asylum and Immigration (Domestic Matters)
- Numbers Game: Arguments Against Asylum Acceptances (Numbers – Against)
- International Legislation or Institutions (Int'l Institutions)
- Britain's Proud History of Providing Asylum (Proud History)
- Electioneering and Party Politics (Electioneering)
- Human Rights and Civil Liberties (Human Rights)
- Descriptions of Refugees: Collective Terms (Collective Terms)
- Opinion of the British Public (Public Opinion)
- Descriptions of Refugees: Sympathetic (Refugees – Sympathetic)
- Compassion and Right to Asylum (Compassion)
- Pull Factors of the UK as a Country of Refuge (Pull Factors)
- International Factors (Int'l Factors)
- International Cooperation (Int'l Cooperation)
- Descriptions of Refugees: Derogatory (Refugees – Derogatory)
- Numbers Game: Arguments For Asylum Acceptances (Numbers – For)
- Financial Costs related to Asylum (Costs)
- Citizenship and Nationality (Citizenship)
- Security of the UK (Security)
- Priority of Own Citizens (Priority)
- Overcrowded Island (Overcrowding)

Parliamentary Debates: Codebook

Code	Description	Key Words	Data Examples
Criticisms of Policies and Legislation **(Criticisms)**	Critical adjectives and terms used to describe policies and legislation, often the Opposition's criticisms of the Government but also Backbenchers criticising their own party's policies.	bad/dishonest/sham/ draconian/tawdry/ flawed/deplorable/ miserable/nasty/ disgraceful/squalid insidious/wretched/ emergency legislation	this bad legislation is as unnecessary as it is draconian, as theatrical as the declared emergency is phoney/ it will drive a coach and horses through 800 years of legal history
Perceived Abuse of the Asylum System **(Abuse)**	Comments on how the asylum system is perceived to be abused by claimants; traffickers and other criminals; unscrupulous lawyers; and bogus institutions.	abuse/loopholes/ bogus/racketeering/ trafficking/fake/ unfounded/false/ fraudulent/illegal/ groundless/criminal/ sham/clandestine/ irregular/honeypot	a number of people – albeit a small number – are abusing our immigration and asylum system for the purposes of terrorism/ we shall close every loophole
Race Relations or Racial Discrimination **(Race)**	Comments primarily about race relations and racial discrimination in relation to asylum and immigration. Also includes references to discrimination based on religion or gender.	race relations/racial discrimination/ prejudice/ xenophobia	good race and community relations and firm and fair immigration control are essential/ the Bill has racial prejudice built right into it
Control of the Immigration and Asylum System **(Control)**	Comments on the practicalities of the immigration, asylum, and border control system, and the need for firmness, fairness, and efficiency.	control/regulate/ firm and fair/ effective/efficient/ restrictive/strict/ credibility/border force/tough/secure	need for fair and firm but effective immigration control/ improve the operation of our border controls and immigration system
Home Office: Administration and Discretionary Powers **(Home Office)**	Comments and criticisms of the running of the Home Office and powers of the Home Secretary.	Home Office/Home Secretary/ discretionary power/ bureaucracy/delays / decision making/ backlog/broken/ culture of disbelief	Most of the delay in resolving asylum applications is caused by the Home Office itself/ decision making is, by and large, of poor quality

How the Issue of Asylum is Described or Portrayed **(Issue – Portrayal)**	Words, terms, and phrases used to describe the issues of asylum and immigration.	problem/national or public emergency/ danger/threat/crisis/ pressure/challenge/ complex/difficult	scale and complexity of the current problem/ a feeling that the situation is out of control
Domestic Matters associated with Asylum and Immigration **(Domestic Matters)**	Domestic matters such as homelessness and pressure on public services being discussed and linked to asylum and immigration.	sweating/ overcrowded housing/ unemployed/crime/ housing/homeless/ public services/ benefits	our present financial and housing problems/ most asylum seekers will end up in the homeless category
Numbers Game: Arguments Against Asylum Acceptances **(Numbers - Against)**	Assertions that the numbers of asylum seekers arriving are large and/or increasing.	massive, significant, or rapid increase/ enormous number/ overwhelming/vast/ huge/rise/ extraordinary scale	the relentless rise in applications is outstripping our ability to deal with them/ there is a problem with the number of asylum seekers
International Legislation or Institutions **(International Institutions)**	References to international legislation such as the Refugee Convention and ECHR, or international institutions such as the EU, UN, or UNHCR.	League of Nations/ European Convention on Human Rights/ UNHCR/ EU/ 1948 UDHR/ 1951 Convention/ international legal obligations/ breach	Britain abides strictly to its commitment to the 1951 UN convention on refugees/ Britain is following the worst possible practice in the European Union
Britain's Proud History of Providing Asylum **(Proud History)**	Statements referring to Britain's proud history or tradition of looking after people in need.	hospitality/tradition/ proud record/ welcome/ safe haven /refuge/history/ tolerance/ generosity	asylum which for long centuries it has been the pride of this country to extend/ we have a proud record of being a haven for those who genuinely seek help
Electioneering and Party Politics **(Electioneering)**	Comments suggesting that the legislation is driven by party politics and electioneering.	general election/ party measure/ window dressing/ manifesto/election pledge/race card/ political reasons or advantage/party political	the Government's intentions are political/ playing the race card in the run-up to the general election
Human Rights and Civil Liberties **(Human Rights)**	Comments that acknowledge individual human	human rights/civil liberties/freedoms/ safeguard/individual/ abuse/protection	our precious, tolerant, democratic society, which is based on fundamental human

	rights and civil liberties.		rights/ it is important that we are able to implement human rights
Descriptions of Refugees: Collective Terms **(Collective Terms)**	Collective terms, including 'watery' metaphors, used to describe groups of people travelling to the UK.	movement/mass/ army/flow/tide/flood /influx/stream/ swarm/swamped/ surge/storming	Britain is in danger of being flooded with refugees and asylum seekers/ unrestricted influx of additional people
Opinion of the British Public **(Public Opinion)**	Comments referring to perceived public opinion on asylum and immigration.	public opinion, concern, confidence, or interest/people want/the country wants/British people/ constituents	immigration is clearly high in the minds of a lot of people at the moment/ genuine public concern about asylum and immigration
Descriptions of Refugees: Sympathetic **(Refugees – Sympathetic)**	Adjectives, terms, and descriptions demonstrating empathy and sympathy with refugees and asylum seekers.	unfortunate/ oppressed/bona fide/ genuine/vulnerable/ victims/religious or political refugees	victims of political and religious persecution/ the asylum seekers whom I meet have often been through horrific and terrible experiences
Compassion and Right to Asylum **(Compassion)**	Comments pertaining to the compassion shown by Britain to asylum seekers and refugees in offering protection and recognising the right to asylum.	right of asylum/ moral responsibility, obligation, or duty/ protection/sanctuary/ safe haven/sympathy /compassionate/ liberal/humane	anxious to preserve the right of asylum/ we all have a moral duty to be compassionate to the many asylum seekers who are in difficulty
Pull Factors of the UK as a Country of Refuge **(Pull Factors)**	Remarks on perceived 'pull factors', i.e., reasons asylum seekers *choose* the UK as a country of refuge.	pull factors/ economic incentives /better life/standard of living/health tourism/destination of choice	it is not asylum that they want, but a better life/ a standard of living better than that in their own countries
International Factors **(International Factors)**	References to international factors, 'triggers', or events which contribute to people having to flee their homes and seek asylum.	oppression/conflict/ civil wars/Third World/famine/ poverty/resources/ pressures/instability	unprecedented scale of global conflict which produces refugee flows/ growing pressures, particularly from the Third World
International Cooperation	Comments about international cooperation –	international cooperation or consensus/European	a common approach with our European neighbours/ we

