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The culture of disbelief

An ethnographic approach to understanding
an under-theorised concept in the UK asylum
system

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List of abbreviations

HOPO	Home Office Presenting Officer
LGBTI	Lesbian, gay, bisexual, transgender and intersex
RFRL	Reason for refusal letter
UK	United Kingdom
UKBA	UK Border Agency

We enter Taylor House and are immediately greeted by an airport-style security barrier. 'Anything metallic in your pockets? I'll need to check your bag. Step forward now, please.' I feel stressed as I walk through.

The atmosphere in the waiting room is hospital-like. A woman moves quickly through the space, crying. Across the room, a representative talks loudly on her mobile phone: 'I just want to be done with this case and leave on my honeymoon.'

Waiting in the corridor, I overhear a female representative say to a young girl, 'Don't worry. You've got a good judge. Much better than last time.' We enter the courtroom to see what makes 'a good judge'.

People are already seated in the courtroom. We quickly learn not only who the appellant is, but the most intimate details about her life. She knows nothing of us, except that we are students, here to observe.¹

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¹ Initial impressions of Taylor House, as excerpted from research diaries.

1 Introduction

In the context of increasingly restrictive immigration and asylum policies in the United Kingdom (UK), human rights advocates suggest that a ‘culture of disbelief’ permeates the asylum system, forestalling the provision of protection to those who need it. This study aims to contribute to emerging academic literature on the culture of disbelief by asking how and to what extent it manifests through the performance of law. Adopting an ethnographic approach, we observed nine complete and five partial asylum appeal hearings at Taylor House Asylum and Immigration Tribunal in London, spoke with judges and solicitors, and conducted two key informant interviews. Engaging the concept of the culture of disbelief in a courtroom environment allowed us to observe how various actors negotiate over the resource of asylum and how the culture of disbelief influences the terms of this negotiation. By describing the culture of disbelief in action, we hope to contribute to a better theorisation of what it can be and what it can mean.

Framing our findings using Bourdieu’s concepts of ‘habitus’, ‘field’ and ‘capital’, we suggest that asylum appeal hearings should function to create space, within an adversarial procedure, for the fair presentation and examination of an appellant’s claim. We focus our analysis around forces in the courtroom, or field, that we observed to be compellingly dual in effect, as they either opened or closed space for the presentation of claims. These elements included the actors, the treatment of evidence and issues surrounding linguistic and cultural translation. The unpredictable interaction of these elements reveals themes of authority, distrust, inconsistency, chaos and otherness. We do not argue that any individual element in the courtroom accounts for the culture of disbelief. Instead, this culture, or habitus, emerges when various structures and agents, with varying capital, combine to create a ‘negative decision-making environment.’²

2 Literature review

From 1993 to 2006, the UK passed six Asylum and Immigration Acts that promoted policies of control and containment. Over two decades, these policies reduced the rate of refugee recognition from 80 percent to 20 percent at the initial decision phase (Webber 2006: 80; Blinder 2013). Deemed criminals, the affairs of asylum seekers are managed by expanding police power, detention, collection of biometric data and electronic monitoring. Policies of dispersal and withdrawal of support deny social resources and increase destitution among asylum seekers (Information Centre about Asylum and Refugees 2010). The denigration of the institution of asylum in the UK mirrors trends throughout Western Europe. The term ‘culture of disbelief’ arose within this restrictionist environment.

² The expression ‘negative environment for decision-making’ emerged in consultation with Guy Goodwin-Gil at All Souls College, University of Oxford, January 25, 2013.

