Centre on Migration, Policy and Society

Working Paper No. 102
University of Oxford, 2012

Return to the Isle of Man: The Implications of Internment for Understanding Immigration Detention in the UK

Stephanie J. Silverman

WP-12-102

Abstract:

Although the three modern periods of internment in the United Kingdom remain relatively unexplored in the migration literature, these historical episodes have significantly impacted the development of that country's immigration policy, law, and legislation. This paper seeks to explore the outcomes of these internments and to draw connections between them and the development of the contemporary immigration detention estate. As such, it presents a historical overview of the First World War, Second World War, and Gulf War internments in the UK. These findings illuminate how powers granted to the UK government on an emergency basis became normalised and repackaged as everyday tools of contemporary immigration enforcement. The working paper also demonstrates how a liberal state government utilises atmospheres of fear, distrust, and xenophobia to justify depriving foreigners of their core individual rights in the name of national security concerns.

Keywords:

internment, immigration detention, immigration policy, United Kingdom history

Author:

Stephanie J Silverman is associated with the Centre on Migration, Policy, and Society, and the Refugee Research Network. She can be reached at sj.silverman@gmail.com

Introduction

There have been three major episodes of wartime internment during the modern period of British history: two major internments during the World Wars and one smaller-scale internment during the Gulf War. Though characterised by gross violations of individual and group rights in the name of national security, these internments remain relatively under-explored. In this paper, I present historical research on the three internments as a contribution to the larger literature exploring intersections amongst migrant controls, executive power, and security. I attempt to situate these internments in their political contexts. I focus the majority of attention on how the executive branch of UK government implemented the World War internments. I indicate where I think the justifications and political tactics underlying these internments parallel those provided for the contemporary detention estate. I find that tools being used in the contemporary immigration detention estate were introduced during the lead-up to the First World War, the Second World War, and the Gulf War and subsequently normalised in an atmosphere of fear, distrust, and xenophobia. In other words, government powers that were allocated on an emergency basis have been repackaged and presented to the public as commonplace aspects of immigration law and policy. The research in this working paper demonstrates that an official appeal to national security concerns can override aliens' enjoyment of core individual rights.[1]

The paper is divided into six sections. I begin in Section II with an overview of the Aliens Act 1905, the foundations of both internment and immigration detention in the UK. In the next two sections, I examine the internments of the First and Second World Wars. I then briefly outline the Immigration Act 1971 because it is still considered the legislative foundation for immigration detention in 2012. Then, I turn to the Gulf War episode and focus on the injustice of one particular case of internment. In the final section, I demonstrate that the UK government has historically taken advantage of atmospheres of xenophobia, distrust, and fear of aliens in order to: (i) legitimise its categorical assumptions of friend and enemy aliens; (ii) concentrate discretionary power over aliens in the Home Office; and (iii) turn internment and detention into political spectacles of government

[1] I employ *alien* as a legal, historical term to refer to non-citizens subject to immigration control. *Illegal alien* remains a common term of American law, and *illegal immigrant* has become a term of art for pundits, politicians, and the public. Ngai (2004: xix) defends the use of *illegal alien* as a means to better locate and comment on the origins of US immigration control. Ruhs & Chang (2004) employ *illegal alien* as the most accurate expression of entitlement levels under rights-based migration regimes. *Enemy alien* is a categorisation of aliens from particular states considered to be hostile towards the host state, usually during wartime.

Internment here refers to the legal practice of detaining enemy aliens. However, some UK citizens were swept up in the internment programs due to their political beliefs, revocation of their naturalised citizenship statuses, or mistaken identities. The internments were also accompanied by deportations of refugees, resident foreign nationals, and *enemy British subjects* (subjects of the British Empire whose beliefs – real or fabricated by others – caused them to become security concerns for the state). *Immigration detention* refers to the holding of non-citizens in specific facilities for the purposes of realising an immigration-related goal (Silverman, 2012). As of August 2012, the UK detention estate has the legal authority and operational capacity to detain 3,500 people in conditions similar to prisons (Silverman & Hajela, 2012: 3, 5).

power. I skip over large periods of time in order to focus on the periods of legislation reform related strictly to interment.

The Aliens Act 1905: The Foundational Legislation of Detention and Internment

Escaping famine, conscription, and the persecution associated with the May Laws, approximately 150,000 eastern European Jews Jewish asylum seekers came to the UK between 1881 and 1914 (Wray 2006: 308). They were greeted with negative media coverage and public outcry tinged with anti-Semitism. Despite previous committees failing to find fault with the number of aliens and labour conditions,[2] the Conservative government convened a new Royal Commission on Alien Immigration in 1902. The Commission was instructed to investigate allegations that the Jewish newcomers were exacerbating conditions of overcrowding, poor sanitation, unemployment, and poverty in the East End of London. While the members of the Commission generally favoured restricting alien immigration, the 1903 Report found insufficient evidence to support the populist claims that the new arrivals were causing the East End's public health and social issues. It did claim, however, that a disproportionate number of criminals were aliens (Hendley 2001: 246). The Commission's Report recommended legislation to prevent the landing and to precipitate the removal of unfavoured aliens (Hansen and King 2000: 397).

