Conveyor-Belt Justice: Precarity, Access to Justice and Uneven Geographies of Legal Aid in Asylum Appeals

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Abstract

Ongoing government funding cuts to British legal aid have resulted in the formation of legal deserts and uneven geographies of access to advice and legal representation. Asylum seekers, particularly those subjected to no-choice dispersal throughout the UK for housing, are enduring the impact of these cuts directly. This paper explores the spatial and legal marginalisation of asylum seekers, drawing upon the findings of a three-year study of the asylum appeals process. Already precarious, we analyse the manifold spatial marginalisation of dispersed asylum seekers from sources of legal advice and representation. We identify the frames of luck, uncertainty and dislocation as ways to further a spatially cognisant understanding of precarity, alongside identifying strategies employed to counter precarious positionalities.

Keywords

Refugee, asylum, precarity, legal aid, spatial justice, unevenness

This is the pre-publication version of the paper accepted for publication in Antipode. The definitive version will appear in the journal *Antipode: a Radical Journal of Geography*.

Introduction

> "The best protection against injustice is good legal advice and, for those who cannot pay, that means good legal advice funded by legal aid. Exclusion from legal aid is exclusion from justice" (Singh and Webber 2010:6).

While geographers have critically developed the concept of spatial justice (Harvey 2010; Soja 2010; Gilmartin 2014), such studies rarely consider the actual spaces of the justice system. Drawing on recent engagements with the concept of precarity in geography, we critically assess the marginalisation of asylum seekers created in part through various barriers to access to justice, and make a series of interventions about what a spatially aware examination of precarity can contribute to studies of asylum and to the broader geographical study of social marginalisation, exclusion and insecurity. In so doing, we suggest ways in which current conceptual work on precarity can be extended and augmented by additional frames of reference to understand how precarity operates in a spatially embedded and geographically uneven manner.

Asylum seekers face myriad challenges following their arrival in the UK, and may endure several years of uncertainty awaiting a conclusion to their application (Conlon 2011; Hyndman and Giles 2011). For many the longest time is spent waiting for an opportunity to appeal against a decision made by the Home Office refusing their asylum. Griffiths (2014) describes this as a temporal moment of chronic uncertainty where asylum seekers are situated within a precarious legal space.

In Britain asylum appeals occur in one of thirteen tribunals dotted around the country, and it is the particular period spent waiting for the opportunity to put their case in front of one of these tribunals that concerns us in this paper (see Figure 1; for a detailed analysis of the UK tribunal system, see Baillot et al 2012; Craig and Fletcher 2012; Good 2007; Thomas 2011). This period, between initial rejection and appeal, is one of exceptional anxiety and uncertainty for asylum seekers that will typically last a minimum of several months, but may continue for several years, often

punctuated with periods of incarceration within one of Britain's detention centres. During this time asylum seekers are typically forbidden to take paid employment for 12 months, with many relying on a government benefit of approximately £36 per week, while others not eligible for this benefit often find themselves in destitution or seeking informal employment (Allsopp et al 2014:7; Waite et al 2015).

Figure 1: The asylum process in the UK.
This paper focuses upon the time following the substantive interview, and particularly for asylum seekers who receive a negative asylum decision (Source: authors).

In 2014, of 24 914 applications for asylum, 59% of these were refused by the Home Office (Refugee Council 2015). In the same year 6130 appeals for asylum were decided, of which we observed 290 of these hearings (4.7 per cent; for a detailed discussion of the observation aspect of this study, and our access to the Tribunal, see Gill et al 2015; 2016). Of the 6130 appeals, 28% were granted at a First Tier Tribunal hearing, while 66% were dismissed, and 6% were withdrawn. That 28% (a representative average over the past decade) indicates that the Home Office was found to have made an erroneous decision in the first instance in more than a quarter of cases, illustrating the importance of the appeals system. We use the word 'erroneous' to refer to errors made within the terms of British law. Our shared position however, is one that would question border controls per se (Burridge, 2014; Gill 2009; 2016), and would therefore see the entire application and appeal system as unnecessary and erroneous in itself. For the purposes of developing an internalist critique of the United Kingdom's border controls however, we suspend these objections in this paper.

Recent work by geographers has highlighted the potential of a spatial approach to precarity (Waite 2009; Lewis et al 2015; Martin 2015). Within this paper we provide a socio-spatial and socio-legal conceptual framing of precarity that moves beyond a primarily labour-based analysis, thereby contributing to the momentum of recent scholarship on the spatialisation of precarity, not only in relation to asylum migration,

but also in legal and social contexts more broadly. This conceptual framing draws upon the call by Louise Waite (2009) to develop a critical geography of precarity that accounts in particular for the role of a "compromised legal status" in creating or sustaining precarity (Lewis et al 2015:585). As the Spanish social movement *Precarias a la Deriva* stated:

> "…we know that precariousness is not limited to the world of work. We prefer to define it as a juncture of material and symbolic conditions which determine the uncertainty with respect to the *sustained access to the resources essential to the full development of one's life*" (our emphasis, 2005:158; see also Casas-Cortes 2014).