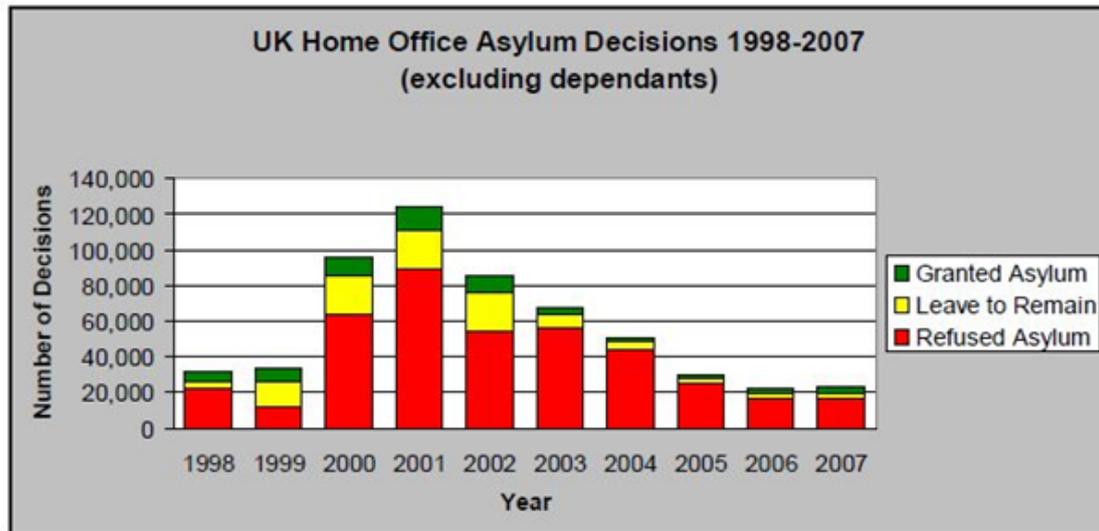


Figure 1: UK Home Office Asylum Decisions 1998-2007 (excluding dependants) (Trueman 2009)

Reason for refusal letters (RFRLs) issued to unsuccessful asylum seekers by the UK Border Agency (UKBA) are the most frequently used tool for substantiating the ‘culture of disbelief’ (Amnesty International 2004; Arnold and Ginn 2008; Asylum Aid 1999; Trueman 2009). Asylum Aid (1995) represents an early example within this literature, identifying a pattern of arbitrary, inconsistent decision-making, insensitivity and bias in the RFRLs. The Independent Asylum Commission’s bipartisan review (2008) illustrates the wide use of the concept of a ‘culture of disbelief’. The phrase also appears recently in reports about women (Asylum Aid 2011; Refugee Council 2009), children (The Children’s Society 2012) and lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals (Equality Network 2011) seeking asylum.

The academic discussion surrounding the culture of disbelief adopts a more sceptical tone. Souter (2011) questions if the culture of disbelief is helpful for understanding UK asylum policy and suggests that disbelief is part of a wider ‘culture of denial’. Jubany’s (2011) exploration of the concept using ethnographic observations of immigration officials in the UK and Spain reveal what she calls a ‘meta-message of deterrence’. Finally, Griffiths (2012) identifies mutual distrust between UK adjudicators and asylum seekers. Despite these articles, the meaning and significance of the culture of disbelief is usually assumed rather than described.

Recognising the significance of perceiving disbelief as a culture, we examined Bourdieu’s (1990) concepts of ‘habitus’, ‘field’ and ‘capital’, set out in his book *The Logic of Practice*. Bourdieu positions culture as an object of study by examining behaviours and ways of thinking, or practices, within specific, overlapping fields. In each field, actors engage in struggles with differing levels of economic, social, symbolic and cultural capital. A habitus emerges from the field in a cyclical concert of structure and agency.

Our chosen methods are grounded in literature on ethnography in courts and the performativity of law. Good (2007) and Bohmer (2007) have each used observation as a tool of research in asylum appeal hearings in London, setting a helpful precedent for our methods. The performativity of law literature emphasises that the courtroom space, as well as the actions therein, are socially, politically and culturally situated (Conquergood 1992, Crenshaw

1996, Lloyd 1999, McKinnon 2009, Morphy 2007). We seek to bring together concerns in the culture of disbelief literature with methods in the ethnography of courts and performativity of law literatures to study the culture of disbelief in a new way.

3 Methods and methodology

In the course of this study, we conducted five visits to Taylor House between November 2012 and January 2013. We chose Taylor House for its proximity to Oxford as well as the high quantity of cases heard there daily. In order to maximise our sample size, we attended the courtrooms with the largest number of scheduled asylum appeal hearings on a given day. We observed nine complete and five partial asylum appeal hearings of eleven male and three female appellants from ten different countries. One appellant was a minor; adult appellants ranged from eighteen to mid-fifties.

Our guiding ontological paradigm is interpretivist, while we take the epistemological view that 'reality' and 'truth' are subjective and socially constructed. Any single asylum appeal hearing contains a multiplicity of interacting realities and subjectivities, including our own. Given our desire to study a culture, we decided that ethnography was the most pertinent methodology to use. At Taylor House, we are also outsiders in several ways. Three of the four of us are not UK citizens, none of us were familiar with court culture or procedure, and only one of us had experience with asylum adjudication.

In November, we conducted a pilot study to test our research methods. We planned to utilise participant observation, coupling observation of hearings with informal conversations and interviews. We divided observational tasks amongst the group, focusing on different elements of performance within the courtroom, but quickly learned that our structured approach to observations produced a fragmented account of the hearings. We also recognised that we were not truly participant observers as it was difficult to have meaningful interactions with people inside and outside of the courtroom. Finally, we agreed that the presence of four observers in a single courtroom caused overcrowding.