The Commission led to the passing of the Aliens Act 1905. Hendley (2001: 246) argues that the Aliens Act 1905 represents a contemporaneous "overt Conservative embrace of anti-alienism." Yet, as Pellew (1989) explains, this Conservative government was commonly seen as "enfeebled" and had been at the very end of its period in office upon introducing the Aliens Act. The Act was hence referred to the incoming and "unwilling" Liberal government, creating a lack of commitment whereby Home Secretaries were "trying publicly to dissociate themselves from an act (though unwilling to repeal it)," and the Home Office bureaucrats faced "a great deal of frustration" in trying to make an ordered bureaucracy of the fledgling immigration control apparatus (Pellew, 1989: 370).

The Act is a curious mix of anti-alienism and pro-asylum seeking as well as bureaucratic openness and firm executive control. For example, the Act represents the first UK legal expression of the right of asylum for persons fleeing religious or political persecution. Section 1(3) of the 1905 Aliens Act recognised asylum seekers as distinct from labourers and other categories of migrants. Although it was ineffective and applied only intermittently, Wray (2006: 303) suggests that the 1905 Aliens Act "has always had symbolic importance as representing the onset of modern immigration control."

[2] Wray (2006: 309) notes that the House of Commons Select Committee 1889 found that, as the number of aliens was not alarming, no restrictive legislation was in order. Likewise, the Lords Sweating Committee report of 1890 did not establish a connection between sweatshop labour and the arrival of aliens to the East End.

Despite these steps towards recognising asylum as a special claim to admission, however, the Aliens Act 1905 also initiated the administrative machinery necessary for large-scale immigration control. The Act calls for initial decisions on entry to be taken by immigration officers accompanied by medical officers. Failed asylum seekers and other refused immigrants could appeal to an Immigration Board, consisting of three members with magisterial, business, or administrative experience. The Home Secretary retained the majority of power in decision-making and appointed the immigration officers, medical inspectors, and the Board (Wray 2006: 311).

The Act's formulation of immigration detention powers exemplifies these contradictory tendencies towards enhancing control while recognising special claims. Section 1(2) of the Act gives the Home Office unprecedented powers to "withhold leave" to "any immigrant who appears to [the immigration officer] to be an undesirable immigrant." Section 7(3) legalised the Home Secretary's powers to detain an alien indefinitely:

> Any immigrant who is conditionally landed, and any alien in whose case an expulsion order is made … and any alien in whose case a certificate has been given by a court, … until the Secretary of State has decided upon his case, shall be liable to be kept in custody in such manner as the Secretary of State directs, and whilst in that custody shall be deemed to be in legal custody.

Nonetheless, a series of Directions passed on 4 December 1905 redefined the terms for detention and allowed the possibility of indefinite detention without review. Section 1(1) of the Directions stipulates that aliens whose claims had been denied by the Home Office and who had been given deportation orders could be detained indefinitely.

Internment during the First World War

The process of internment involves taking someone into official custody who is not formally charged with an offence. If held on security grounds, the internee does not enjoy the right to know the legal basis that warranted the internment. Simpson (1994: 5) suggests that the First World War internment relied on a "radically authoritarian belief" that "in a time of national emergency the executive ought not to be prevented by the requirements of regular criminal procedure from taking precautionary action against dangerous persons."

In 1914, in anticipation of the impending war, the Committee of Imperial Defence convened to discuss the issue of aliens residing in the UK. On 4 August 1914, the same day that King George V declared war on the German Empire, the House of Commons and the House of Lords passed the temporary Aliens Restriction Bill 1914. The Bill proceeded on the Committee's recommendation and without comment. King George V assented to the Aliens Restriction Act 1914 the next day.

The 1914 Act calls for the registration and monitoring of all resident aliens, regardless of their immigration status, and introduces a raft of new powers for the Home Secretary. It expands the Secretary's discretion to admit or refuse not only the "undesirable" aliens but *all* aliens. It

authorises the designation of some areas as forbidden to aliens. The 1914 Act eliminates two significant sections of the 1905 Aliens Act: the unconditional exception to immigration controls for aliens fleeing religious or political persecution; and it eliminated the appeals process.

Since the government argued that it could distinguish the friendly from the enemy aliens, the Home Secretary's wide discretion was justified as a mere administrative tool to facilitate this supposedly easy process of categorisation and response. Nonetheless, asylum seekers from Russian Poland and Belgium were soon caught up in the new regulations and subject to the 1914 restrictions (Cesarini 1993: 35 – 36). A subsequent Order in Council of 5 August 1914 requires all so-called enemy aliens to register themselves at the local registration office, usually the local police station (McDermott 2005: 338).

The 7 May 1914 sinking of the passenger liner *Lusitania*, and the rioting that followed, inflamed widespread xenophobia in the UK. The Home Secretary came under increasing public and governmental pressure to intern or expel all foreign nationals, especially Germans (Gullace 2005: 361). In partial response, the Home Office published three circulars[3] wherein the Home Secretary prohibited increasing numbers of aliens from travelling without permits, and from relocating more than five miles from their places of residence (Sykes and Dane 1916: 7). Then, on 15 May 1915, Prime Minister Herbert Asquith made public the Home Office's intention to intern 24,000 adult males of foreign nationality "for their own safety and that of the country." Prime Minister Asquith made it clear that his government intended to secure power to detain naturalised aliens as well (Simpson 1994: 13).

The Defence of the Realm Act (DORA)

On the heels of the Home Office circulars, the first Defence of the Realm Act (DORA) was introduced to the House of Commons on 7 August 1914 – three days after war was declared – and written into legislation on 8 August 1914.[4] DORA passed all the required stages of the House of Commons virtually without debate and in a matter of minutes.