In particular, we develop the conceptual frames of luck, uncertainty, and dislocation in constituting the spatially uneven landscape of socio-legal precarity that marginalised and vulnerable groups – like asylum seekers – must navigate. We first provide a review of existing work on precarity within geography and provide an examination of the decimation of legal aid in the UK over the past decade. In the second half of the paper, we then examine the context of asylum seekers traversing the legal terrain of the asylum appeals system, exploring how these frames afford a deeper understanding of the spatially embedded nature of precarity.

Spatialising Precarity

Within the past decade the concepts of precariousness and precarity have begun to enter into the lexicon of critical geographers as well as other social scientists (Tyner 2015). Previously, the use of precarity was predominantly seen within analyses of labouring conditions by continental European social movements (Casas-Cortes 2014). The work of Judith Butler (2006; 2009) can be credited with providing the most notable influence in broadening the use of precarity (see Harker 2012; Waite 2009; Woon 2013). We trace the critical adoption of precariousness and precarity within and beyond the discipline, thereby developing a distinctive spatial understanding of these concepts.

Tyner (2015) notes that there remains considerable debate within geography over the concepts of precariousness and precarity, arguing that there are two discernable camps: “those who understand the term as something unique to work under neoliberal labour market conditions, and those who view it as a feature of broader life” (4). This is further supported by Waite (2009) who describes the dichotomy within the work of geographers (and others) applying the concepts as varying “between those who see it as emerging from a generalised societal malaise, and those who perceive the condition as something far more specific that is generated from particular neo-liberal labour market conditions to leave precarity oriented around working experiences” (413; see also Woon 2013).

Those falling into the ‘camp’ of a condition of broader life, or a generalized social malaise, tend to draw most directly from the work of Butler. As Harker (2012) notes, Butler’s work defines a social ontology of precariousness, that is, “the ways in which one’s life is dependent on the lives of others,” while her analysis also considers the “uneven distribution of precarity,” that is, exposure to violence. Harker takes up Butler’s (2009) distinction between precariousness and precarity. Precariousness, as a social ontology, Butler argues, applies to all lives: “Precariousness implies living socially, that is, the fact that one’s life is always in some sense in the hands of the other” (Harker 2012: 859). As Harker continues, “Precariousness is therefore an ontological condition common to all life” (ibid). However, as Harker points out, the concept of precariousness “does not explain why certain subjects and populations experience a greater risk of death and injury than others” (ibid), what is referred to as *differential exposure*. Therefore, to do this, Butler deploys the term precarity (as distinct from precarious/ness), which she defines as:

> “the politically induced condition in which certain populations suffer from failing social and economic networks of support and become differentially exposed to injury, violence, and death” (in Harker 2012: 859).

For those approaching precarity from the other ‘camp’, it is the work of Louise Waite (2009), notably her call for a critical geography of precarity, which has brought the

use of the concept to the fore in the discipline. While providing a detailed etymology of the concepts of precariousness and precarity, and of the divergent understandings and applications within geography and beyond, Waite also offers the most engaged geographical exploration of their use within studies of labour under neoliberalism, and particularly labour conducted by refugees, asylum seekers, and migrants. She is primarily concerned then with precarity as a condition that is "contextually specific in contemporary times that emanates primarily from labour market experiences" (ibid:416).

In a recent article, Waite joins with other colleagues to further explore precarity in this context (Lewis et al 2015), in which they unpack "the contested inter-connections between neoliberal work and welfare regimes, asylum and immigration controls, and the exploitation of migrant workers" (580). In this vein the authors develop the concepts of 'hyper-precarity' and a 'continuum of unfreedom' (in contrast to the term 'forced labour') in the hope of "furthering human geographical inquiry into the intersections between various terrains of social action and conceptual debate concerning migrants' precarious working experiences" (ibid). Hyper-precarity, they argue, "emerges from the ongoing interplay of neoliberal labour markets and highly restrictive immigration regimes" (582) and is "exacerbated in destination countries by socio-legal status restrictions," where such precarity can lead to "deportability [and] risk of bodily injury coupled with restricted access to healthcare" (593).

Other geographers have usefully pointed to the need to consider the *unevenness* of precarity, and in turn, its uneven *materialities*. Vasudevan's analysis of precarity in 'The Makeshift City' (2014) is concerned primarily with precarious forms of inhabiting the city – specifically, squatting in urban slums as a form of survival. Vasudevan employs precarity as one of his three frames of reference for examining squatting as a practice, and sets out to examine "the uneven material geographies of urban squatting across the globe, focusing on their informal, makeshift and precarious character" (339). Precarity can therefore be both observed and

experienced as spatially uneven, due in part to (lack of) access to certain life affirming resources.

Attention to the notion of differential exposure by geographers in the first camp, and to the notion of unevenness in the second, highlights the importance of a spatial understanding of precariousness and precarity. As Waite (2009) notes, “Precarity as a concept for geographical enquiry will be hollow and of questionable value if it flattens or homogenises difference” (413). Similarly Woon (2013), in his examination of non-violent social movements, and development of a “precarious geopolitics,” usefully articulates that power relations result in differential exposure and an unequal distribution of “vulnerability among different social groups,” and thus while anyone may be “rendered precarious to violence,” this is “scored differently across asymmetrical power relations” (663). Ettlinger (2007), while also framing precarity as a part of everyday life, notes that there is a group-differentiated exposure to precarity, and that an analytical examination of precarity requires acknowledging the effects of racism, patriarchy, and other factors beyond simply class-based analysis (323).