Our pilot study experience allowed us to refine and adjust our methods, including a shift to unstructured observation, which we conducted in pairs. We adopted a holistic approach to note-taking, aspiring to produce 'as full a record as possible...not merely a précis of the substantive issues' (Good 2007: 43). Implicit in this choice is the recognition that, if a culture of disbelief exists, it is not confined to the words spoken in the hearing.³ As we grew accustomed to Taylor House, it became more difficult to maintain explicit awareness; thus, we acknowledged that our observations became more selective with time. This does not, however, imply methodological weakness. On the contrary, unstructured observation relies on the gradual emergence of themes through continued observation and the associated refinement of data collection. As both the instrument of data collection and intellect of data analysis, we each kept research diaries to reflect on our experiences at Taylor House and become more

³ As Clifford (1988: 290) asserts, 'The trial record does not provide much information on the effect of witnesses or events in the courtroom. It omits gestures, hesitations, clothing, tone of voice, laughter, irony... the sometimes devastating silences.'

aware of the impact of our own subjectivities on the research process. This led us to acknowledge many of our biases.

To supplement our observations we sought the opinions of experts. After our pilot study, we met with Carol Bohmer, who provided methodological advice based on her experience conducting research in Taylor House. After completing our field research, we consulted Guy Goodwin-Gill for perspectives on UK asylum law. These meetings contributed substantially to developing our understanding of key issues relating to our research.

Throughout the research process, we prioritised ethical considerations. As asylum appeal hearings are open to the public, it was not necessary to gain informed consent from the individuals in the courtroom, but we gained verbal informed consent from those with whom we held informal conversations and the experts we consulted. Due to the sensitive nature of asylum cases, we thoroughly anonymised all personal information pertaining to the hearings we observed.

After returning from the field, we transcribed and collated our data. The comparison of two versions of the same hearing consolidated our understanding of each hearing. We then engaged in a rigorous, line-by-line coding process to organise our observations according to the themes they revealed. It was through this process that we chose, from an overwhelming amount of rich material, specific focus areas to answer our research question.

4 Findings

A middle-aged Afghan man, a father of four, sits silently in front of the judge, nothing in front of him save a small plastic cup of water. The judge and solicitors shuffle through stacks of paperwork, discussing a missing DNA report. The judge pauses intermittently to deal with the details of upcoming cases. People bustle in and out of the room, letting the door click shut, dropping their bags, rustling their coats. When the proceedings begin and the appellant finally speaks, it is through an interpreter. The judge frequently interrupts, addressing him without looking up from her note taking. The Home Office representative repeats the same query three times; the appellant repeats the same answer three times, visibly more agitated with each. When the hearing closes, and the appellant reaches the door, he turns back, calling out to the judge. 'Please, can I just say something? I plead for your help!' Her attention is already focused on the next appellant, part of whose bundle is also missing (Case 13).

In the UK, asylum appeal hearings are adversarial. Two representatives sit opposite one another embodying opposing arguments regarding the appellant's claim for asylum. The judge and the appellant sit face to face, the former elevated above the latter, one embodying the law, the other its subject. Contestation is often centred on the appellant's credibility, further contributing to elements of doubt and disparities of power that are already inherent in this adversarial setting.

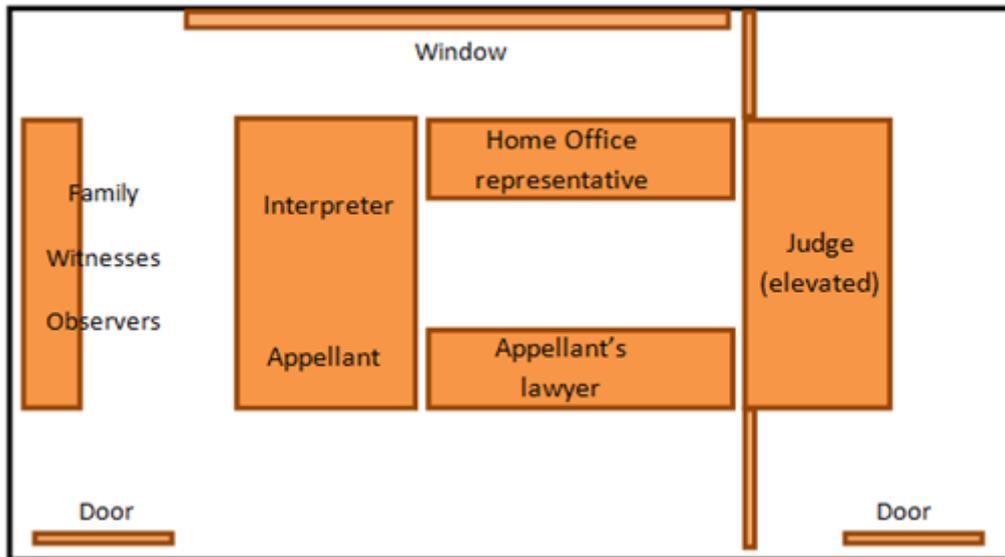


Figure 2: Field sketch of a typical courtroom in Taylor House

Their four desks come together to create a physical and metaphorical space into which each actor submits his or her claims. In asking how the culture of disbelief manifests in asylum appeal hearings specifically, we strive to identify instances within our observations in which disbelief elevates above the level expected in an environment of contestation.