DORA grants the Home Office a sweeping legislative competence and isolates the executive from the usual checks and balances. DORA Regulation 14B provides the Home Secretary with "competent naval or military authority" to intern anyone of "hostile origin or associations" (McDermott 2005: 339 – 340). It authorises the trial by court-martial of persons contravening specified regulations "as if such persons were subject to military law and had on active service

[3] These circulars were published on 5 August - the same day as the King assented to the Aliens Restriction Act 1914 - 11 August, and 14 September 1914.

[4] Defense of the Realm Act, Aug. 8, 1914, 4 & 5 Geo. 5, c. 29; Defense of the Realm (No. 2) Act, Aug. 28, 1914, 4 & 5 Geo. 5, c. 63; Defense of the Realm Consolidation Act, Nov. 27, 1914, 5 Geo. 5, c. 8; Defense of the Realm (Amendment) Act, March 16, 1915, 5 Geo. 5, c. 34; Defense of the Realm (Amendment), No. 2, Act, Mar. 16, 1915, 5 & 6 Geo. 5, c. 37; Defense of the Realm (Amendment) (No. 3) Act, May 19, 1915, 5 & 6 Geo. 5, c. 42 (collectively known as "DORA").

committed an offence" (Vorspan 2005: 6). In Rossiter's (c2002: 156 – 157) words,

> [DORA] constituted the foundation for a major part of the government's legislative activity in this war, and the regulations issued thereunder were able to derogate from existing law with relative impunity. Moreover, additional authority of this character was presented to the government as the war progressed. ... It must be emphasized that this executive lawmaking was based almost entirely on these delegations, and not on any revival of the long-dead royal prerogative of legislation.

At any given time during the First World War, approximately 20 British enemy subjects were interned under powers granted to government under DORA Regulation 14B (Simpson 1988 – 1989: 231).

DORA regulations persisted for nearly eight years, twice as long as the hostilities with Germany. In March 1916 a Member of Parliament objected to Regulation 14B on the grounds that, at the time of DORA's passage, it was "commonly understood that all British subjects were to have legal access to the Courts"; the government therefore could not issue regulations that "make that resort in the end impossible." Another Member argued in 1917 that the House of Commons "had no idea whatever" when it enacted the DORA Amendment Act that it was "surrendering an immemorial liberty." Indeed, he contended, the internment regulations are "altogether apart from the intentions of Parliament" (cited in Simpson 1994: 5).

Although the executive branch of government pitched DORA to Parliament as an interim measure, wartime fear and pressures buoyed the government's power to prolong the life and scope of DORA's intrusive regulations. It will become clear that DORA is typical of a certain sequence of events – a crisis leading to bloated executive power and a short-term measure never redacted – that characterises the leaps and bounds of expanding immigration regulation in the UK.

Places and spaces of internment

Government sent the majority of its internees to wind-swept towns on the semi-autonomous Isle of Man. The Home Department decided who would be interned and the War Office was responsible for guarding the sites (Winterbottom, 2000: 237). From August 1914 to May 1915, the government selectively arrested and interned Germans and Austrians of military age. The number of internees reached 10,000 by late 1914, and rose to 32,000 over the next two years. Wartime documentation recorded 24,450 internees at Knockaloe Moar and an additional 2,744 internees in the nearby town of Douglas (Cesarini 1993: 35; Winterbottom 2000: 237). In total, off the 70 – 75,000 people classified as enemy aliens resident in the UK, roughly 32,000 men of mostly German and Austrian nationalities were interned, and a further 10,000 were deported or repatriated (Kushner and Knox 1999: 45; Shah 2000: 43).

The wartime government also hired ships on which to incarcerate the internees. The *Scotian, Ascania* and *Lake Manitoba* collectively housed approximately 3,600 internees. The *Invernia* the *Saxonia*, and *Royal Edward* interned about 1,575, 2,300, and 1,200 internees, respectively, in March 1915. Both the *Royal Edward* and *Saxonia* remained in operation until the end of May 1915 (Panayi 1993: 64).

By February 1919, the number of internees held in Isle of Man camps and elsewhere was reduced to about 19,831, of whom 16,442 were Germans; by May 1919, the figure totalled about 5,000, consisting mainly of individuals unwilling to leave the UK (Panayi 1993: 62). For a five-year period following the end of the war, government forbade former enemy aliens from entering the country, acquiring land, changing names, or gaining employment in the civil service (Cesarini 1993: 39).

Halliday

The test case for the legality of First World War internment under *habeas corpus* proceedings[5] was *R v. Halliday ex parte Zadig*. Arthur Zadig was a railway contractor who was born in Breslau of German parents but became a naturalised British subject in 1905. He was interned in October 1915 on the basis of "hostile origins and associations". After being detained in Islington prison for eighteen months, he petitioned the King's Bench for a writ of *habeas corpus*. As the petitioner's counsel later recounted, Zadig was considered suitable to bring a test case because he was in law a British citizen and in fact a "harmless person" (Vorspan 2005: 20).

Halliday challenged Regulation 14B as *ultra vires* the Defense of the Realm Act. Since DORA did not authorise executive detention in express terms and statutes affecting the liberty of the subject must be strictly construed, the case argued that it was illegitimate to infer from silence that Parliament approved a scheme of preventive detention, i.e. interment. However, in the King's Bench, where due to its importance five judges heard the case, the entire bench made it clear that they personally believed that internment was a necessary device for winning the war. The Court of Appeal and the House of Lords rendered equally cursory judgments. Lord Atkinson, for example, articulated the rationale for his decision as follows: however "precious" the personal liberty of the subject might be, it must be "sacrificed to achieve national success in the war" (cited in Vorspan 2005: 22 – 23).