(International Cooperation)	globally, with the rest of Europe and with France.	situation/nations of the world/ partnership/bilateral agreement/France	depend on cooperation with other countries – primarily in Europe, but also elsewhere
Descriptions of Refugees: Derogatory **(Refugees – Derogatory)**	Derogatory and unsympathetic adjectives and terms used in relation to asylum seekers, refugees, and immigrants.	evil/unfit/ undesirable/not genuine/refuse heap	refuse heap of the whole of Europe/ persons unfit for reception in other parts of the world
Numbers Game: Arguments For Asylum Acceptances **(Numbers – For)**	Assertions that the number of asylum applications are small and/or decreasing.	no increase/falling/ trifling/small/ decreasing/ reduction/few	Britain receives fewer applications for asylum than many other countries/ been a reduction of asylum seekers coming into the country
Financial Costs related to Asylum **(Costs)**	Comments on the financial costs of the asylum system to the British taxpayer.	cost/burden/public money, purse, or funds/expenditure/ expense/taxpayer	the Bill will cost millions in additional public expenditure/ ever-spiralling cost of the Government's asylum policy
Citizenship and Nationality **(Citizenship)**	Comments regarding nationality, national identity, and British or UK citizenship in terms of it being earned or automatic in relation to refugees and immigrants.	automatic/earned/ active/probationary/ second-class/journey /path/route/rights of citizenship/ nationality/national identity	ensuring that those who come to the UK earn the right to citizenship/ nor should there be a right to automatic citizenship based purely on length of stay in Britain
Security of the UK **(Security)**	Statements regarding national security, border security, and terrorist threats.	state or national security/threat/ terrorist/emergency/ protection/fortress Europe/borders/risk/ Chahal case	emergency provision to plug some of the gaps in our existing security/ one of the most important functions of any Government: to protect the country's borders
Priority of Own Citizens **(Priority)**	Statements suggesting that priority ought to be given to British people.	our own people/our nation/Britain for the British/duty/ preference/fair	first duty of a Government is to its own people/ an immigration system that works in the

			interests of Britain and British citizens
Overcrowded Island **(Overcrowding)**	Comments about the country being overcrowded and there being a lack of room or resources.	overcrowded island/ congestion/heavily or densely populated /room/resources	this already crowded island/there are fewer countries more densely populated than our own

Appendix F

Parliamentary Debates: Tables Showing Numerical Data

Table1: Number of Data Segments Coded to Each of the Twenty-Six Codes

Code	Overall	H	Non-H	N/A	Total Data Segments	Percentage (%)	Rank
Abuse	H	1002	13	1	1016	11.8	1
Criticisms	H	929	16	1	946	11.0	2
Race	H	573	171	28	772	9.0	3
Control	H	627	117	0	744	8.6	4
Home Office	H	535	11	1	547	6.4	5
Issue	H	425	5	1	431	5.0	6
Int'l Institutions	Mixed	131	97	176	404	4.7	7
Domestic Matters	H	309	11	0	320	3.7	8
Numbers - Against	H	310	0	0	310	3.6	9
Citizenship	N/A	63	14	222	299	3.5	10
Int'l Factors	non-H	24	268	0	292	3.4	11
Human Rights	non-H	47	220	1	268	3.1	12
Compassion	non-H	19	216	0	235	2.7	13
Electioneering	H	219	9	0	228	2.6	14
Refugees - Sympathetic	non-H	0	219	0	219	2.5	15
Public Opinion	H	173	18	11	202	2.3	16
Collective Terms	H	189	12	0	201	2.3	17
Proud History	non-H	8	176	0	184	2.1	18
Int'l Cooperation	non-H	42	119	1	162	1.9	19
Costs	H	157	3	0	160	1.9	20
Numbers - For	non-H	0	149	0	149	1.7	21=
Security	H	149	0	0	149	1.7	21=
Pull Factors	H	145	3	0	148	1.7	23
Refugees - Derogatory	H	103	2	0	105	1.2	24
Priority	H	80	1	0	81	0.9	25
Overcrowding	H	40	1	0	41	0.5	26
Totals		**6299**	**1871**	**443**	**8613**	**100**	

Notes

The total number of data segments are split between the hostile, non-hostile and N/A categories: H = hostile; non-H = non-hostile; N/A = not applicable. The 'overall' column also gives an overall rating for each code (H, non-H, N/A or mixed).

Table 2: Number of Data Segments per Category

Category	Number of Data Segments	Percentage (%)	Rank
Control and Management	2057	23.9	1
Party Politics	1721	20.0	2
Race and Citizenship	1071	12.4	3
Discourse around Refugees and the Issue of Asylum	956	11.1	4
International Issues	858	10.0	5
Compassion and Human Rights	687	8.0	6
Domestic Issues	644	7.5	7
Numbers Game	619	7.2	8
Total	**8613**	**100**	

Appendix G

List of General Election Manifestos

The manifestos for the following general elections were analysed:

1900, 1906, Jan 1910, Dec 1910, 1918, 1922, 1923, 1924, 1929, 1931, 1935, 1945, 1950, 1951, 1955, 1959, 1964, 1966, 1970, Feb 1974, Oct 1974, 1979, 1983, 1987, 1992, 1997, 2001, 2005, 2010, 2015, 2017, 2019

The manifestos included in the analysis were:

Political Party	General Elections
Conservative	all elections from 1900 to 2019
Labour	all elections from 1900 to 2019
Liberal	1900 to 1979
Liberal-SDP Alliance	1983
SDP-Liberal Alliance	1987
Liberal Democrat	1992 to 2019

Appendix H

Election Manifestos Codebook:

List of 17 Codes, with a Description, Key Words and Data Examples, used in the Second Iteration Coding of the Manifestos

General Election Manifestos: Codes (derived from the debates coding)

- Perceived Abuse of the Asylum System (Abuse)
- Granting of Asylum and Dealing with Asylum Claims (Asylum)
- Citizenship and Nationality (Citizenship)
- Human Rights and Civil Liberties (Human Rights)
- Control of Migration Into the UK (Control)
- Immigration or Refugee Obligations (Obligations)
- Colonialism, the Empire, Decolonisation, or the Commonwealth (Commonwealth)
- International Cooperation (International Cooperation)
- International Legislation or Institutions (International Institutions)
- Overseas Aid (Overseas Aid)
- Priority of Britain or British Citizens (Priority)
- Perceived Problems Associated with Immigration including Large or Increasing Numbers (Problems)
- Britain's Proud History of Providing Asylum (Proud History)
- Race Relations or Racial Discrimination (Race)
- UK Legislation (UK Legislation)
- National, International, or Border Security (Security)
- Criticisms of Policies, the Government, or Rival Parties (Criticisms)