It is therefore an essential contribution of geographers to consider the spatial distribution of differential exposure to precarity. Where one is located, one’s socio-legal status and access to certain resources will have significant implications (White 2002). Writing from a geographical perspective, Lewis et al (2015) assert that a more sophisticated analysis is needed of how the socio-legal status of migrants, refugees, and asylum seekers can lead to exploitation. They also advocate for a deeper understanding of ‘stratified rights’ between asylum seekers, refused asylum seekers, and refugees, noting that individuals claiming asylum in the UK will “experience different degrees of ‘alienage’ at different stages of the asylum process” (12).

This paper responds to this need. Our approach can be characterised in three ways. First, we argue that it is the geographically uneven nature of precarity, coupled with socio-legal status, which leads to individuals’ and populations’ differential exposure. Second, our approach is attuned to conditions that span contemporary life, within

and beyond labour. In so doing we seek to move beyond the dichotomy of the 'camps' identified. Third, we develop an understanding of precarity that is attentive to a set of influences highlighted through our fieldwork – namely luck, uncertainty and dislocation – which we argue combine to produce a uniquely challenging and hostile landscape of precarity for refused asylum seekers.

A Decade of Cuts: Legal Aid in UK Immigration and Asylum 2004-2014

The past decade has seen severe cuts to civil legal aid in the immigration and asylum sector. Prior to 1998, immigration and asylum advice was free, provided by the Home Office (Singh and Webber 2010). 1998 saw the inclusion of immigration and asylum within the remit of Legal Aid. However, by 2004 a significant restructuring to the way in which legal aid was conducted within asylum and immigration law had begun. The Legal Services Commission[i] (LSC) imposed cost limits on legal practitioners, which equated to only five hours work per asylum case (ibid:2). Importantly, these limits were attached to the client's case, rather than to the adviser, and so when clients had to find a new representative, generally because they were relocated ("dispersed") by the UK government (Hynes, 2009; Gill, 2016), the majority of the casework hours had already been used. The LSC also removed funding for representatives to attend initial asylum interviews, leading to problems later in the process because representatives were unfamiliar with cases or what clients had said during their interviews.

In April 2004, staged billing was also removed. Previously firms with legal aid contracts would bill the LSC every six months, but this was changed so that firms were only paid on completed cases. The nature of asylum cases means they can remain open for many years, while the Home Office's practice of withdrawing appeals – which we discuss below – can also significantly extend the time before a case is closed (Singh and Webber 2010; Taylor 2013). This form of deferred payment was simply not tenable for most small legal agencies. Reports by non-profit organizations, such as *Bail for Immigration Detainees* (BID), found that the effects of such changes were almost immediate, with "experienced and widely respected practitioners leaving the publicly funded immigration and asylum field" (Singh and Webber 2010:3; BID 2005).

In 2006, targets were introduced by the LSC for firms with legal aid contracts, through the use of 'Key Performance Indicators' (KPIs), setting a 40% success rate for appeals (York 2013). If firms fall below this rate they are at risk of having their legal-aid contract revoked, or receiving fewer cases under subsequent contracts. Soon after, fixed-fees were introduced to replace hourly payments for immigration and asylum casework, implemented in October 2007. This was a detrimental alteration to legal aid-funded work, resulting in the further loss of specialist providers of immigration and asylum services, whilst:

> "…rewarding 'factory' firms with a speedy through-put of cases, and discouraging conscientious preparation, complex cases or those involving vulnerable clients who cannot be hurried" (Webber 2012:68).

Closures and reductions in service continued in 2010, when new contracts for legal aid were announced by the LSC, with a third of the 410 firms seeking renewal turned down (ibid). Soon after, Refugee and Migrant Justice (RMJ) went into administration, the largest provider of immigration and asylum advice and representation in the UK with 13 regional offices, 270 staff, and 10 000 clients (ibid:68). Then, less than a year later, the nation-wide Immigration Advisory Service (IAS) went into administration, the second-largest provider after the RMJ (Medley 2011).

Following the closure of the UK's two largest providers of immigration and asylum advice and representation, the UK government introduced a bill in 2011 that sought to remove legal aid funding from all advice and representation in civil immigration law, except in asylum, bail, and challenges to immigration detention. The bill, which became known as the Legal Aid Sentencing and Punishment of Offenders Act (LASPO), came into effect in April 2013 and was justified as a means to reduce the supposed £2.1 billion legal aid bill in England and Wales (Gibbs and Hughes-Roberts 2012).

The landscape of legal aid funding for immigration and asylum work across the UK has therefore changed drastically since its inception in 1998, especially with regard to quality and access. The consequences of the constriction of legal aid is observable via both pressure on the quality of legal work, and the number of asylum seekers who have to represent themselves in their appeals.

In relation to appellants who ultimately represent themselves at appeal, during our observations we saw a significant disparity by location. Appellants were unrepresented on the day at 6% of hearings at [anonymised]; 13% at [anonymised]; and 26% at [anonymised]. Unrepresented appellants, it has been shown, are less likely to be successful than those who are represented, even if the representation is not of high quality (Thomas 2011; Ramji-Nogales et al. 2009; Genn 1993; Schoenholtz and Jacobs 2002; BID 2005; James and Killick 2012; York 2013). Indeed, [anonymised], which had the highest figure of unrepresented hearings observed, also has one of the lowest grant rates for asylum appeals in the country, approximately 18% against the national average of 25% in 2012, while [anonymised] had the lowest proportion of unrepresented hearings observed, and granted the most in the country, at 42% (FOI/77084 27 July 2012; averages for each centre are taken from the time covering 1 June 2010 – 31 March 2012). While rates of representation may not explain discrepancies in grant rates between hearing centres (a large proportion of appeals still fail when represented), it is potentially a significant contributing factor (for a detailed examination of the myriad possible factors affecting grant rates, see Gill et al 2015; 2016).