[5] *Habeas corpus* refers to a legal action that can be addressed to a prison official, demanding that a prisoner be brought before a court of law to determine if he or she is serving a lawful sentence or should instead be removed from custody. The writ of *habeas corpus* is frequently used by detainees who are seeking relief from unlawful imprisonment, and is generally regarded as an important instrument for the safeguarding of individual freedom against arbitrary state action. It was commonly used in immigration matters to challenge unlawful decisions resulting in deportation (Kurzban, 2008).

Internment during the Second World War

During the interwar period, government began to curb the civil and political liberties afforded to aliens. Throughout the 1920s and 1930s, Parliament renewed the 1919 Act on an annual basis via the Expiring Laws Continuance Acts. In this manner, Parliament acceded to the continuous expansion of Home Office powers over immigration and aliens. Initially granted as wartime contingencies, the Home Secretary's powers included, but also transcended, the enforcement of a court's recommendation for immigration detention and/or deportation. The Secretary could detain or deport anyone who was not "conducive to the public good." Home Secretary Edward Shortt depicted these powers as "administrative action[s] … on behalf of the public" (cited in Cohen 1994: 46).

The Home Office prohibited asylum seekers from moving freely around the country. Since 1919, the whereabouts, occupation, and character of every asylum seeker living in the UK have been (theoretically) known to police: every asylum seeker is expected to report to within three months of landing, and to inform the police upon change of residence thereafter (Kochan 1983: 2). Policy was guided by a national preoccupation with preventing the settlement and encouraging the deportation of migrants with radical sympathies, Jews, Communists, Russians, and Germans (Dummett and Nicol 1990: 153). Despite learning of the horrors of the Nazi oppression, wartime policymakers continued to circumscribe the entry of refugees fleeing the war.

Earlier official discussions – including the 1923 Committee of Imperial Defence – had suggested that the mass internment of the First World War was to be avoided. The logic was cost-effective reasoning, not humanitarian grounds. Nonetheless, in the wake of a press-excited paranoia that a Fifth Column of foreign spies was organising within the country,[6] the Joint Imperial Committee began staggering the internment of Jews and political adversaries in May 1938. Although review tribunals were arranged, the Joint Imperial Committee favoured mass internment (Gillman and Gillman 1980: 86).

Regulation 18B

In January 1939, the Home Office published a White Paper describing Regulation 18B, its proposal to intern aliens once again:

> As persons detained in pursuance of Regulation 18B are so detained for custodial purposes only and not for any punitive purpose, the conditions of their confinement will be as little as possible oppressive, due regard being had to the necessity for ensuring safe custody and maintaining order and good behaviour.

[6] On 20 April, 1940, an article by Ward Price typifying the hysteria appeared in the *Daily Mail*. It read, in part: "Act! Act! Do It Now! The rounding up of enemy agents must be taken out of the fumbling hands of local tribunals. All refugees from Austria, Germany and Czechoslovakia, men and women alike, should be drafted without delay to a remote part of the country and kept under strict supervision" (Seyfert, 1984).

Regulation 18B of the Defence (General) Regulations of 1939 was passed on 1 September 1939, two days before the declaration of war, as one of the Defence Regulations made by Order in Council under the Emergency Powers (Defence) Act 1939.

Rossiter (c2002: 197) argues that Regulation 18B marked "a severe break with the traditions of British liberty, and … it was bitterly and repeatedly attacked on the floor of Commons, as well as in several dissenting court opinions." The relevant regulations state:

> If the Secretary of State has reasonable cause to believe any person to be of hostile origin or associations or to have been recently concerned in acts prejudicial to the public safety or the defence of the realm or in the preparation or instigation of such acts and by that reason thereof it is necessary to exercise control over him, he may make an order against that person directing that he be detained.

Return to the Isle of Man

When Britain declared war on Nazi Germany, some 70,000 Germans and Austrians then living in the country were reclassified as enemy aliens. Among this group were some 55,000 asylum seekers *fleeing from* Nazi Germany and German-dominated Austria. Since many refugees had been deprived of their nationality and rendered stateless, it was not possible to perform the Committee of Imperial Defence's preferred option of deportation. Thus, in the first half of 1940, the Home Office started interning male enemy aliens living in coastal areas. By May 1940, some 3,500 female enemy aliens were also ordered interned (Kochan 1983: 1 – 2). The practice of internment on the Isle of Man was finally ended in 1944, at which time all internees were released

Although the majority of internment orders were made in 1940, quite a few were implemented in later years.[7] The Isle of Man once again served as the primary location for internment. On 25 June 1940, under Regulation 18B, Home Secretary Sir John Anderson issued internment orders for about 27,000 German, Austrian, and Italian enemy aliens (of a total population of about 93,000) (Rostow, 1944 – 1945: 495). Once again, most internees were not informed of the legal reasons warranting their internment, and their solicitors' visits were supervised (Gillman and Gillman 1980: 44; Simpson 1988 – 1989: 234).

The largest internment camp is thought to be an unfinished housing estate at Huyton near Liverpool: at its maximum capacity, there were between 3,000 and 5,000 internees living mostly in tents, with Nazis, pro-Nazis and Jews mixed up indiscriminately (Chappell 2005: 36; Kochan 1983: 68.). It is clear that, when deciding whom to intern, the Home Office failed to distinguish between those people who presented a serious threat to British national security, and those whose ethnicity alone rendered them dangerous (Bashford and Strange: 2002: 520).