General Election Manifestos: Codebook

Code	Description	Key Words	Data Examples
Perceived Abuse of the Asylum System **(Abuse)**	Comments on how the asylum system is perceived to be abused by claimants; traffickers and other criminals; unscrupulous lawyers; and bogus institutions.	abuse / bogus / trafficking / unfounded / fraudulent / fake / sham / illegal / unscrupulous / fraud / health tourism	Britain has gained a reputation as a soft touch for bogus asylum seekers. / We need much stronger action to stop illegal immigration.
Granting of Asylum and Dealing with Asylum Claims **(Asylum)**	Comments related to the current or proposed system of granting asylum.	refugee policy or scheme / asylum… system / seekers / applications / claims / policymaking / resettlement / safe and legal routes	we are modernising our asylum and immigration system / Apply the asylum system fairly, efficiently, and humanely, including the process for those who have no right to be here
Citizenship and Nationality **(Citizenship)**	Comments regarding nationality, national identity, and British or UK citizenship in terms of it being earned or automatic in relation to refugees and immigrants.	automatic / earned / equal / class of … / rights of … citizenship / nationality	We now propose to review the law relating to citizenship / effective rights of appeal against refusal of citizenship.
Human Rights and Civil Liberties **(Human Rights)**	Comments that acknowledge individual human rights and civil liberties.	human rights / civil liberties / freedoms / individual rights/ citizens' rights / liberties / humanity / justice	protection and enhancement of human rights and civil liberties / take action to promote good governance, the rule of law and human rights.
Control of Migration Into the UK **(Control)**	Comments on the practicalities of the immigration, asylum, and border control system, and the need for firmness, fairness, and efficiency.	control / control of entry / firm and fair / effective / efficient / strict / border controls / quota / secure / manage migration	a Labour Government will retain immigration control / fair treatment for immigrants combined with stricter control of entry.

Immigration or Refugee Obligations **(Obligations)**	References to the UK honouring its obligations.	Honour our obligations / commitment / responsibility / international obligations	Refugees are human beings fleeing from war zones and persecution, and we have a legal and moral obligation to offer them sanctuary
Colonialism, the Empire, Decolonisation, or the Commonwealth **(Commonwealth)**	Comments regarding the British Empire, Colonies, Dominions, or the Commonwealth	Empire / Colonies / Mother Country / Commonwealth / Dominions / Free Nations / independence / self-government	in the interests of the Colonies and the mother-country / We will strengthen our close links with our Commonwealth allies
International Cooperation **(International Cooperation)**	Comments about international cooperation – globally, with the rest of Europe and with the Empire and Commonwealth.	international cooperation / union / unity / friendship / alliance / relations	we shall pursue the aim of closer unity in Europe / our commitment to internationalism and international cooperation
International Legislation or Institutions **(International Institutions)**	References to international legislation such as the Refugee Convention and ECHR, or international institutions such as the EU, UN, or UNHCR.	League of Nations / international obligations / United Nations / EC, EEC or EU / ECHR	strengthening international organisations and particularly the United Nations / our leading role in the G8, EU, the Commonwealth and UN
Overseas Aid **(Overseas Aid)**	Comments on the UK's commitment to providing overseas aid.	aid / overseas aid / overseas development / developing countries / UN target / % of GNP	leading the fight against global poverty, with increased aid, better spent / We will ensure British aid money is properly spent
Priority of Britain or British Citizens **(Priority)**	Statements suggesting that priority ought to be given to British people.	public interest / British interest / British way of life / Britain first	protect British interests / We must work to control immigration and put Britain first
Perceived Problems Associated with Immigration including Large or Increasing Numbers	References to perceived problems associated with immigration.	problem / social problem / immigrant problem / numbers / high levels	immigration today is too high and needs to be reduced / Above all the 'immigrant

(Problems)			problem' is a problem of housing
Britain's Proud History of Providing Asylum **(Proud History)**	Statements referring to Britain's proud history or tradition of looking after people in need.	proud / welcome / safe haven / Britain's record / history / tradition / sanctuary	We will ensure Britain remains a place of sanctuary for refugees and asylum seekers. / reputation as an open, tolerant society
Race Relations or Racial Discrimination **(Race)**	Comments primarily about race relations and racial discrimination in relation to asylum and immigration. Also includes references to discrimination based on religion or gender.	race / racism / racial discrimination / conflict / colour bar / multi-racial / equality / harmony / race relations	racial discrimination must be abolished / We will combat discrimination on the grounds of race and in all its other forms
UK Legislation **(UK Legislation)**	References made to UK legislation relevant to asylum, refugees, and immigration.	Commonwealth Immigrants Act / Immigration Act / British Nationality Act / Human Rights Act	We shall carry forward the review of British nationality law / Our commitment to protection for every citizen is expressed in the 1998 Human Rights Act.
National, International, or Border Security **(Security)**	Statements regarding international, national, and border security.	security / border controls / border security	stronger international co-operation to tackle security challenges / BORDER SECURITY Border security is vital in preventing serious crimes
Criticisms of Policies, the Government, or Rival Parties **(Criticisms)**	Critical adjectives and terms used to describe policies and legislation, the Government, and rival parties.	the Government / Tory Government / the Tories / Labour / Conservative / out of control / lost control / mismanagement / mess / chaos / incompetence	Asylum seekers, in particular, have been treated in a disgraceful manner by both Labour and the Conservatives / Our out-of-control immigration system encourages people smugglers and penalises genuine refugees

Appendix I

General Election Manifestos: Tables Showing Numerical Data

Table1: Number of Data Segments Coded to Each of the Seventeen Codes

Code	Overall	H	non-H	N/A	Total Data Segments	Percentage (%)	Rank
Int'l Institutions	N/A	4	47	88	139	12.5	1
Human Rights	non-H	1	115	12	128	11.5	2
Commonwealth	N/A	5	48	72	125	11.2	3
Immigration Control	H	90	29	4	123	11.1	4
Overseas Aid	non-H	3	88	25	116	10.4	5
Race	non-H	14	83	15	112	10.1	6
Int'l Cooperation	non-H	0	79	31	110	9.9	7
Abuse	H	40	8	0	48	4.3	8
Asylum	non-H	5	33	4	42	3.8	9
UK Legislation	non-H	9	21	4	34	3.1	10=
Criticisms	H	20	11	3	34	3.1	10=
Citizenship	Mixed	2	12	13	27	2.4	12
Security	H	12	5	4	21	1.9	13
Obligations	non-H	0	14	0	14	1.3	14=
Proud History	non-H	1	11	2	14	1.3	14=
Priority	H	13	0	0	13	1.2	16=
Problems	H	11	1	1	13	1.2	16=
Totals		**230**	**605**	**278**	**1113**	**100**	

Notes

In accordance with the debates coding, the total number of data segments are split between the hostile, non-hostile and N/A categories: H = hostile; non-H = non-hostile; N/A = not applicable. The 'overall' column also gives an overall rating for each code (H, non-H, N/A or mixed).

Table 2: Number of Data Segments per Category

Category	Number of Data Segments	Percentage (%)	Rank
Party Politics*	34	3.1	1
International Issues	490	44.0	2
Control and Management	234	21.0	3
Compassion and Human Rights	156	14.0	4
Race and Citizenship	139	12.5	5
Domestic Issues	60	5.4	6
Total	**1,113**	**100**	

*Although the category of party politics appears to have only a few data segments coded to it, in reality *all* the data segments could be coded to party politics by the nature of the documents being analysed. In other words, all the content of general election manifestos are by definition concerned with party politics and electioneering. This category, therefore, has a much higher status than the numbers suggest.

Appendix J

Matrices supporting the Summary Temporal Analysis of Parliamentary Debates and General Election Manifestos

In the matrices, references which have been taken from parliamentary debates are in blue and references from general election manifestos are in red.

Table 1: Matrix for Concept 1: Internal Politics: UK legislation-making on asylum and immigration is constrained by domestic party politics.