Given these patterns, we were surprised to learn that legal scholars who have conducted detailed examinations of the First Tier IAC Tribunal have struggled to obtain the success rate of unrepresented asylum seekers at appeal (see Baillot et al 2012; Thomas 2011; York 2013). Indeed, we were also informed in response to freedom of information requests made in 2014 that "With regards to the determination rate for unrepresented hearings […] the department does not hold this information, as there is no business need to differentiate between represented and unrepresented hearings" (FOI/96549 2 April 2015). And yet, in earlier freedom of

information requests we *were* given the information (FOI/92822 11 September 2014). Table 1 shows the data reproduced from this request:

Table 1: Unrepresented asylum appeals hearings at the First Tier Tribunal, by Hearing Centre, January 2011 – December 2012, showing appeal success rates (FOI/92822)[ii].

The data clearly reveals not only a distinct regional geography to the issue of unrepresented appellants, but also a contradiction in what information the British government is willing to make available, hinting at the bureaucratic inconsistency and chaotic self-contradiction that typifies immigration control systems (Gill 2016; Mountz 2010).

Methods

The aim of the three-year research was to examine differences in the way that asylum appeal hearings are conducted between the various hearing centres across the UK. Over the course of three years, the study employed a variety of methods, encompassing several stages. Ethnographic observations of hearing centres across the UK were carried out between July 2013 and October 2013 at eight of the thirteen hearing centres, totalling 94 individual hearings (see Griffiths et al 2013). From January 2014 until December 2014, structured observations of 290 hearings at four hearing centres were conducted using pro forma to enable comparative quantitative analysis of key features of hearing procedure and process (see Gill et al 2015; 2016). In the third and final stage, qualitative interviews were carried out with the main actors involved in the appeals process to gain insights into their experiences within the Tribunals, but also importantly concerning the time leading up to, or between, hearings. Document analysis was also conducted regarding UK immigration and asylum policy, Home Office policy, reviews of Tribunal operation and procedure, and changes to legal aid provision.

First Tier Tribunal hearings are presided over by a single Immigration Judge, with the Home Office (on behalf of the Secretary of State) usually represented by a Presenting

Officer (HOPO) who is not normally legally trained, or on occasion by a barrister employed by the Home Office. Asylum seekers, referred to as the appellant, may be assisted by a legal representative (typically a solicitor or barrister), either funded by legal aid, privately paid, or pro bono, but may also appear unrepresented. An official Tribunal-appointed interpreter is also provided when requested. Hearings are typically open to the public and media, with a small public gallery situated within each hearing room, though these are rarely attended (see Figure 2).

Figure 2: The layout of a typical IAC Tribunal hearing room, with public gallery (Reproduced by permission of Rebecca Rotter).

While asylum appeal hearings are open to the public, except in particular circumstances, we notified Her Majesty's Courts and Tribunal Service (HMCTS) of our research intentions, and at which hearing centres we would be present. Over time familiarity developed between researchers on the project and legal representatives, Tribunal staff, HOPOs, and to a lesser extent, judiciary, particularly within smaller hearing centres. More difficult was notifying appellants and/or their legal representative: though not required, where possible observers sought to announce their presence, and explain the reasons for attending the hearing, particularly noting that they were not legally relevant to the case, nor associated with the HMCTS, Ministry of Justice (MoJ), or to the Home Office in any way. While legally we had the right to observe, if requested by the appellant or their representative, the researcher would leave the hearing.

Several methods were employed to conduct interviews, according to the interviewees' position. Legal representatives (barristers, solicitors, legal advisers) were typically approached for interviews at the hearing centres, and conducted either in person at locations that suited them, or by phone/Skype. In total we interviewed 18 legal representatives throughout the life of the project, based across the UK. Similarly, HOPOs, clerks, and Tribunal-appointed interpreters were approached at hearing centres. Eight months after submitting a detailed and lengthy

application, we received official permission from the Judicial Office to interview judiciary. However we were only successful in obtaining one official interview before having all other judiciary eventually decline to be interviewed on record without explanation. Similar difficulties were faced in attempting to interview HOPOs, with only three official interviews conducted. In contrast, informal conversations were had frequently with judiciary and HOPOs, typically at the conclusion of hearings or during breaks.

Except in a small number of instances, asylum seekers were not approached for interviews at hearing centres, or on the day of the hearing, recognising the inappropriate timing given the stressful nature of a hearing. Instead, interviews were sought through snowballing from existing contacts of the researchers developed through solidarity and organising work that often pre-dated the project. In total, 41 current or former asylum seekers who had at least one appeal hearing at the First Tier were interviewed, several who had done so while in detention within the now-suspended Detained Fast Track (a system for determining asylum claims quickly; Right to Remain 2015). Interviews were conducted following our period of observation within the Tribunal, and included those with on-going cases and others whose cases had concluded, but in most instances were not cases we had observed in person at the Tribunal. Semi-structured questions pertained to the time leading up to, or between, hearings, as well as the hearing/s themselves, to better understand the entirety of the appeals process.