Bourdieu's ideas provide tools that enable us to move beyond a monolithic conception of culture. Taylor House courtroom is a field, or a site of cultural production, in which actors with different types and levels of capital 'struggle' over the resource of asylum (Bourdieu 1983). Refugee status is a type of symbolic capital, a position of recognition, which the asylum seeker lacks and hopes to obtain through the appeal process. In analysing our data, we observed that individual elements within this field can act to either *close* or *open* space for the presentation and examination of an asylum claim. The level of access to the resource of asylum, therefore, differs from hearing to hearing. We determined that the 'culture of disbelief' manifests if and when elements in the courtroom combine to have a restrictive effect on the space for the substantiation of a claim. In this section, we discuss our observations and analysis of the roles performed by actors, the treatment of evidence and cultural and linguistic translation within this field.

Actors: posture and personality

Within the asylum appeal, actors perform roles similar to civil and criminal courts. The judge has the role of hearing arguments from the representatives for and against the appellant's claim. Silence is imposed upon the appellant for most of the hearing, unless addressed by another actor. The interaction of these actors reveals much about the influence of individuals on court proceedings and the space available for the presentation and examination of the asylum claim.

Of the actors in the courtroom, the judge has the most authority, or symbolic capital, to influence the setting. We observed judges using this authority to facilitate space for the presentation of a claim by guiding proceedings, emphasising their own independence and impartiality, ensuring understanding between parties and interrupting convoluted or rapid

questioning (Cases 1, 3, 4, 9 and 12). A very thorough judge started a hearing with the following statement:

I'm going to explain what's going to happen. I'm an immigration judge and I will hear your case today. Here is the Home Office representative, you know your solicitor and this is the independent interpreter. I will hear all of the evidence and legal arguments. It's my job then to make a written decision determining your case. It can take up to two weeks to prepare and can take longer than that to be sent to you so there will be no result today. [To the interpreter:] I get the impression he can understand you. Can you please ask him to talk to you so we can make sure there is no problem in dialect or interpretation? (Case 1)

We noted, however, that judges also exercise authority in a way that obstructs the space for substantiation of a claim. Interventions at times prolonged the proceedings and limited the ability of the appellant's representative to speak. One judge exclaimed, 'I am what you call an interventionist judge.' He frequently paused to lecture and rebuke the appellant's representative, asking, 'Are you even aware of the facts of this case?' In an informal conversation after the hearing, the judge justified his actions: 'When she [the Home Office Presenting Officer (HOPO)] is sitting right there, you can't be too lenient and understanding with the ill-preparedness of the counsel' (Case 4). This emphasised the impact of solicitors' behaviour on judges. The absence of the HOPO in some cases also allowed for the judge to make a decision whether to stay or hear a case. We witnessed judges reacting in different ways to this absence, either taking a more sympathetic position to the appellant or adopting a more critical line of questioning, as if replacing the HOPO. One judge told the appellant, 'The Home Office thinks you should go back to Sudan. You are lucky not to have an officer present' (Case 6). A judge's authority to decide whether to stay or delay a case represents the ultimate obstruction of space if such a decision is unfounded. For example, another judge refused to hear a case due to its perceived complexity and insufficient time, but we heard the representatives suggest that the judge simply did not want to hear the case (Case 13).

A critical part of the judge's interactions with the appellant include the assessment of credibility. The judge's interactions often carry a neutral, information-seeking tone and facilitate the space for the claim. However, a judge's outright expressions of disbelief become obstructive, skewing the interpretation of testimony, evidence and cultural contexts. We witnessed overt incredulity from judges when they asked, 'Why is this newspaper only four pages?' and 'You crossed on a what? A mule?' (Cases 12 and 1). One judge described a case as 'refreshingly honest' because 'it would have been easy for her to just say [her husband] beat her', thus equating credibility with not claiming domestic violence (Case 2). While we cannot confirm that such disbelief necessarily contributed to partiality in decision-making, we observed its impact on the treatment of evidence as judges grappled with contradictions between information presented and their understanding of 'truth' in one cultural context, further discussed in the sections below.