By September 1941, as the number of internees was dropping to about 8,500, the UK government undertook to arrest certain British subjects on suspicion alone (Rostow, 1944 – 1945:

[7] 66 internees were brought to the Isle of Man in 1941, 29 in 1942, 14 in 1943, and 5 in 1944 (Simpson 1994: 381).

495). 1,847 British subjects were eventually arrested and interned under Regulation 18B.[8] The largest single group of detained British subjects were the core leaders of the British Union of Fascists, including Sir Oswald Mosley and his wife.[9] An uncertain number of British subjects were constrained by restriction orders on residence, requirements to report changes of address, and curfews. While the majority were held in camps, a small number of prominent internees were housed in prisons, particularly Brixton Prison in London. Persons detained under Regulation 18B were entitled to make objections to an advisory committee appointed by the Home Secretary, who was himself obliged to report monthly on the number of internees.

The wartime government conducted at least 7,000 deportations to its former colonies. The deportees included refugees, aliens, and enemy British subjects. They were not only Nazi sympathisers but also anti-fascist activists and displaced victims of wartime hostilities, all often sailing on the same boat (Seyfert 1984: 171 - 176). The Duke of Devonshire told the House of Lords on 6 August 1940 that the purpose of the deportations was "both to husband our resources of food and get rid of useless mouths and so forth, and to release the services of as many camp guards as possible" (cited in Kapp & Mynatt 1997: 121).

Liversidge

This security practice of arresting and interning enemy aliens and British subjects on strong personal suspicion aroused a storm of legal controversy. Of the cases and commentary, the most significant is *Liversidge v. Anderson* brought before the House of Lords in 1942. The plaintiff, Liversidge, was interned under Regulation 18B. He then brought a false imprisonment action against the Secretary of State. The House of Lords interpreted Regulation 18B as insulating detention decisions made by the Secretary of State from judicial review, provided that the Secretary was acting in good faith and had "reasonable cause" to believe that the detention was justified.

In his dissenting opinion, Lord Atkin famously argued that Regulation 18B did *not* give free reign to the Home Secretary to authorise internment at whim:

> In this country, amid the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respecters of persons and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law.

Lord Atkin contended that, even during wartime, a decision made by the executive to detain individuals should be subject to judicial scrutiny, as courts could, and should, be able to review

[8] It is notable that these figures are drastically lower and the time spent in detention much shorter than the contemporaneous internment of Japanese-Americans in the US (Simpson 1988 – 1989: 239 – 245).
[9] Simpson (1996: Footnote 7) explains that an "amending addition, Regulation 18B (1A) of May 23, 1940 (S.R. & 0. 1940 No. 770) was used to arrest Mosley and other fascists. Regulation 14B of June 10, 1915 was brought in under the Defence of the Realm Acts 1914 (S.R. & 0. 1915 No. 1915).

independently whether or not the detention was justifiable (Elias, 2009 – 2010: 170).

The majority decision represents an aberration from the English common-law presumption against interference with liberty (Wilsher, 2008: 918). Forty years later, *R v Secretary of State for the Home Department ex p Khawaja* confirmed this dissenting opinion. In that case, Lord Scarman dismissed the idea that protection from arbitrary deprivation of liberty might be contingent on nationality, and that this had been the law "at least since Lord Mansfield freed 'the black' in Sommersett's case" (Johnston 2009: 362).

The Immigration Act 1971

By the late-1960s, Parliament grew increasingly unsatisfied with the piecemeal approach characterising legislation of immigration control in the UK.[10] A discussion of how to reform the process led to implementing a formal, statutory basis for immigration detention with the Immigration Act 1971. The Act legalises detention pending completion of examination, a decision to remove, the execution of removal directions, or deportation. Under Section 4(1), immigration officers may give or refuse leave to enter the UK, and, under Schedule 2, Section 16 (1), the Secretary of State holds the exclusive power to give leave to remain. The non-statutory Immigration Rules provide departmental instructions and structured the discretionary powers of immigration officials to interpret immigration control statutes.[11]

After a marked increase in the arrivals of asylum seekers in the 1980s, the UK government refined its approach to immigration detention. Under the Asylum and Immigration Appeals Act 1993, government could detain certain groups of asylum seekers detain in a so-called accelerated appeals process.[12] The government aimed to eliminate delays in decision-making,[13] in part by implementing risk-based categorisation schemes. Understood as a criminological/penal development, risk-based categorisation and management seeks to process large aggregates, such as groups of specific nationalities rather than assessing individual cases of asylum (Banks, 2008: 44 – 45). The Asylum and Immigration Act 1996 supplemented and tightened the accelerated appeals procedure.

Gulf War Internment

One month after the Iraqi invasion of Kuwait in August 1990, the Conservative government of Prime Minister John Major amended the immigration rules to prevent Iraqi nationals from entering the UK to study. By January 1991, the immigration rules had been again amended, this time to require all

[10] Squire, 2005: 54; Hansen, 2000.
[11] Marrington, 1986: 272 – 274. The UK Border Agency Instruction and Guidance on Detention and Temporary Release now function in virtually the same way as the Immigration Rules.
[12] Namely, those asylum seekers whose cases were "without foundation" and/or did not violate the UK's commitment to providing asylum to refugees who meet the definition laid out in the 1951 Geneva Convention Relating to the Status of Refugees.
[13] Harvey, 1997: 64.