Luck, Uncertainty and Dislocation: Creating A Landscape of Precarity

We see the interrelated frames of *luck*, *uncertainty* and *dislocation* as essential to understanding the spatially uneven nature of precarity, and individuals' differential exposure to it. Through our observations of appeal hearings; conversations with legal representatives particularly regarding the state of legal aid services and access to quality representation and advice; interviewing and engaging with asylum seekers at hearings, in community settings, and through volunteering and solidarity work; as well as policy and media analysis of contemporary conditions for asylum seekers in the UK; we came to recognise the importance and interrelated nature of these

elements as central to understanding precarity at this vital period within the asylum process.

These three elements provide new ways to understand the spatial nature of precarity. As Martin (2015) explored in her study of immigration detention in the U.S., certain practices produce precarity and "exploit life's *precariousness*" by making life effectively unliveable (original emphasis:244). We assert that these practices have a spatiality, and that the three frames we identify help to unpack that spatiality by providing new lenses onto how refused asylum seekers are differentially exposed (Ettlinger 2007; Harker 2012).

In the following sections we discuss a selection of examples that we have encountered or been made aware of regarding the unique moment of awaiting an appeal hearing and decision. However we do not propose that these can only be applied to the context of asylum law. Rather we intend to open a discussion about the spatial nature of precarity in legal and social contexts more broadly, and identify how precarity embeds within specific places and at particular times or life stages, beyond that of forced or unfree labour, in reducing access to life affirming resources (Casas-Cortes 2014; Vasudevan 2014; Martin 2015).

Luck

Luck, or lack thereof, plays its role in a number of instances where choice, or access to resources and/or information, is either not available, or simply not sufficient to determine an outcome, placing someone in a position of precarity, often due to reliance on the goodwill of others. As Vasudevan (2014) notes:

> "Precarity thus designates a state of insecurity that is not natural but constructed. It describes an economic or political condition 'produced by a power on whose favour [one] depend[s]'" (351).

In the context of asylum, the luck of finding legal aid services (Singh and Webber, 2010), being assigned a Home Office case worker who reviews your application

diligently (Souter 2011; Baillot et al 2012), finding a legal representative that will advocate for you conscientiously (James and Killick 2012), and appearing before a scrupulous immigration judge (Ramji-Nogales et al 2009), demonstrate luck's central importance in creating or alleviating conditions of precarity, all of which are often out of the control of the person claiming asylum, and based upon their location. Our study indicates that whether an appellant accesses high-quality advice or a legal representative frequently hinges on whether they received useful information from others within their community, or happened to walk into the right drop-in centre at the right time and talk to the right person.

Take the case of *Asylum Justice,* for instance, a charitable trust that provides free legal services to asylum seekers and refugees in southwest Wales. Usually charities will refer asylum appellants to the legal services they are aware of, but often their awareness is patchy and out of date. One solicitor in the area noted the importance of referrals of appellants from *Asylum Justice* to their firm:

> "…quite often it's people referring [...] I think there might have been some people that might not have had referral to us if it was not for *Asylum Justice* [...] We might not have known about their case" (Solicitor December 2014).

Founded in 2005, in 2013 Asylum Justice was closed due to lack of charitable donations, not reopening until January 2015. During the time of its closure this meant that there were no free accredited legal advice services available in the dispersal cities of Swansea, Cardiff and Newport in southwest Wales. Only a few months after reopening in Cardiff, high demand for its services meant that it was unable to accept new clients for several months at a time (Asylum Justice 2015). Accurate, high-quality legal advice is unnervingly critical to an appellant's prospects. Yet whether an appellant happens to arrive at a time when such services are solvent, whether advisors there happen to be aware of the services of reliable legal firms, and whether other asylum seekers have already exhausted capacity, are factors that lie outside the control of the appellant and are largely serendipitous, particularly in areas recognised as legal advice 'deserts'.

The role of luck pervades the hearing itself as well. *Bail for Immigration Detainees*, for example, demonstrated the role of luck in the context of appeals hearings in their report '*A Nice Judge on a Good Day*' (BID 2010), which found that unfair practices of particular immigration judges could greatly affect a person's chance of receiving bail. Ramji-Nogales et al (2009) and Rehaag's (2012) studies of North American asylum appeal hearings found significant disparities in grant rates of judges, and that therefore the luck of which judge is appointed to a hearing can be one of the most significant factors in a determination. In the specific context of asylum appeals, much emphasis was placed on which judge was presiding:

> "Some judges will actually go through the [Home Office] refusal letters they have and literally [...] read it through […] And the other judges, they'll just be like "Anything else to say? No? Well, alright then." Boom-boom-boom. And it's just like conveyor belt justice then, which is always a concern" (Barrister, November 2014).