Overall, inconsistency in the posture and personality of actors from one case to another led us, as outsiders, to perceive the performance of law in this environment as being prone to confusion and scepticism, or 'disbelief'. We thus believe that certain behaviours of the judge and other actors can negatively impact the balance of space for the substantiation of a claim, and thus contribute to a culture of disbelief. These findings correlate with Griffiths' (2012) description of mutual disbelief, the Bail for Immigration Detainees report 'A Nice Judge on a

Good Day', and Ramji-Nogales et al's. (2008) discussion of the impact of immigration judges' sociological characteristics on chances of receiving asylum.

The bundle: treatment of evidence

There are so many bundles [for this case]. I would be so agitated if I were hearing this appeal today. There are... there are papers and bundles everywhere. You understand how complicated it becomes when there are so many bundles. It doesn't make the judge's job easier, I'll tell you that.
(Judge in Case 10)

Bundles contain all relevant information for an appeal and greatly impact the ease or difficulty of exploring evidence and establishing credibility.⁴ Each representative prepares a bundle for the judge and the opposing representative before the hearing. We found that the bundle and the treatment of evidence therein opened and closed the space for substantiation of a claim based on its organisation as well as the capability and preparation of the representative wielding it as a tool.

A well-organised bundle leads to ease in the presentation and examination of evidence. One judge told an appellant, 'You have kept all these documents... That is good. A lot of people don't do that' (Case 6). In this case, the bundle facilitated the presentation of the appellant's Article 8 claim, which would provide him the right to remain in the UK even though he might not meet criteria for asylum. In cases where the bundle was well-organised and utilised, we barely noticed it. A quick discussion of its size, contents or brief page number references reminded us of its subtle, facilitating impact on the procedures.

We witnessed a hierarchical treatment of evidence contained in the bundle. HOPOs clearly demonstrated the privileging of 'objective' evidence through adjectives used. For example, multiple HOPOs asked if the appellant could provide any 'real' or 'actual' evidence to supplement an 'alleged' or 'supposed' claim. One judge clearly said, 'The risk that you run relying on oral evidence is that if the court found him not credible before, without physical evidence, the court finds it easier to reject the claim' (Case 4). Conversely, in a conversation after a hearing, a judge told us, 'Law is not a perfect science. I try to make people feel comfortable, because oral testimony is so important, but testimony from a nervous person doesn't have much value.' Despite this hierarchy of evidence, different adjudicators clearly displayed different expectations of 'objective' versus 'subjective' evidence, shifting the burden of proof.

The HOPO frequently attempts to dismiss evidence in the bundle on the basis of minute details. For example, one discredited the birth certificates of an Afghan man's children on the grounds that they were issued several years after the children's births (Case 10). The Home Office launched its own age assessment, determining that the older child was an adult. This example suggests that the treatment of evidence is often biased, arbitrary and easily manipulated, contributing to the theme of distrust between adjudicators and asylum seekers and the impression that asylum procedures are chronically inconsistent. This also shows how even something which is normally considered 'objective' evidence can be challenged and manipulated to close the space for substantiation of a claim. The hierarchy of evidence goes beyond objective and subjective and is culturally situated.

⁴ Bundles usually contain RFL, appellant and witness statements, expert reports, country conditions and other relevant evidence.

Poorly organised bundles in the hands of unprepared actors were a key cause of chaos and confusion in the courtroom. In such cases, the bundle took on a life of its own, transforming from a tool to an actor with the power to dictate the flow of procedures. Absorbed in the bundle, the judge and representatives ‘spoke to’ its pages rather than to each other. They passed it back and forth, flipped through it frantically, and lapsed into long stretches of silence studying it. More than once, a judge had to take a recess to allow the representatives time to organise the bundle. One judge said, ‘What I need is for you to decide what you want the judge to look at...If I put this case back, would you be able to sort these bundles?’ (Case 10)

An actor’s ability to use a bundle, regardless of its organisation, depends on the level of preparation. An underprepared representative leaves the HOPO’s dismissal of the evidence unchallenged, underlining the importance of asylum seekers’ access (or lack thereof) to high-quality legal counsel. In other moments, the HOPO fumbled over the bundle, pursuing irrelevant lines of questioning due to unfamiliarity with the case. We heard several complaints that the UK Home Office’s habit of forwarding bundles at short notice leaves HOPOs with little time to learn the facts.

Due to its impact on court procedures, we view the bundle as a document of authority and site of symbolic capital. It reinforces the bureaucratic nature of asylum appeal hearings, which tend to treat appellants not as individuals with unique stories, but as one case in a long series of cases. One judge described this approach as ‘lacking compassion’ (Case 8). The bundle frequently contributed to the phenomenon of chaos in the courtroom, in which the normal procedures break down and the space for a fair asylum hearing shrinks. Ultimately, discussing the bundle, evidence and the preparation and attitudes of actors in dealing with these items allows us to see how the burden of proof, and by extension, the space for the substantiation of a claim, fluctuates.