Descriptor	Age of Humanitarianism, 1900-1962	Age of Hesitancy, 1962-1993	Age of Hostility, 1993-2023
Increasing/ Emerging	There were just one or two criticisms of the 1905 Bill. The 1919 Bill received more criticisms, including being described as 'dangerous', 'dishonest', 'ridiculous', and a 'gross public scandal'. The Gov't was criticised in the 1947 Polish resettlement Bill debate. Emerging criticisms of the Home Office and the discretionary powers of the Home Sec throughout this period, with 10 references to the Home Sec's discretionary powers in the 1919 debate.	Increasing references to electioneering and party politics throughout this period. In 1971, there were 17 references to the Bill being an election pledge. In 1988, the general election was mentioned 12 times and manifesto pledge 5 times. Increasing concerns about inefficiencies, delays, the backlog, and bureaucracy at the Home Office throughout this period. Criticisms of Con policy: Lab accused 'Tory policy' of 'exacerbating tensions between rich white and poor black nations' (1970); Liberals 'deplore the Tory policy of inflaming people's fears about unrestricted	

		immigration when the numbers of immigrants are actually falling' (1979); Lab claim to be more compassionate to refugees than the Tory gov't; 'We will restore rights removed by the Tories, such as the right to automatic citizenship if born in Britain; through their immigration and nationality laws, the Tories have divided families and caused immense suffering in the immigrant communities' (Lab, 1983).	
Constant/ Consistent		Extensive criticism of the legislation under debate throughout this period, with many extreme adjectives being used. In 1981, one MP used the 'curate's egg' analogy. The 1987 Bill was described as a 'bucket with holes in it', a 'sledgehammer' of a measure, and accused of violating the Refugee Convention. The 1988 Bill was described as 'propaganda'. Discretionary powers given to the Home Sec continued to be a concern in this period, with 6 references in the 1971 debate and 8 in 1981.	Every debate in this period includes large numbers of criticisms of the legislation and/or the Gov't. In 1993, the Gov't were accused of scapegoating asylum seekers. In 1999, MPs criticised the legacy of the previous gov't, and one used the 'class detention' analogy. In 2006, the Gov't were criticised for the amount of legislation and lack of efficiency. In 2009, the system was criticised as being 'chaotic', 'complicated', and 'bureaucratic'. In 2014 and 2016, the Gov't were accused of 'outsourcing' immigration control. Among a string of criticisms, the 2022 Bill was accused of being discriminatory (15 mentions) and in breach of the 1951 Convention (8). Consistent references to electioneering and party politics throughout. In 1993, the Gov't were accused of using imm as an election tool, and in 1996, of

			playing the race card. In 2006, there were 13 references to electioneering and party-political point scoring. In 2022, the Gov't were accused of whipping up anti-immigrant sentiment to distract from their own failures. Extensive criticisms of the Home Office in all debates from 1993 to 2023, with many references throughout to inefficiencies, the backlog, bureaucracy, delays, administrative incompetence, and chaos, and, increasingly from 2004 onwards, poor quality decision making. Criticisms of the imm and asylum system throughout this period: 'the system for dealing with asylum seekers is expensive and slow' (Lab, 1997); 'backlog we inherited' (Lab, 2001); 'asylum seekers have been treated in a disgraceful manner by Lab and Con' (Lib, 2001); 'in 4 years, Lab has seen the cost of the asylum system double'; 'virtual collapse' of our asylum system; this Gov't has caused a crisis to develop; Labour's mismanagement; massive delays; chaos (Con, 2001); asylum system is in 'chaos'; 'out-of-control' imm system; this Gov't has 'lost effective control of our borders' (Con, 2005); Home Office has a record of delays and bad decisions on asylum; 'mess' (Lib, 2005); 'chaos'; 'decades of incompetent management'; 'Gov't failed to plan properly' (Lib, 2010); imm and asylum systems have suffered from 'inefficiency

			and severe backlogs and delays' (Lib, 2017); the Cons have been 'relentlessly hostile in their rhetoric and policy around migration'; 'decades of incompetence, cruelty, and hostile rhetoric from Lab and Con Home Secretaries' (Lib, 2019); their [Con] migration policies are a 'complete and damaging failure'; 'this Gov't has failed its international legal obligations to refugees and to allow people to exercise their rights to seek asylum' (Lab, 2019).
Decreasing /Ceasing	A few comments in the 1905 debate suggesting that the Bill was more to do with electioneering. No similar comments later in this period.		Concerns about the discretion of the Home Sec gave way to extensive criticisms of the Home Office as a whole and mismanagement by the Home Sec.
Missing	No criticisms of gov't policy in this period, except in 1900 when the Lib manifesto referred to the 'Gov't's unskilful handling of its interests abroad'.		
One-off Events, Significant Events or Turning Points			Lab manifesto, 2019 accuses Con of racism: 'The Conservatives have fanned the flames of racism using difference to divide'.

Table 2: Matrix for Concept 2: International Norms: UK legislation-making on asylum and immigration takes account of international norms and influences.

Descriptor	Age of Humanitarianism, 1900-1962	Age of Hesitancy, 1962-1993	Age of Hostility, 1993-2023
Increasing/ Emerging	First mentions of int'l justice (Lib, 1918) and int'l obligations (Con, 1935). Reference to East-West relations and the need to improve this (Con, 1955 & 1959). A commitment to provide aid to developing countries started in 1931 (Lab). In 1959, Lib also pledged aid and Lab pledged to donate 1% of national income to underdeveloped areas, the first such commitment.	Con, 1992: 'We will continue to honour our commitment to the 1951 UN Convention...' References to the European Community/European cooperation from 1979 onwards. One reference to North-South differences (Lab, 1979). Emerging mentions of terrorist threats (Lib, 1987; Con, 1992).	Increasing mentions of the need for cooperation throughout Europe and/or with France. In 2002, 9 MPs mentioned the bilateral agreement between the UK and France and the need for it to be reinstated. In 2022, 4 MPs criticised the French, and 7 accused the Bill of withdrawing from international obligations or undermining global cooperation. From the 1998 Human Rights Act (HRA) debate onwards, there were increasing references to the ECHR, with some MPs in 2014 and 2016 concerned about possible breaches of Art 8, the right to family life. Threat from terrorism linked with control of immigration (Con, 2005). Pledges to promote reform of the UN (Con & Lib, 1997; Lab, 2010). Proposals to incorporate the ECHR into UK law (Lab & Lib, 1997). Proposals to reform the EU (Lib, 1997 & 2001). Opposition to any attempts to withdraw from the ECHR or water down the HRA (Lib, 2017 & 2019). Some references to targeting overseas aid to the poorest countries and tackling global poverty (Lab, 1997,2001, 2010, 2017; Lib, 2001).