Iraqi nationals with leave to enter or remain in the UK to register with the police, they were also prohibited from extending their stays.

After joining the American coalition and committing to war, Secretary of State Kenneth Baker formally issued orders to take into custody 110 Iraqi and Palestinian nationals who were legally resident in the UK. It has been reported that many of these internees had British spouses and children. The majority of the internees were students with study grants from the Iraqi government. Although most were interned under Immigration Act 1971 powers,[14] thirty-five were subsequently reclassified as prisoners of war. Initially, the detainees were placed in Pentonville Prison in London but most were subsequently transferred to Full Sutton in Yorkshire, while some remained in London in Wormwood Scrubs (Walsh, 1993: 306 - 308). The number of deportees is not clear.[15]

The Palestinian writer Abbas Shiblak was swept up in the internment. Shiblak had been a noted critic of Saddam Hussein, and, importantly for our purposes, had been granted indefinite leave to remain in the UK in 1987. His application to become a naturalised British citizen was under review at the time of the Gulf War. After a campaign organised by individuals and advocacy networks, Shiblak was released on 6 February 1991 after almost eleven months of detention in Pentonville Prison under a deportation order. Shiblak (1993: 244) writes of the experience that "we are in a democratic and free society, yet suddenly I found myself completely helpless and defenceless, held in prison and threatened with the destruction of my future without any reason being given, without any legal defence. It is a terror I do not wish on anyone."

The UK was the only Western member of the anti-Iraqi coalition to intern Iraqi nationals during the conflict. In a written statement to the House of Commons from 20 March 2003, then-Home Secretary David Blunkett remarked that: "Many people will be aware that action taken in 1991 to detain large numbers of Iraqi citizens proved to be ineffective. I do not consider the action taken in 1991 to have been the most appropriate means to deal with the situation then."[16] Apart from sporadic statements in Parliament and some memorial efforts, discussion of the Gulf War internment remains muted.

[14] The Immigration Act 1971 established the formal, statutory basis for immigration detention, including discretionary detention powers for immigration officials; the Immigration Rules 1971 issued the administrative rules and departmental instructions for governing detention. Both are still in use in 2012.

[15] Walsh (1993: 312) explains: "[on] 7 February 1991, it was reported in Parliament that three Iraqi nationals had been deported. Statistics produced by the Home Office, however, suggest that overall there were five deportations; the discrepancy may be explained if the two further deportations occurred after 7 February 1991 or if they concerned persons other than Iraqi nationals, but the statistics provided by the Home Office are not sufficiently detailed to establish which explanation, if any, is correct. In addition, a number of those issued with notices of intention to deport left the United Kingdom voluntarily."

[16] Hansard HC Deb 20 March 2003 vol 401 cc51-3WS.

Discussion: The Decline of Rights on the Isle of Man

As mentioned, the political implications of these three internments remain relatively unexplored. Kushner and Cesarini (1993a: 10 – 11) suggest that the downplaying of the significance of the Second World War internment, in particular, relates to its potentially harmful effects on Britain's self-image of its nation-wide conduct. Kushner and Cesarini draw connections between the paltry attempts to come to terms with the First and Second World War internments with the "tragic repetition" of internment during the Gulf War. Likewise, Gullace (2005: 362) notes the paucity in scholarship on wartime internment in the UK:

> Perhaps it is the seemingly "undramatic" nature of this "tragedy" that has caused it to be passed over by all but a few scholars—as though it were somehow unseemly to dwell on the petty suffering of those from whence would come much greater suffering. Economic envy, terror of spies, and hatred towards "the enemy" turned friends and neighbours into objects of violence, but their bodily survival has deflected attention from their loss… After a long liberal interlude, the "island race" reasserted itself, not by exterminating its enemies, but by legislating against them.

No doubt that when compared to, say, forced deportation or the Japanese-Americans' collective experience during the World Wars, internment on the Isle of Man or in a London prison is the "lesser of evils". Nonetheless, as these scholars suggest, these attempts to justify the arbitrary deprivation of liberty based on the Home Secretary's personal suspicions or wartime exigencies of an inflamed media, fall short. Moreover, the appeal to trust in executive power cannot explain why interim measures like DORA or Regulation 18B were continuously renewed until they were leant an appearance of legitimacy.

What are the outcomes of these internments and what connections can be drawn between these historical episodes and contemporary immigration detention practices? First, the assumptions underlying internment and immigration detention that aliens can be easily distinguished is false. In the lead up to the World Wars and the Gulf War, government was focussed on eliminating any threats from within the state that it made assumptions about danger that linked nationality, gender, political beliefs, and foreignness into one caricaturally monstrous *enemy alien*. Through efforts to homogenise this population, government managed to disregard or overlook the fact of a number of internees having British-born families and extensive professional and community ties. The wrongheadedness of this assumption is manifest in the deportation of Jewish refugees on the same boat as Nazi sympathisers, the internment of the liberal intellectual Abbas Shiblak, and the modern-day cases of mistaken identity in immigration detention. In more contemporary times, the so-called hubs and spokes policy requires prison staff members to identify and detain deportable non-citizens beyond the length of their criminal sentences (Kaufman, 2012). Notably, Wormwood Scrubs, site of internment, is one of these seven hub prisons. In all of these cases, the UK government is

essentialising and stigmatising a static, categorical identity on aliens that relies on regressive ideas about birthplace, skin colour, religion, and (projected) political beliefs.