Translation: language and culture

Several asylum appeal hearings we observed required the presence of interpreters due to language barriers. The interpreter’s role is to serve as a neutral medium, enabling communication and thereby facilitating space for the substantiation of claims. However, the need for and mere presence of interpreters impacts the structure and procedure of hearings. The interpreter’s actions, personality, and expertise also have an impact on court dynamics, at times obstructing communication, contrary to their intended role.

In one hearing the judge asked the interpreter to translate the ‘gist of things’ (Case 5). In another hearing, the judge requested that the appellant give ‘short answers’ to ease translation (Case 10). Both judges thus limited the appellant’s ability to communicate. Such limitations marginalise appellants within a procedure primarily concerned with their fate. For example, one judge repeatedly corrected an interpreter speaking in third person, saying, ‘No, don’t say ‘he’. Say ‘I’, as if you were speaking on behalf of the appellant’ (Case 10). Here, the judge’s intervention was necessary to ensure that the appellant remained the central actor in his own appeal hearing. This ‘middleman’ impedes the direct interaction between the central parties in asylum appeal hearings. One judge expressed this explicitly: ‘People just come across so much better without an interpreter’ (Case 6). Thus, those who can speak English have a higher cultural capital than those who require interpreters.

Language ties into the broader field of communication, which also involves translating meanings between different cultural contexts, particularly that of the UK and that within

which the appellants' experiences are situated. Inghilleri (2003:252) argues that 'the social and cultural location of the court is monolingual.' While multilingualism is a feature in asylum hearings, non-British languages and cultures are treated as 'Other'. The cultural knowledge necessary to translate experiences presents a challenge for all actors in asylum appeal hearings; the space for the substantiation of claims depends on appellants' ability to present an account conceivable to others, and on the elasticity of other actors' cultural repertoires in engaging with these accounts. The following three observations illustrate this point.

In one hearing the notion of who constitutes family was contested (Case 9). The HOPO asked the Sierra Leonean appellant if she had family in the UK. She responded, 'My son and friends that I have taken as sisters.' The HOPO sought clarification that those were friends rather than family, a distinction significant in the UK, but less so in her home country. In affirming this distinction, the appellant aligned her account with the HOPO's cultural context, demonstrating her cultural capital.

In the same hearing, the appellant explained the risk she would face upon returning to Sierra Leone having not undergone female genital mutilation (FGM). The appellant and her representative argued that FGM is a rite of passage and socialisation process rather than merely a physical procedure. Therefore, upon return, the appellant's behaviour, including the way she walks, talks and prepares food, would identify her as uncircumcised. The judge dismissed this argument as 'nonsense', indicating his inability to comprehend the social significance of FGM. We suggest this opinion emanates from the inelasticity of the judge's cultural repertoire.

In another case, an appellant detailed events surrounding his brother's abduction by the Taliban (Case 7):

HO: How did you know they were from the Taliban?

A: Because you can recognise [the Taliban] from a distance. [Describes their beards.]

HO: Apart from their beards, was there anything else indicating they were from the Taliban?

A: They were wearing turbans. They can be recognised from a distance.

The notion that members of the Taliban may be identified by physical appearance was clear to the appellant. The HOPO was not satisfied with this explanation and demanded further indicators. The appellant, however, produced a similar second answer (turbans). The appellant was unable to provide context as to why these physical appearances constitute uncontested indicators of a Taliban identity. The HOPO, on the other hand, seemed unable to fathom that Afghans could recognise members of the Taliban by their beards and turbans. This example illustrates the appellant's inability to transcend the restrictions of his cultural repertoire.

As the previous examples illustrate, all actors in asylum appeal hearings are enabled and restricted by the inelasticity of their cultural repertoires when generating meaning across cultures. In cases where interpreters are required, this task is further complicated by language barriers. Unsuccessful cross-cultural communication and translation may contribute to lower cultural capital, obstruct the appellant's ability to speak and close space for the appellant's substantiation of a claim.

5 Conclusion

Our findings assist in conceptualising how a culture of disbelief may manifest in asylum appeal hearings. The examples above illustrate the manifold ways in which structural, procedural and interactive features in the courtroom impact the space for the presentation of and arguments around asylum claims. We argue that none of these elements individually constituted a culture of disbelief. Instead, we observed the interplay of actors, evidence and translation jointly obstructing this space and creating an overall atmosphere of disorganisation, confusion and chaos in many hearings. The combination of these elements creates a negative decision-making environment, which seems to heighten the risk that an otherwise legitimate asylum seeker might be denied refugee status. We thus argue that these elements of performance within the courtroom constitute the manifestation of a culture of disbelief.