Constant/ Consistent	Positive references to the British Empire and the Commonwealth throughout this whole period by all 3 parties. Importance of relations between the Colonies and the Mother Country, and peace, union, security, development, support, welfare, prosperity, and cooperation throughout the Commonwealth. Need for int'l cooperation (1923-1951).	A few concerns expressed about adverse situations in Third World countries, and about Britain's reputation overseas. General promotion of int'l cooperation throughout this period. Continued references to the importance of membership of the UN throughout this period as well as a commitment to membership of the EC, especially by Con. Consistent pledges to provide overseas aid as a minimum at the UN target as a % of GNP. Constant commitments to support the poorest countries. Lab pledging to create a Ministry of Overseas Development ('64, '83, '87, '92).	A few references to the need for int'l cooperation in all debates in this period. Extensive references to adverse conditions around the world throughout these debates. Includes mentions of 'conflict', 'civil wars', 'genocide', 'ethnic cleansing', 'fascism' (1993 and 2002), 'global poverty', 'famine'. Con manifestos pledged throughout this period to strengthen our close links with the Commonwealth. Throughout this period, pledges by Lib and Lab to work together with other nations across Europe and globally, and all 3 parties express a commitment to overseas aid and to meeting the UN's target of 0.7% of GDP for aid.
Decreasing /Ceasing		References to cooperation with other Commonwealth countries tailed off during this period (a few in 1962, 1968, and 1971, but none from 1981 onwards). References to strengthening Commonwealth links and Commonwealth cooperation from 1964 to 1983: 'the first responsibility of a British Government is still to the Commonwealth' (Lab, 1964).	27 references to the Refugee Convention in 1993. This tailed off throughout the period, with a few in following debates and none from 2007 onwards, the exception being 2022. A few mentions of the Commonwealth by Lib (2001) and Lab (2001 & 2010). In 2001, Lab pledged to 'promote human rights in the Commonwealth'.

		References to relations between East and West (Lab, 1964; Con, 1964 & Feb '74); Commonwealth cooperation (Con 1964; Lab, 1966); the UN Charter (Con & Lib, 1964). Pledges to specifically help Commonwealth countries (all 3 parties in 1966 and Con in 1983). Commitments to the Commonwealth in the 1980s (Lab, 1983 & '87; Con, 1983).	
Missing		Just one reference to the 1951 Refugee Convention (Con, 1992). No mentions of the EC in Lab manifestos until the 1992 one. Only Lib manifestos made any reference to the ECHR (1979, '83, '87 & '92).	Apart from one mention in 2022, no references to climate change as a driver of migration. No mention of international cooperation in any Con manifesto until 2019 when they say they will 'seek to strengthen old and new partnerships across the world'.
One-off Events, Significant Events or Turning Points	In 1919, post-WW1, MPs were calling for 'international peace', 'goodwill', 'solidarity', and a 'league of union'. In the 1948 British Nationality Bill debate, 14 references to equality and a 'common status throughout the C'wealth'. In 1919, some concerns that the Bill was contrary to the League of Nations. Need to establish and maintain lasting peace (1918) [post-WW1]. Importance of a united Europe (1951) [post-	Concerns that the 1962 Bill would undermine C'wealth relations. In the 1987 debate, there were 17 mentions of the 1951 Convention, mainly the Gov't giving assurances that the Bill complied with it, and 11 references to the UNHCR.	In 2022, 37 MPs expressed concern that the Bill breaches the 1951 Refugee Convention or the UK's international obligations. In 2005, Con pledged to withdraw from the 1951 Geneva Convention. In 2017, they said they would review the international legal definitions of asylum and refugee status. In 2015, Con pledged to scrap the Human Rights Act and break the link between British Courts and the ECtofHR. In 2001, the Lab manifesto included a proposal to ensure a common interpretation of the 1951 Convention across the EU. In

	WW2]. Support for the League of Nations (1918-1935). Support for the United Nations (1945-1959).		2017, Con said they would not bring the EU's Charter of Fundamental Rights into UK law. In 2019, Lib said that overseas aid should focus on countries that have accepted millions of refugees.

Table 3: Matrix for Concept 3: Domestic Constraints: UK legislation-making on asylum and immigration is limited by domestic issues and constraints.

Descriptor	Age of Humanitarianism, 1900-1962	Age of Hesitancy, 1962-1993	Age of Hostility, 1993-2023
Increasing/ Emerging	The 1905 debate referred to the need to 'regulate and control the immigration of pauper aliens' and that 'unrestricted immigration could become a great national evil'. In 1947, the debate deemed that resettlement of Poles should be 'orderly and appropriate'. In 1905, 3 MPs mentioned cost and in 1947, 6 were concerned about the costs of maintaining Poles in Britain. In 1905, concerns about numbers or increasing numbers of aliens (12 mentions) and references to large specific numbers (10). In 1919, 7 MPs were concerned about the number of aliens or enemy aliens in the country. Conversely, in 1905 and 1919, references to	(Following the arrival of 64 Tamil asylum seekers), the 1987 debate was all about closing loopholes and stopping abuse. The word 'bogus' was used 23 times in this debate. The 1988 debate also focused on closing, finding, stopping, or repairing loopholes. Control of immigration from Commonwealth countries was first debated in 1962 and 1968. This continued in the 1971 debate which stressed the need for tighter controls. In 1988, 10 references to controls which were 'firm and/but fair'. A few emerging comments about the UK being an already overcrowded island. Increasing references throughout this period to public opinion,	First acknowledgment of hostility towards illegal migrants was in the 2014 debate: 'this is not just about making the UK a more hostile place for illegal migrants; it is also about fairness' and 'we will do everything we can to make it harder for illegal migrants to establish a settled life in the UK…'. First references to 'reporting, tracking, and monitoring' were made in 2002. In 2004, 2 MPs called for an 'offshore processing system'. From 1993 onwards, the emerging concern was with the increasing numbers of ASYLUM applications. Increasing use of 'shock statistics': asylum applications 'increasing tenfold' (1993); 'highest number of asylum seekers in Europe' (2004); 'one migrant a minute' coming in; '450,000 failed asylum seekers in the UK' (2007). Numbers arriving by small boats started to be mentioned from 2020

	the small population of aliens in this country and/or that it was not increasing. From 1950 onwards, a commitment to put the general public first and guard the British way of life.	mainly in terms of the public being in favour of the legislation and the public's fears and worries about immigration: 'public alarm' (1968); 'public fears, worries and concerns' (1971); 'legitimate concern of our citizens, who sometimes feel that they are being swamped with people' (1988). Taking measures to prevent 'illegal' immigration (Feb 1974 onwards) and stop 'bogus' visitors/applications (from 1987). Reference to 'rights of political asylum' (Lib, 1964); and protection of refugees (Lab, 1979, '83, '92). Links between imm control and good race relations (Lab, 1970, Con, Oct '74 & '79). Con, 1979: 'introduce a quota system for those outside the EC'. The notion of 'firm but fair' control was introduced in 1987 by Con and Lab. Criticisms of UK legislation: In Feb 1974, Lib vowed to reform the 1971 Imm Act; in 1983, Lib called the 1981 British Nationality Act (BNA) 'offensive and discriminatory', and Lab vowed to repeal	onwards. References to small or decreasing numbers of arrivals throughout this period and increasing comparisons with elsewhere, viz. the UK not taking as many asylum seekers as other countries: 'in Somalia 1 person in 6 is a refugee, in Britain it is 1 in 5,500' (1999); 'the majority of asylum seekers across the world … are not in this country or in Europe and never will be' (1999); 'we are not taking our fair share of refugees'; 'the UK receives a much lower number of asylum applications than any other comparable countries in Europe' (2022). In 2022, 9 MPs were concerned about public opinion on uncontrolled or ILLEGAL immigration (the public are fed up with …). Contrary to this, 6 comments in this debate referred to the public welcoming refugees. With respect to 'pull factors', in 2014, 5 MPs said that the UK was viewed as a 'soft touch' and 19 referred to 'benefit' or 'health tourism'. In 2022, 4 MPs mentioned 'asylum shopping'. Notion of imm controls which are 'fair' (Lab, 1997, 2001, 2005, 2015, 2017; Lib, 2001, 2019; Con, 2019) or 'firm but fair' (Lab, 1997, 2001, 2010; Con, 1997; Lib, 2010). Lib and Con manifestos detailing what they have already done to tackle abuse (2015). In 2001, Con proposed that all new asylum applicants be housed in secure reception centres. In 2005, they said they would process asylum