Luck within hearings can also pertain to the quality of interpretation (which we address in greater detail in Gill et al 2016). For instance, if a legal representative happens to speak the same language as used by the appellant and interpreter, we found in our observations that this can be of critical importance. An excerpt from a diary of one of our observations demonstrates an example of this:

> "The interpreter re-asks the question posed by the HOPO when she believes the appellant has misunderstood the initial interpretation. The legal representative for the appellant stops the interpretation at this point and states to the judge, "I am unhappy with the interpretation – I understand the language and she (the interpreter) has not translated the question correctly" […] The legal representative intervenes once more. He states the interpreter is not interpreting when the appellant does not understand the question […] the judge directs the interpreter to interpret all answers and not to decide what should and shouldn't

be interpreted. The judge then rephrases a question put by the HOPO in more simple terms to the interpreter" (Taylor House, London, August 2013).

The effect of this intervention by the legal representative was to draw attention to issues in interpretation, and in the way questions were being asked in an unnecessarily complicated manner by the HOPO, resulting in the judge then intervening to direct how questioning and interpretation should be conducted properly. Had the legal representative not spoken the language of the appellant, it is likely they would have continued to give answers to incorrectly interpreted questions, with potentially detrimental consequences for their appeal. It is often the case that legal representatives do not speak the language of their clients – they have no need to as they can operate on the basis of paperwork and a brief interpreter-mediated meeting with their client. While asylum seekers may be referred to legal representatives that speak their language, often by others within the community who have had an appeal, in regions with limited legal advice and representation services, such options are limited.

In another instance, we observed a hearing where the Home Office, relying on their Country of Origin (COI)[iii] evidence for a case in Somalia, were arguing that the appellant, who was from a particular region, was safe to return, as while the country remains in conflict, their region was 'safe' (diary entry, September 2013). The presiding judge, however, happened to have been listening to the news on the radio that morning while driving to the hearing centre. It so happened that the very region in question was reported in the news, due to conflict having broken out recently, and the judge intervened to inform the HOPO of this. The judge then stated to the HOPO: ""That's the general situation as I know it, but you may be able to persuade me otherwise." The HOPO immediately requested a brief adjournment to call their superior, and returned soon after to withdraw the case. Had a different judge been presiding, or had they not turned on the radio that morning, the hearing would likely have proceeded, and the appellant would have potentially faced return to Somalia. While we recognise that such an instance of luck could easily apply in other areas of law and courtroom proceedings, it illustrates the

highly tenuous and fast changing nature of asylum, particularly as conditions within countries change rapidly.

Uncertainty

Uncertainty is also important in producing precarity. From the point of initial dispersal to housing across the UK and the instability of such accommodation (Phillips 2006; Stewart 2011; Gill, 2016); the ongoing risk of detention (Gibney 2008); to the opaque nature of the British asylum and appeals legal system (Thomas 2011; Webber 2012); uncertainty saturates asylum seekers' lives. As Griffiths' notes in her exploration of time and waiting for those situated as 'deportable migrants', "uncertainty and instability are key characteristics of the asylum and immigration systems" (2014:2001).

A particular uncertainty for asylum seekers reliant on legal aid funded advice was whether their legal representative would 'drop' them. In their study of quality of legal aid work in asylum, Gibbs and Hughes-Roberts (2012) report on the practice of less scrupulous law firms taking on clients and then ditching them after receiving the initial legal aid fee. This is often done with very little time before an appeal, making it unlikely another representative will be found in time. Furthermore, once a client has been denied legal aid, it is very difficult to find another firm who will take them on. On a number of occasions we observed hearings where the appellant had been dropped with little notice, and had not had time to find another representative. In a few extreme examples, the appellant was unaware they had been dropped until their hearing had begun – calls made by the Tribunal to the office of their legal representative confirming that they would not be attending the hearing.

In 2013 and again in 2014, the distinct but related practice of withdrawing cases last minute by the Home Office was also brought to the attention of the media (Doward 2014; Taylor 2013). HOPOs are under pressure to win 60% of their cases and may be rebuked if they do not meet this, so withdrawing a case can be a key strategy to maintain targets (Taylor 2013). While observing at [anonymised], this target rate of success was often discussed by HOPOs. Given [anonymised] has one of the lowest

grant rates for appeals (and thus a higher success rate for the Home Office), we had expected that the HOPOs would be least concerned at this hearing centre. However several discussed the pressure of this mandate, with one mentioning that "nobody was meeting it" (diary entry, September 2013). Furthermore, it was recently revealed that HOPOs are also controversially offered incentives such as shopping vouchers if they achieve higher targets (Taylor and Mason 2014). If HOPOs know or suspect that they are likely to lose a case, a key strategy can be to withdraw the case to help maintain their success rate, despite the prolonged uncertainty this will cause appellants. As one diary entry reflected, "Several HOPOs have told me that they are supposed to withdraw a case if they are likely to lose it. Several have linked this to the targets regarding success rates that they are supposed to meet" (diary entry, August 2013).

The uncertainty of when a hearing will be rescheduled, combined with an ongoing requirement to report to the Home Office for many whilst awaiting a hearing, and subsequently a precarious legal status, creates significant anxiety (Griffiths 2014). One barrister reflected on the position of those with a withdrawn case:

> "…sometimes a decision can take a year to make and they're living on asylum support and they're unbelievably stressed because they think that they might be sent back and their status isn't resolved and it's horrific, you know, they [the Home Office] should concede those appeals, not withdraw the decision" (Barrister, July 2014).