This manifestation of the culture of disbelief does not exist in isolation, but is inextricably linked to larger political, social and cultural contexts; they represent a field that exists within other larger fields. UK immigration and asylum law frames every exercise of power and procedure within the setting of the asylum appeal. While UK asylum law helps to create space for claims for asylum by enabling appeal, we observed how frequent changes in the law and limited resources for its implementation contribute to the unpreparedness of actors and an atmosphere of chaos. We also observed how the lives of actors beyond the courtroom directly affect their performance within the hearing, showing how otherwise external social dynamics continually influence this field. Varying degrees of cultural capital exercised in the hearings illustrate actors' navigation of intersecting, yet incompatible, cultural fields within the courtroom. This interconnectedness demonstrates how such a locus of observation provides a legitimate space to observe elements of a larger culture. Therefore, although we limit our research to one specific stage in the asylum process, our findings offer an important window into the culture of disbelief within the larger context of the UK asylum process.

By theorising what constitutes the culture of disbelief, we hope to advance and encourage a critical approach to the use of this term. We also hope to contribute to a heightened awareness of what the culture of disbelief is. Further research is needed to critically examine the culture of disbelief. An ethnographic study with more insight into the bundle and including interviews with relevant actors could reveal whether the elements we observed were actual obstructions or facilitations of space for substantiation of claims. Longitudinal studies, following asylum claims from initial application to the final result of an appeal, would be ideal for testing a correlation between the existence of obstructing elements we observed and the decision made about a claim.

6 Post scriptum

Since the completion of this research, a number of developments and publications relating to asylum in the UK demonstrate increasing attention to the existence and impact of a culture of disbelief. Institutional changes to the UKBA, reports by the UK Home Affairs Committee on the agency's performance, and a UNHCR report on credibility assessment particularly illustrate the challenges that a culture of disbelief poses for both asylum seekers and the UK government. These recent events and reports support several of our research findings.

In March 2013, the British Home Secretary, Theresa May, announced a restructuring of the UKBA, stating that ‘its performance was not good enough’ and that the agency suffered from a ‘closed, secretive, and defensive culture’ (May 2013). Furthermore, quarterly reports by the Home Affairs Committee highlighted these deficiencies within the UKBA and also provided statistics on asylum grants and refusals. These statistics show that 30 percent of the agency’s initial decisions to refuse asylum were overturned on appeal, indicating the inconsistent quality of initial adjudications⁵ (Home Affairs Committee 2012; 2013a; 2013b; 2013c).

The UKBA lost its status as an independent agency, with the Home Office absorbing its functions. Two separate entities emerged from UKBA: an immigration and visas service and an immigration law enforcement organisation. Interestingly, given the years of advocacy and popular discussion on the culture of disbelief, the Home Secretary stressed that:

By creating two entities instead of one, we will be able to create distinct cultures [emphasis added]. First, a high-volume service that makes high-quality decisions about who comes here, with a culture of customer satisfaction for businessmen and visitors who want to come here legally. And second, an organisation that has law enforcement at its heart and gets tough on those who break our immigration laws (May 2013).

While these important developments do not capture the same performative dynamics we examined in the setting of the courtroom, they provide examples of external influences that we concluded also impact the space of the asylum hearing. Our interviews and observations revealed that outside pressures and obligations faced by actors in the courtroom impacted the environment of ‘organised chaos’ that we witnessed. It is precisely this confluence of external factors that the Home Affairs Committee reports confirm.

In October 2013, the Home Affairs Committee produced its seventh report on asylum, this time specifically addressing the culture of disbelief and relating it to the asylum seeker's credibility – a controversial ground for denial discussed in our research findings.

Another cause of distrust in the effectiveness in the system is what has been termed the ‘culture of disbelief’, which describes the tendency of those evaluating applications to start from the assumption that the applicant is not telling the truth. The term, first used to describe the asylum system in 2008, has recurred repeatedly throughout our inquiry. It was referred to in almost a quarter of written evidence submissions to this inquiry [...] In many cases, the applicant’s ‘lack of credibility’ will be cited as a reason for refusal, with no more specific grounds being offered for rejecting their story [...] Frequently the basis for the refusal is that the asylum seeker is not believed. Cogent reasons for this disbelief are often not offered. This is not to say that all asylum seekers tell the truth, but rather that decision-makers are still prone to disbelief without foundation, and to treating the asylum interview and decision-making process as adversarial rather than as an exercise of an international protection obligation [emphasis added]. Since the asylum-seeker’s story invariably involves distressing events, and sometimes deeply traumatic ones, the effect of being disbelieved can be devastating (Home Affairs Committee 2013: 11, para 12).