Second, following Shah (2000: 44), it seems that times of conflict provide opportunities for the executive branch to assume more control over supposedly administrative instruments. The high level of discretionary authority vested in the Home Office to make decisions over individuals' internments or detention is worrying. The seamless extension of the Home Secretary's discretionary power over enemy aliens to *all* aliens with minimal outcry is surprising in a liberal state. Another disconcerting precedent is the Home Secretary's selection of the Immigration Board set under the Aliens Act 1905 that continued with the Immigration Act 1971. Moreover, this concentration of power was meant to be a wartime exigency in the guise of DORA and then Regulation 18B; however, government's superseding of individual rights with a bugaboo of national security has normalised this once-shocking centralisation of power over rights to liberty, choice of residence, and travel.

Third, internment and detention can be seen as political spectacles of government power in times of trepidation.[17] As I explore in my thesis (Silverman, 2012), the spectacle of detention displays for the local population the state's power to decide who does and does not belong in the community; it also "sends a message" to the enemy that the state is diligent in searching for and isolating potential threats. The prison-like conditions of isolation and punishment on the Isle of Man and the First World War ships contributed to an impression that the aliens were threats or, at the very least, potential criminals. In this way, an association is built between aliens and unrelated policy problems, such as overcrowding, crime, or social entitlement to live in the community. The UK government's repeated turns to large-scale internment and detention in times of national distress reinforces the view that these extreme responses constitute acceptable treatments for aliens.

In sum, then, familiar tools of identification and isolation of aliens that are being used in immigration detention today were introduced during the lead-up to the First World War, the Second World War, and the Gulf War. Over the last fifty years, these emergency powers have been regularized and repackaged as commonplace aspects of immigration law and policy. The research in this working paper demonstrates that, in an atmosphere of fear, distrust, and xenophobia, an official appeal to national security concerns can override aliens' enjoyment of core individual rights.

Acknowledgements

The author warmly acknowledges the support and helpful criticism of Bridget Anderson, Joanne Bargman, Matthew J. Gibney, Daniel J. Lowinsky, Earl Silverman, and the ladies and gentlemen of the

[17] Debord defines the spectacle as "not a collection of images; rather, it is a social relationship between people that is mediated by images" (Kan, 2010). Huysmans describes the *political* spectacle as "a drama in which meaning is conferred through evoking crisis situations, emergencies, rituals such as consultations or elections, and political myths. It structures processes of role-taking by the actors and legitimates political decisions often through the evocation of threats or reassurances" (Huysmans, 2000: 762).

COMPAS Basement. This research was made possible by a Commonwealth Commission Doctoral Scholarship.

References

Banks, J. (2008). "The Criminalisation of Asylum Seekers and Asylum Policy." Prison Service Journal **175**: 43 - 49.

Bashford, A. and C. Strange (2002). "Asylum-Seekers and National Histories of Detention." Australian Journal of Politics and History **48**(4): 19.

Cesarini, D. (1993). An Alien Concept? The Continuity of Anti-Alienism in British Society before 1940. The Internment of Aliens in Twentieth Century Britain. D. Cesarini and T. Kushner. London, Frank Cass and Company Limited**:** 25 - 52.

Chappell, C. (2005). Island of Barbed Wire: Internment on the Isle of Man in World War Two. London, Robert Hale.

Cohen, R. (1994). Frontiers of Identity: The British and the Others. London, Longman.

Dummett, A. and A. Nicol (1990). Subjects, Citizens, Aliens and Others: Nationality and Immigration Law. London, Weidenfeld and Nicolson.

Elias, S. B. (2009 - 2010). "Rethinking 'Preventive Detention' from a Comparative Perspective: Three Frameworks for Detaining Terrorist Suspects." Columbia Human Rights Law Review **41**: 99 - 234.

Gillman, P. and L. Gillman (1980). 'Collar the Lot!' How Britain Interned and Expelled its Wartime Refugees. London, Quarter Books, Ltd.

Gullace, N. (2005). "Friends, Aliens, and Enemies: Fictive Communities and the Lusitania Riots of 1915." Journal of Social History **39**(2): 345 - 367.

Hansard HC Deb 20 March 2003 vol 401 cc51-3WS.

Hansen, R. (2000). Citizenship and Immigration in Post-war Britain: The Institutional Origins of a Multicultural Nation. Oxford, Oxford University Press.

Hansen, R. and D. King (2000). "Illiberalism and the New Politics of Asylum: Liberalism's Dark Side." The Political Quarterly **71**(4): 396 - 403.

Harvey, C. (1997). "Restructuring Asylum: Recent Trends in United Kingdom Asylum Law and Policy." International Journal of Refugee Law **9**(1): 60 - 74.

Hendley, M. (2001). "Anti-Alienism and the Primrose League: The Externalization of the Postwar Crisis in Great Britain 1918-32." Albion: A Quarterly Journal Concerned with British Studies **33**(2): 243 - 269.

Huysmans, J. (2000). "The European Union and the Securitization of Migration." Journal of Common Market Studies **38**(5): 751 - 777.

Johnston, C. (2009). "Indefinite Immigration Detention: Can it be Justified?" Journal of Immigration, Asylum, and Nationality Law 23(4): 351 - 364.

Kan, L. (2010). "Spectacle." The University of Chicago Theories of Media Keywords Glossary. Retrieved 20 June, 2011, from http://csmt.uchicago.edu/glossary2004/spectacle.htm.