Uncertainty therefore inhabits a central role within a precarious phase of life. The enduring nature of uncertainty through the lengthy process of seeking asylum, often drawn out through unforeseeable events or circumstances for the person affected, becomes a key aid to the UK government determined to remove asylum seekers whose claims it sees as false or problematic. Uncertainty wears people down, through a continued state of anxiety and inability to make informed choices towards a future state of stability. One Kurdish asylum seeker who had to wait eight years for

a final decision from the Tribunal described this experience as "the biggest challenge of my life" and went on to describe the acute stress that uncertainty breeds:

> "Because you are finding yourself getting older. Every morning you are looking to see if the letter or something has arrived which is really hard and if you're not careful and you are not integrated into society you can have a huge mental health problem […] Because when you get status every door opens for you. But before, you cannot plan. You say 'I want to buy a house', no you don't have status, it could be any time you get refusal and they send you back" (Interview with former asylum seeker, November 2013).

Dislocation

Where one is located also has a direct impact on exposure to precarity. In particular we detected two forms of dislocation: one-off, momentous events and decisions that affect future chances and prospects immeasurably, and more everyday, repeated influences of distance that gradually and sometimes subtly erode an individual's resilience. Dispersal of asylum seekers to legal advice and representation deserts directly affects one's exposure to precarity and is an example of the first type of dislocation, brought about by a momentous decision to allocate asylum seekers to a certain region made by a bureaucrat they never meet on the basis of considerations of cost, convenience and efficiency.

The use of dispersal was introduced to reduce the supposed burden of asylum seekers settling in London (Darling 2011; Stewart 2011). At the end of 2014, 26 350 asylum seekers were in dispersal housing, the largest grouping (7 100 persons) in the northwest of England (Refugee Council, 2015). Asylum seekers are dispersed on a no-choice basis, i.e. if they refuse the housing offered to them they forfeit their accommodation entitlement. Dispersal to already economically deprived and ethnically homogenous regions has created racial tension and has functioned as a deterrent to seeking protection from persecution in the UK – what Darling has called a "politics of discomfort" (2011:264). Many asylum seekers forgo housing to avoid

the dispersal process, but by forgoing housing may render themselves destitute and/or homeless (Gill 2016).

Although dispersed asylum seekers have little or no control over where they live, legal representatives make frequent reference to the issue of location and its impact upon the likelihood of finding quality advice and representation in a landscape of legal aid rollbacks (see Patel et al 2008; White 2002). Capacity to take on clients in dispersal areas was a central concern for some agencies:

> "Look at the southwest! I mean it's a wasteland when it comes to asylum legal aid [...] literally, we've got one lawyer [laughs] in one office [...] So we've got an office with like, basically one lawyer covering the whole of the southwest and that's it" (Legal adviser, September 2014).

This situation was not limited to the southwest of the UK, but also further north, including in major metropolitan hubs. In an interview conducted with a barrister situated in Manchester, it was noted that asylum seekers may be forced to pay for private representation if they were able to find the means to do so (and therefore to potentially partake in informal labour, at the risk of being detained, to raise funds), due to a lack of agencies with legal aid funding:

> "I've got private asylum cases now, which merit-wise should have been eligible for legal aid but people are not able to find a legal aid provider who can take on their case in the area, and they want to stay in the area obviously whenever they do get money from family and friends and do pay privately for their asylum, which I think is a really frightening sign of what's happened in terms of legal aid" (Barrister, December 2014).

A second way in which asylum seekers can experience dislocation is through the daily workings of a bureaucracy that privileges cost saving over human considerations, echoing the everyday conceptualisations of precarity that Ettlinger (2007) and Vasudevan (2014) put forward. Rather than a cataclysmic decision, the routine

operation of apparently banal and mundane bureaucratic systems gradually saps the energies of the subjugated. A change in Home Office rules in early 2015, for instance, required submission of new evidence for a fresh asylum claim to now be done in person, and only in Liverpool, a city located on the west coast in northern England, approximately 2.5 hours by train from London. This now forces most to take a lengthy journey at their own expense (Refugee Action 2015).

Strategies Employed in Response to Structural Unfairness and Precarity

We do not propose that asylum seekers awaiting their appeal in the UK are merely passive victims devoid of agency. We observed and were told of various strategies and forms of resistance employed to overcome situations of precariousness. Strategies included insisting that legal representatives research their case properly; finding contacts within the community to signpost good quality advice and representation; dropping a representative who is performing poorly; approaching charities or non-profits and other services; and deciding to forgo dispersal housing to remain within more supportive locations; amongst many other approaches. One strategy employed by asylum seekers awaiting their appeal and struggling with finding quality legal representation was that of persistence:

> "First time I had no English, no nothing so you have to call a solicitor and try and do it by yourself, which I couldn't do. I tried; they said "Why did the first solicitor abandon your case?" I said I didn't know, and then "Sorry, I can't take it." I tried more than 15 [agencies]" (Interview with asylum seeker, September 2015).

Connected to acts of persistence and determination, were those who took on researching their own case and providing their own evidence in the face of poor or non-existent legal representation:

> "By then I'd been staying 2-3 months in detention, I've been gaining some confidence, a little bit, I'd been able to mix with other detainees, I'd been seeing how they do their appeal by themselves, they write this, they do this,

> they do that. I sat down myself practicing the way they do it, I went into the library, I took out law books. I started reading these, I started taking some information, I can see some of my rights have been violated in the law books. I started putting it out into the appeal form […] I've gained some confidence, I put all my paperwork together, I fax it to court. And I got granted leave that they should not remove me" (Interview with asylum seeker, September 2015).