		both the 1971 Imm Act and the 1981 BNA; and in 1987 and '92, Lib said they would repeal the 1981 BNA.	applications outside Britain. Lib proposed to take responsibility for asylum away from the Home Office (2010 & 2019). Pledges to establish a British Border Control Police (Con, 2005) and a coordinated UK Border Force (Lib, 2005). From 2010 onwards, Con pledged to REDUCE and control immigration and reduce net migration to the 'tens of thousands'. A few references to the numbers/high levels of immigration (Con, 2005 & 2010; Lab, 2015, 2017). Some references to the importance of border security ((Lib, 1997, 2015; Lab, 2005, 2010, 2017, 2019; Con, 2019). The 2015 Con manifesto said that their plan for imm control would put Britain first. The notion of 'safe and legal routes' is very recent (Lib, 2017 & 2019; Lab, 2019).
Constant/ Consistent		Domestic matters, such as housing, overcrowding, homelessness, integration, and unemployment were of some concern throughout. Concerns throughout this period of large or increasing numbers of immigrants, with terms such as 'limitless', 'overwhelming', 'sheer weight of numbers', and 'vastly increased numbers'. In 1968 and 1971, MPs used the 'run on the bank' analogy. References throughout this period to numbers	Extensive references to abuse of the asylum system throughout this period. The 1993 debate included 7 references to 'loopholes', 15 to 'bogus' applicants or claims, 21 to 'unfounded', 'manifestly unfounded', or 'groundless' claims. The 1996 debate had 20 mentions of claims and appeals that were deemed to be 'bogus', and one MP referred to the need to close the 'Jackal loophole'. Commonly used adjectives in the 1999 debate were 'unscrupulous', 'sham', 'fraudulent', 'illegal', 'political', 'bogus', 'false', 'groundless', 'clandestine', 'unfounded', and 'abusive'. One MP used the 'long stop'

		of arrivals being small, not significant, or not increasing. MPs proposed a variety of 'pull factors' for people wanting to come to the UK throughout these debates: 'better standard of living' (1962); 'economic reasons' (1987); 'better life'; 'welfare benefits' (1988). In 1962, 1 MP described the UK as a 'honey pot', and, in 1988, 1 used the 'Dick Whittington' analogy. Immigration control was supported by all 3 main parties throughout this whole period.	cricketing analogy. In 2006, 12 references were made to 'abuse'. The 2009 debate was concerned with immigrants arriving in the back of a lorry and 'bogus' colleges and students. Abuse was mentioned 24 times in the 2014 debate. The 2022 debate paid particular attention to those who are 'gaming' the system, including human rights lawyers. 'Control' was mentioned 9 times in the 1993 debate and 'firm and/but fair' was used 9 times in 1996. In 1999, 8 MPs wanted the system to be 'fairer, faster and firmer'. The emphasis in 2002 was on a 'managed' system. The 2007 debate included 25 references to border control or border police. One MP called for a 'ring of steel'. In 2009, there were 18 references to border controls. In 2014, 17 MPs were calling for a fair system. The 2016 debate included 12 references to border control. In 2022, MPs wanted a 'fair' system (14 references) or a 'firm and fair' system (11 references). Taking control of our borders or taking back control was mentioned 13 times. Housing continued to be regarded as an issue related to immigration throughout this period. Other domestic issues included homelessness, employment, education, social and health services. MPs were concerned about the costs of the proposed legislation throughout this period, including costs of housing, administration, social security, appeals, security, and

			detention. Some put a figure on the costs while others referred to general increases. Many references to concerns about large or increasing numbers of arrivals in all debates in this period: 'enormous', 'worrying', 'trend is steeply upward', 'vast increase', 'substantial'. A very small number of references to the priority of British people in each of the debates in this period. References to public opinion across these debates in terms of worries and concerns about imm. In 2004, 8 MPs raised constituents' concerns, and, in 2014, 11 mentions of public worries, anxieties and concerns. In 2016, 12 references to imm as a public concern or the public's number 1 issue. References to 'pull factors' throughout these debates: a better standard of living, to claim benefits, economic incentives. In 1993, 1 MP described the UK as a 'prize', and, in 1996, 1 said the UK should be a 'safe haven rather than a soft touch'. In 2002, 3 said that the UK was more attractive than elsewhere in Europe. Some references to security in some of these debates, the first ones being in 1993. In 2007, security (border/port/national) was mentioned 15 times, and in 2009, 12 MPs referred to security at the borders. A series of detailed imm control measures being introduced to prevent abuse of the system and bring down numbers. Extensive detail on ASYLUM policy from 2001

			onwards. Extensive detail on imm control measures, including border control, throughout this period. Priority of Britain/British people and putting Britain first is mentioned throughout this period in Con manifestos only. Constant commitments by Lab and Lib ONLY throughout to the 1998 HRA.
Decreasing /Ceasing	Concerns in 1905 about other domestic matters were not issues in later debates in this period. The 1905 debate focused on sweating (15 mentions), overcrowding (10), and unemployment and rate of wages (11). The notion of British preference diminished over this period. In 1905, 19 references to having a duty to look after the British people before aliens, and, in 1919, 9 MPs said that it should be 'Britain for the British'.	Very few references to the priority of Britain and or British people: 5 mentions in 1968, 3 in 1971, and 1 in 1981.	A small number of references to the UK being overcrowded. Imm control linked with good race relations (Con, 1997). Imm leading to pressure on communities and services (Con, 2015).
Missing	No references to abuse of the asylum or imm system; no references to public opinion; almost no references to 'pull factors'; and no references to security in these debates. No references to any UK legislation in this period.	Very few references to cost throughout this period. No references to security throughout this period. Only one reference to the priority of British citizens: protecting British interests and upholding the British way of life (Con, 1964). Very few mentions of problems related to imm in this period. The 1966 Lib	No references to priority of Britain/British people in Lab or Lib manifestos.

		manifesto stated that the 'immigrant problem' is a problem of housing, and Con mentioned stresses on local services in areas where there are large numbers of immigrants (1970 & Feb '74). No mentions of security throughout this period.	
One-off Events, Significant Events or Turning Points		Housing and overcrowding were major concerns in the 1962 debate (34 references). In 1987, 1 MP said that 'other European countries have taken more Tamil asylum seekers than Britain'. First mention of EU: 'strengthen the external frontiers of the Community' as well as our own; introduce fingerprinting (Con, 1992). In 1979, Con said they would introduce a new BNA.	In 1996, 1 MP claimed that good race relations were contingent on 'rooting out fraudulent asylum applicants'. In the 2001 debate, following 9/11, there were 5 references to terrorism and 15 mentions of security, national security, or aviation security. In 2005, Con pledged to review the HRA, and, in 2015, they vowed to scrap it. In 2019, Lab pledged to end the 'hostile environment'. In 2005, Con wanted to establish a British Border Control Police to secure Britain's borders, and, in 2010, Lib proposed giving the National Border Force police powers. In 2019, Lab also pledged to scrap the 2014 Immigration Act.