Kapp, Y. and M. Mynatt (1997). British Policy and the Refugees, 1933 - 1941. London, Frank Cass.

Kaufman, E. (2012). "Finding 'Foreigners': Race and the Politics of Memory in British Prisons." Population, Space and Place Forthcoming.

Kochan, M. (1983). Britain's Internees in the Second World War. London, Macmillan Press Ltd.

Kurzban, I. J. (2008). Democracy and Immigration. Keeping out the Other: A Critical Introduction to Immigration Enforcement Today. D. C. Brotherton and P. Kretsedemas. New York, Columbia University Press: 63 - 78.

Kushner, T. and D. Cesarini (1993a). Alien Internment in Britain During the Twentieth Century: An Introduction. The Internment of Aliens in Twentieth Century Britain. D. Cesarini and T. Kushner. London, Frank Cass and Company Limited**:** 1 - 24.

Kushner, T. and D. Cesarini (1993b). Conclusion and Epilogue. The Internment of Aliens in Twentieth Century Britain. D. Cesarini and T. Kushner. London, Frank Cass and Company Limited**:** 210 - 216.

Kushner, T. and K. Knox (1999). Refugees in an Age of Genocide: Global, National and Local Perspectives during the Twentieth Century. London, Frank Cass.

Marrington, D. (1986). "Commitment and contradiction in immigration law." Legal Studies **6**(3): 272 - 291.

McDermott, P.M. (2005). "Internment during the Great War - A Challenge to the Rule of Law". The University of New South Wales Law Journal **2**(34): 330.

Ngai, M. M. (2004). Impossible Subjects: Illegal Aliens and the Making of Modern America. Oxford, Princeton University Press.

Panayi, P. (1993). An Intolerant Act by an Intolerant Society: The Internment of Germans in Britain During the First World War. The Internment of Aliens in Twentieth Century Britain. D. Cesarini and T. Kushner. London, Frank Cass and Company Limited**:** 53 - 75.

Panayi, P. (2004). "The Evolution of Multiculturalism in Britain and Germany: An Historical Survey." Journal of Multilingual and Multicultural Development **25**(6): 466 - 480.

Pellew, J. (1989). "The Home Office and the Aliens Act, 1905." The Historical Journal **32**(2): 369 - 385.

Rossiter, C. (c2002). Constitutional Dictatorship: Crisis Government in the Modern Democracies. London, Transaction Publishers.

Rostow, E. V. (1944 - 1945). "The Japanese American Cases - A Disaster." Yale Law Journal **54**: 489 - 533.

Ruhs, M. and H.-J. Chang (2004). "The Ethics of Labor Immigration Policy." International Organization **58**(1): 62 - 102.

Seyfert, M. (1984). "His Majesty's Most Loyal Internees". Exile in Great Britain: Refugees from Hitler's Germany. G. Hirschfeld. London, Berg Publishers**:** 163 - 194.

Shah, P. (2000). Refugees, Race, and the Legal Conept of Asylum in Britain. London, Cavendish Publishing, Ltd.

Shiblak, A. (1993). Internment Testimony. The Internment of Aliens in Twentieth Century Britain. D.

Cesarini and T. Kushner. London, Frank Cass and Company Limited**:** 241 - 244.

Silverman, S. J. (2012). The Normative Ethics of Immigration Detention in Liberal States. DPhil Thesis. University of Oxford.

Silverman, S. J. and R. Hajela (2012). Immigration Detention in the UK - Updated. Migration Observatory Briefings. Oxford, The Migration Observatory**:** 7.

Simpson, A. W. B. (1988 - 1989). "Detention without Trial in the Second World War: Comparing the British and American Experiences." Florida State University Law review **16**: 225 - 268.

Simpson, A. W. B. (1994). In the Highest Degree Odious: Detention without Trial in Wartime Britain. Oxford, Clarendon Press.

Simpson, A. W. B. (1996). "Round Up the Usual Suspects: The Legacy of British Colonialism and the European Convention on Human Rights." Loyola Law Review **41**(4): 629 - 712.

Squire, V. (2005). "'Integration with diversity in modern Britain': New Labour on nationality, immigration and asylum." Journal of Political Ideologies **10**(1): 51 - 74.

Sykes, A. J. and L. Dane (1916). Report of the Commissioners appointed to review the Permits under which Alien Enemies are allowed to reside in Prohibited Areas. Home Office Reports. T. Home Office. London, The Home Office 6.

Vorspan, R. (2005). "Law and War: Individual Rights, Executive Authority, and Judicial Power in England During World War I." Vanderbilt Journal of Transactional Law **Accepted Paper Series**: 107.

Walsh, B. (1993). Detention and deportation of foreign nationals in the United Kingdom during the Gulf conflict. The Gulf War 1990 - 91 In International and English Law. P. Rowe. London, Routledge**:** 304 - 332.

Wilsher, D. (2008). "The Administrative Detention of Non-Nationals Pursuant to Immigration Control: International and Constitutional Law Perspectives." International and Comparative Law Quarterly **53**(1): 897 - 934.

Winterbottom, D. (2000). Economic History, 1830 - 1996. A New History of the Isle of Man. R. Chiverrell and J. Belchem. Liverpool, Liverpool University Press**:** 207 - 278.

Wray, H. (2006). "The Aliens Act 1905 and the Immigration Dilemma." Journal of Law and Society **33**(2): 22.