The UK asylum system has also come under scrutiny recently by UNHCR. In May 2013, UNHCR published a document entitled ‘Beyond Proof – Credibility Assessment in EU

⁵ Rate calculated manually for third and fourth quarters of calendar year 2012 based on evidence submitted to Home Affairs Committee and included in the quarterly reports.

Asylum Systems’, in which UNHCR found the UK asylum system to fall short of the standards expected by the Common European Asylum System. Referring to this report, The Home Affairs Committee stated:

UNHCR identified a number of specific failings in the quality of the UK’s asylum decision-making, including the following: failure by caseworkers to understand the basics of human rights law; a lack of understanding by caseworkers of the role of applicants’ credibility; frequent use of speculative arguments to undermine credibility; failure to apply the correct methodology to credibility assessment; and lack of consideration of relevant evidence and the placing of unreasonable burdens on applicants to provide supporting evidence. It is notable that three of these five reasons relate directly to decision-makers’ assessment of applicants’ credibility (Home Affairs Committee 2013d: 13, para 15).

The observations and findings contained in the UNHCR report closely mirror our own findings regarding the multiplicity of factors that can influence the decision-making environment, including the prominent role played by judges and their power to open or close the space available to applicants to substantiate their claim:

Due to the repetitive nature of the task, there is a risk that decision-makers may, consciously or unconsciously, categorize applications into generic case profiles and make predetermined assumptions about their credibility and other issues. [...] Disbelief is a very human coping strategy that undermines objectivity and impartiality (UNHCR 2013: 40).

Whilst UNHCR’s conceptualisation of disbelief privileges the agency of the judge (as well as a psychological rationale for disbelief), the report is indicative of the growing recognition amongst national and international legal and political actors that more needs to be done to understand factors that influence decision-making in asylum contexts.

The Home Affairs Committee and UNHCR reports support that our research theorising the culture of disbelief successfully began to survey the complex setting of actors and interactions that comprises the setting or field of an asylum hearing. In an already restrictive immigration environment, recent political developments, governmental consolidation of the asylum system and other institutional changes, such as the diminished availability of legal aid for asylum seekers, will only increase the value of the ‘resource’ of political asylum. The narrowing of the space – or ‘field’ – available for asylum seekers to contest decisions regarding access to this resource will in turn intensify debates. The shifts in these debates regarding the culture of disbelief should be a future topic of concern for academics and practitioners.

The ethnographic approach we adopted to conduct our research was a useful and original way to capture and analyse the interactions and factors that can contribute to – and diminish – a negative decision-making environment for individuals seeking international protection in the UK. Nevertheless, more research must be carried out in order to deepen practitioner and academic knowledge of the factors and dynamics that increase and decrease the space afforded for the substantiation of asylum seekers’ claims. We would recommend carrying out further research using correlative methodology to blend qualitative and quantitative approaches. By combining field observations with accurate information on case outcomes, for example, more rigorous analyses of the influence of bundle, interpreter and judge (i.e. the elements we identified as strongly influencing the decision-making environment) on the final decisions to grant or refuse asylum could be undertaken. Such an approach would yield

additional useful information regarding best practices for decision-making, so that asylum seekers are not left at the mercy of a 'good judge on a good day' and the integrity of the UK's asylum apparatus is strengthened such that judges do not need to rely on their 'gut' to administer a right to asylum or the protection of the state.

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8 Appendix

Details of cases observed at Taylor House

	Nationality	Sex	Complete or Partial Observation	Actors Present			
				Number of Researchers	Home Office	Interpreter	Number of Witnesses
1	Afghan	M	Complete	2	YES	YES	2
2	Pakistani	F	Complete	2	YES	YES	0
3	Libyan	M	Complete	2	NO	YES	0
4	Bangladeshi	M	Partial	2	YES	NO	0
5	Chinese	M	Complete	2	NO	YES	0
6	Sudanese	M	Complete	2	NO	NO	0
7	Afghan	M	Complete	1	YES	YES	0
8	Sri Lankan	M	Complete	2	YES	YES	0
9	Sierra Leonean	F	Complete	2	YES	YES	2
10	Afghan	M	Partial	2	YES	YES	0
11	Albanian	M	Partial	2	YES	Unknown	15 ⁶
12	Sierra Leonean	M	Complete	2	YES	NO	1
13	Yemeni	F	Partial	2	YES	YES	0
14	Unknown	F	Partial	2	YES	NO	0

⁶ The appellant's representative mentioned this number of witnesses. We did not observe cross-examination for this case.