Table 4: Matrix for Concept 4: Values: UK legislation-making on asylum and immigration is impacted by the values and principles of decision-makers.

Descriptor	Age of Humanitarianism, 1900-1962	Age of Hesitancy, 1962-1993	Age of Hostility, 1993-2023
Increasing/ Emerging	No mention of citizenship until 1947, when it was proposed that Polish servicemen and their families would enjoy 'equal citizenship with all other members of our community'. In 1948, a definition of citizenship as 'equal rights and equal obligations' was acknowledged as was a 'common citizenship' throughout the UK and Colonies. In 1919, the issue of 'aliens' was regarded as a 'problem' or 'emergency'. The notion of racial discrimination began in the 1948 debate, when 3 MPs noted that there were no restrictions [in the UK] based on race. Notion of 'free citizenship' (Lab, 1918) and 'equal c'ship' (Lab, 1929). Tentative emergence of people's entitlement to rights. Started with reference to 'individual rights' (Con, 1906 & Jan 1910; Lib, 1955) and moved to 'human rights' (Con, 1950; Lab, 1955 & 1959). Obligations to minorities and the	The idea of citizenship was linked with imm in 1971 and 1981 ('the Bill seeks to marry citizenship to the needs of imm control'). In 1988, the elevated status of UK citizenship was emphasized: 'prize and value our citizenship'; 'citizenship of our country is a great prize'. In 1962, the issue of imm, very much associated with issues of race relations, was described as 'at a crisis'. In 1968, there were 8 references to the issue as a 'problem'. One MP used a 'leprosy' analogy. The 1971 debate included 15 references to the issue as a 'problem', and 1981 included 7. In 1987, the word 'problem' was used 22 times. The 1968 debate saw the first references to 'clandestine imm' and 'illegal entrants'. Illegal imm was mentioned 9 times in the 1971 debate. In 1981, one MP used the 'daschund' analogy. In the 1987 debate, the adjective 'genuine' – as in genuine refugee	Emerging concerns about whether the legislation being introduced would undermine human rights, especially in 2014, 2016, and 2022. Six MPs in 2016 were concerned that the Bill would erode human rights and the same number in 2022 claimed that this Bill would be a potential abuse of human rights. Reference to 'bogus' asylum seekers (Con, 2001). Notion of 'earned citizenship' (Lib & Lab, 2001). Proposals to establish a Bill of Rights (Lib, 1997); to incorporate the ECHR into UK law (Lab, 1997); a Human Rights Commission (Lib, 1997 & 2001); a Commission on Equality and Human Rights (Lab, 2005). Support for the ECHR (Lib, 2017 & 2019) and HRA (Lab, 2015; Lib, 2019). A few references to moral and legal obligations to protect refugees (Lib, 2001, 2010, 2017; Lab, 2005, 2017). Statements against racial discrimination (Lib, 1997, 2001, 2005, 2015, 2019; Lab, 2001, 2017, 2019; Con, 2010, 2019). Introduce an Equality Act (Lib, 2001 & 2005).

	Indian states (Con, 1945). Emerging mentions of being against racial discrimination and/or a colour bar from 1951 onwards. Mentions of a racial partnership in 1955 (Con & Lib).	or asylum seeker – was used 24 times. Emerging references to the recognition of human rights from 1968 onwards, but still not many throughout this period. In 1988, 6 MPs expressed concern about a lack of compassion in the legislation. In 1962, 1968, and 1971, MPs said the UK's record of providing asylum compared favourably with other countries. In 1981, 1 MP referred to the UK's shameful history of fear of aliens. Lab 1970 manifesto: 'the extension of human rights has had to wait for a Labour Gov't'. Mentions of rights of citizenship by Lab and Lib in 1987. Linking the provision of overseas aid with upholding human rights (Lib, 1979; Lab, 1979, '83 & ''92; Con, 1992). 1983 Lab manifesto said they would 'ensure that imm officials fully respect the human rights of those seeking entry'. In 1992, Lab proposed a Charter of Rights.	
Constant/ Consistent	In 1905, MPs were concerned about an 'influx' of aliens, 'tide', 'flow', 'mass', 'alien sea', 'flood',	In 1962, collective terms included 'flow', 'flood', 'influx', 'rush', 'flock', and 'trickle'. In 1968, 10 references to a 'flow', 7 to a 'flood',	References to imm. and asylum as a 'problem', 'crisis', or 'emergency' throughout this period. Use of descriptions such as 'out of

	‘stream’, and being ‘swamped’. In 1919, there were concerns of ‘floods’, ‘swarms’, ‘shoals’, and ‘armies’. In 1947, a ‘festering mass’ and an ‘influx’. A few references to compassion and humanity in this period. In 1905, MPs stressed the importance of retaining a right of asylum, protection, and a duty to offer hospitality to the afflicted. References to the UK’s proud history or tradition of providing asylum throughout these debates.	and 8 to an ‘influx’. One MP was concerned about an ‘invasion’, 1 about ‘hordes’, and 1 about a ‘wave’. In 1981, MPs were concerned about a ‘pool’ of people and of being ‘swamped’. Descriptions in 1987 included ‘influx’, ‘flow’, ‘surge’, and ‘swamping’, and in 1988, ‘flood’, ‘stream’, ‘swamping’, ‘influx’, and ‘waves’. Comments of a compassionate nature throughout these debates, e.g., ‘moral obligation’, ‘protection, sincerity, and humanity’ (1968); ‘fairness and justice’, ‘clear obligation’ towards refugees, ‘sympathy and understanding’, ‘humanitarian treatment’ (1987). Mentions of the UK’s proud history or tradition throughout this period. In 1987, 11 mentions of tradition, 5 of the UK’s record, and 7 of the UK’s history of accepting asylum seekers. From 1962 onwards, vast numbers of references to race relations, racism, or racial discrimination throughout these debates, including concerns about race relations and accusations that the legislation was racially	control’, ‘unprecedented’, ‘overwhelmed’. In 1993, 20 MPs described migration, refugees or asylum seekers as a ‘problem’. Terms used included ‘burden’, ‘enormous strain’, ‘bogus’, ‘potentially dangerous’, ‘near-crisis’ and ‘pressure’. 9 mentions of a problem in 1996 and 10 in 1999. In 2006, 1 MP used the ‘engine oil’ analogy. 10 references to the scale of the problem in 2007. References to de-humanising collective terms throughout this period. In 1993, mentions of ‘influx’, ‘overload’, ‘flood’, ‘flow’, ‘horde’, ‘swamping’, and ‘tide’, and, in 1996, ‘floods’, ‘flows’, ‘tides’, and ‘swamping’. References to flows and swamping continued in 1999 and 2002. In 2016, the emphasis shifted to the country being ‘stormed’ by migrants and the 2022 debate mentioned a ;tide’, a ‘deluge’, and people coming ‘en masse’. Concerns about upholding and protecting human rights were expressed in all debates throughout this period. References to compassion in all debates in this period: ‘our moral duty’, humanitarian reasons, compassionate judgement (1993); an asylum system that is ‘just and humane’ (1996); humanity, caring, and compassion (1999); humane treatment, tolerance (2002). In 2022, 12 MPs mentioned compassion and 6 referred to a moral obligation. Many references to the UK’s proud history/tradition/record of offering protection in all