We also witnessed and spoke with a number of asylum seekers who upon being dropped by their legal representative, decided to represent themselves at their Tribunal hearing:

> "Before we even went to the court [my barrister told me] "Oh, [name removed] there is no point in going to court, you don't have a chance, they are going to refuse you. Just sign this paper and give up. And I said "What kind of barrister are you if you don't want to represent me, I will go by myself." So she said, "Well, go by yourself." And I said "I don't want you" and I went by myself to represent myself" (Interview with asylum seeker, June 2015).

It is necessary however to recognise a level of structural unfairness, particularly for those in immigration detention, that any amount of personal resilience and persistence may not be enough to overcome. For example, statistics have shown that on average only 1-2% of appeals were successful at the First Tier Tribunal from within detention under the Detained Fast Track system (Right to Remain 2015). As Martin points out, such inequalities are "*strategically institutionalized* and reproduced" (original emphasis, 2015:245), and therefore difficult to overcome. As one person reflected:

> "There is no time for interpreting, I met people in detention who didn't even understand refusal letters. It said 'you are going home', and they didn't even know that. And they were sent home, not because they failed, but because

they didn't know what to do. They had no lawyer and no one to help them" (Interview with asylum seeker, June 2015).

Conclusion

Precarity has pernicious effects. Harald Bauder (2014:100) argues that a precarious status keeps people from making connections and becoming stakeholders in communities by excluding them from participating in public and civic life (see also Martin 2015). Social and legal precarity sentences people to uncertain futures and the vicissitudes of fortune. This uncertainty is also spatially uneven – different spaces offer different prospects of success owing to their differential access to resources and capacities (Harker 2012; Patel et al 2008). Such considerations raise questions about the relationship between legal systems and spatial justice, understood in relation to mechanisms of justice like courts and police forces. As White (2002:1071) notes:

> "[A]n analysis of the mutually constitutive relationship between law and place is important because it helps us understand the geographic complexities of the legal practices, discourses and lived relations that constitute [legal systems] and therefore the degree of access marginalised groups [...] have to justice."

The primary insight that our analysis offers is that precarity is spatial, and that thinking about precarity spatially reveals important characteristics of its dynamics. Our discussion has revealed the geographically uneven nature of precarity, which, when coupled with marginalised socio-legal status, leads to individual and group differentiated exposure. This finding underscores the importance of examining the spatial unevenness of precarious forms of existence, especially in relation to legal status (Harker 2012). It also, more generally, represents an attempt to reveal the spatial grammar of marginalisation from sources of help and other resources that allow full development of one's life (following Butler 2006; 2009).

Through our discussion of the frames of luck, uncertainty and dislocation, we have explored a number of ways in which asylum seekers experience precarity in spatially

selective and specific ways. These frames arose from our multi-methodological research, and have pointed the way towards understanding how space can figure in the production of exclusion and insecurity in the context of bureaucratic structures and systems that are not only under-funded, but continuously undermined by deleterious legislation.

Rodgers and Rodgers (1989) identify instability, lack of protection, insecurity, and social and economic vulnerability as characteristics of precarious labour (see also Waite 2009). Our analysis of socio-legality and precarity indicates that we should also consider the frames of luck, uncertainty and dislocation to understand legal marginalisation more fully. These are not intended as a typology but rather as additional lenses onto the complex and multifaceted phenomenon of precarity. It is with these concepts that we must develop an appreciation of the factors that lead to the differential exposure of individuals to unpredictable threats to their livelihoods and safety in a range of contexts.

Although we have focused upon asylum seekers in Britain, we see potential for application of our insights about precarity not only within the broader field of migration studies, but also in studies of homelessness and (non-)belonging, activism and rights to the city, legal geography, and citizenship studies in developing as well as developed world contexts. Embedding an appreciation of the spatial mechanics of precarity offers these fields an opportunity to move beyond the rather limited and binary camps that have emerged in relation to the nature of precarity in recent years. The insights of our work are not specific to a particular human activity (such as work), nor a particular lens onto human existence (such as everyday life). Rather our hope is that the insights we have developed will prove useful in attuning academic attention to the realities of situated and specific struggles with precarity in a diverse range of sites and situations.

Acknowledgements

The authors would like to thank the researchers involved throughout various stages of the project, in no specific order: Melanie Griffiths, Rebecca Rotter, Jennifer

Allsopp, and Natalia Paszkiewicz. We acknowledge useful comments from Emma Marshall on an earlier draft. This research has been funded by the ESRC (ES/J023426/1).

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[i] Replacing the Legal Aid Board in 2000, the LSC administered legal aid in England and Wales, and was classified as an executive non-departmental public body of the Ministry of Justice (MoJ). It was replaced by the Legal Aid Agency (LAA) in 2013, an executive agency of the MoJ.

[ii] Where data does not total 100% this refers to cases that were withdrawn or adjourned. Where data is not given this percentage would equate to fewer than 5 individual cases.

[iii] Country of origin (COI) information refers to information collected by or on behalf of governments to help them make decisions on asylum claims by considering the current political and social conditions in the countries from which claimants originate. In the UK COI reports are produced by the UK Visas and Immigration agency, and Country Information and Guidance (CIG) reports are produced by the Home Office.