		discriminatory. In 1962, 21 MPs said that the Bill was based on racial discrimination while 6 said it was not. In 1968, 45 references to racial prejudice, colour prejudice, discrimination, or racialism. In 1971, 14 mentions of race relations, 13 of racialism or discrimination, and 15 of coloured or black immigrants. In 1981, 9 references to race relations and 46 to racism or (racial) discrimination. In 1988, 27 MPs mentioned racism or discrimination and 18 mentioned race relations. Consistent calls by Lab and Lib to review and reform citizenship law (1970-1992). Promotion of human rights at home and abroad (Lab and Lib, 1970-1992). Lib manifestos consistently called for a Bill of Rights from 1970 to 1992. Statements opposing racial discrimination throughout this period.	debates in this period, e.g., a 'long and distinguished history of tolerance and generosity' (1999); 'long and honourable tradition of giving safe refuge' (2004). Also mentions in 1993, 1996, 2002 and 2022 of the UK providing a safe haven. In 2022, 22 references to pride, being proud, or having a proud history/tradition/record. References to race vary throughout this whole period: there were constant references to race from 1993 to 1999 (not 1998), a dip from 2001 to 2008, then increases in 2014, 2016, and, to a lesser extent, in 2022. In 1993, 19 mentions of racism or discrimination and 7 of race relations. In 1996, 26 references to race relations and 19 to racism, discrimination, or prejudice. In 1999, 16 MPs mentioned racism or discrimination and 4 referred to race relations. In 2014, 12 MPs referred to racism or discrimination, and in 2016, 20 such references. In 2022, 9 mentions of racism or xenophobia. Commitment to protect and promote universal human rights (Lab and Lib ONLY). References to Britain's proud history/record/tradition and of being an open and welcoming/tolerant country (Lab and Lib ONLY).
Decreasing /Ceasing	Numerous negative descriptions of refugees in the 1905 debate, and a few in 1919, but they tailed off during this period after that.	The notion of 'common citizenship' began to be eroded from 1962 onwards. Positive descriptions of refugees generally	In the 2009 debate, an emphasis on earned citizenship and 'control': 'control the number of those granted citizenship'; 'a system to control the route to citizenship'. Throughout this period, derogatory

	Positive references to refugees in 1905 tailed off after this. In 1905, 9 references to genuine, political or religious refugees who had been persecuted and 8 to their contribution and positive attitude.	decreased throughout this period. Linking race (multi-racial populations) and imm control and social problems (Con, 1964, '70, Oct '74, '79; Lab, 1966, '70). A role for the Commonwealth in tackling racial discrimination (Lab, 1964 & '70; Lib, 1966).	descriptions of refugees gave way to questioning their status as genuine asylum seekers. Not many positive references to refugees throughout this period. Link with imm controls and good race relations (Con, 1997).
Missing	No mentions of human rights in these debates. No mentions of race relations.	No references to Britain's 'proud history' of looking after those in need.	No mentions of citizenship until 2002.
One-off Events, Significant Events or Turning Points		The 1968 debate centred around the Kenyan Asians and how they were effectively being denied their rights of UK citizenship. The 1992 Lib manifesto pledged to reform imm legislation to make it free from racial discrimination.	In 2001, following 9/11, immigration was associated with terrorism and mentions were made of an 'emergency', 'dangers', and 'threats'. The 2001 manifesto is the only Con manifesto to state 'Britain has welcomed people who have been persecuted…'. A call to free imm laws from racial discrimination (Lib, 1997).

Appendix K

Summary of Legislation, General Elections, and Significant Events in the Ages of Humanitarianism, Hesitancy, and Hostility

Age of Humanitarianism, 1900 to 1962		
New Legislation (party in government)	**General Elections (winning party)**	**Domestic Matters and World Events**
• 1905 Aliens Act (Liberal) • 1914 British Nationality and Status of Aliens Act (Liberal) • 1919Aliens Act (Coalition) • 1947 Polish Resettlement Act (Labour) • 1948 British Nationality Act (Labour) • *1951 Refugee Convention (and 1967 Protocol)* (Labour) • *1953 European Convention on Human Rights* (Conservative)	• 1900 (Con) • 1906 (Lib) • Jan 1910 and Dec 1910 (Lib: minority gov't) • 1918 (Lib: coalition) • 1922 (Con) • 1923 (Con: minority gov't) • 1924 (Con) • 1929 (Lab: minority gov't) • 1931 (Lab: National Gov't) • 1935 (Con: National Gov't) • 1945 and 1950 (Lab) • 1951, 1955, and 1959 (Con)	• 1914 - 1919 - World War 1 • 1939 - 1945 - World War 2; Jewish refugees; *Kindertransport* • 1945 - Post-WW2; Polish refugees • 1948 - Empire Windrush: start of Commonwealth immigration • 1956 - Hungarian Revolution • 1958 - Race riots in Nottingham and Notting Hill

Age of Hesitancy, 1962 to 1993		
New Legislation (party in government)	**General Elections (winning party)**	**Domestic Matters and World Events**
• 1962 Commonwealth Immigrants Act (Conservative) • 1968 Commonwealth Immigrants Act (Labour) • 1971 Immigration Act (Conservative) • 1981 British Nationality Act (Conservative) • 1987 Immigration (Carriers' Liability) Act (Conservative) • 1988 Immigration Act (Conservative)	• 1964 and 1966 (Lab) • 1970 (Con) • Feb 1974 (Lab: minority gov't) • Oct 1974 (Lab) • 1979, 1983, 1987, and 1992 (Con)	• 1968 - Enoch Powell's 'rivers of blood' speech • 1970s - Rise of the National Front • 1970s - Chilean, Cypriot, and Vietnamese refugees • 1972 - Ugandan Asian Crisis • 1973 - UK joins the EEC • late 1980s - Tamil, Ghanaian, Ugandan, and Somali refugees • 1989 - Kurdish refugees • 1989 - 1991 - End of Cold War; fall of Berlin Wall • 1991 onwards - Break-up of former Yugoslavia; Balkan Wars

Age of Hostility, 1993 to 2023		
New Legislation (party in government)	**General Elections (winning party)**	**Domestic Matters and World Events**
• 1993 Asylum and Immigration Appeals Act (Conservative) • 1996 Asylum and Immigration Act (Conservative) • *1997 Dublin Convention* (Labour) • 1998 Human Rights Act (Labour) • 1999 Immigration and Asylum Act (Labour) • *2000 EU Charter of Fundamental Rights* (Labour) • 2001 Anti-Terrorism, Crime and Security Act (Labour) • 2002 Nationality, Immigration and Asylum Act (Labour) • *2003 Dublin II* (Labour) • 2004 Asylum and Immigration Act (Labour) • 2006 Immigration, Asylum and Nationality Act (Labour) • 2007 UK Borders Act (Labour) • 2008 Criminal Justice and Immigration Act (Labour) • 2009 Borders, Citizenship, and Immigration Act (Labour) • *2013 Dublin III* (Con-Lib Dem) • 2014 Immigration Act (Con-Lib Dem) • 2016 Immigration Act (Conservative) • 2022 Nationality and Borders Act (Conservative) • 2023 Illegal Migration Act (Conservative)	• 1997, 2001, and 2005 (Lab) • 2010 (Con: coalition) • 2015, 2017, and 2019 (Con)	• 1999 - 2002 - Spike in asylum seekers in the UK • 2001 - 9/11 attacks • 2014 onwards - Syria Resettlement Programme2015 - European migrant crisis • 2015 - European migrant crisis • 2016 - Brexit • 2021 - BN(O) Visa introduced • 2022 - Russia invasion of Ukraine • 2022 - Refugee resettlement schemes for Afghans and Ukrainians