



Department of History and Civilization

**International Trends and National Differences in
Asylum Policymaking.
Australia, Italy and Ireland compared, 1989-2008**

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Contents

List of Tables and Figures.....	5
Abstract.....	7
Acknowledgements	8
Introduction.....	10
1. Setting the Context: Asylum before 1989	23
1.1 The Secularisation of Asylum.....	25
1.2 Inter-War Refugees	28
1.3 The Genesis of the Geneva Convention	41
1.4 The Consequences of the Convention	49
1.5 Asylum during the Cold War	50
1.6 The Age of the Asylum Seeker	57
2. Asylum in Australia and the Politics of Control	63
2.1 Asylum in Australia before 1989	64
2.2 The Return of Boat People to Australia, 1989-1996.....	71
2.3 Between Waves	81
2.4 Restricting Asylum Advocates and Advocating for Restrictions, 1996-2001.....	84
2.5 Boat and Votes: <i>Tampa</i> and beyond, 2001-2008	92
3. Seeking Asylum in Italy	105
3.1 Asylum in Italy before 1989	106
3.2 The Martelli Law and the “Albanian Effect”, 1989-1991	110
3.3 Tangentopoli and the Politics of Immigration, 1992-1996.....	123
3.4 Emergency Measures and Absent Laws: Asylum in Italy, 1997-2000	126
3.5 Anti-Immigrant Politics, 2001-2008	138
4. Asylum in Ireland: From Empathy to Enmity?	154
4.1 Asylum in Ireland before 1989.....	155
4.2 Surprise Guests, 1989-1997	162
4.3 Struggling to Restrict Asylum, 1997-2002	168

4.4 Regaining Control, 2002-2008.....	190
5. International Trends and National Differences	202
5.1 The 1990s.....	203
5.2 The 2000s.....	222
Conclusion	235
Bibliography	242

List of Tables and Figures

1.1 Refugee NGOs in the Union of International Associations, 1919-2006	57
1.2 Refugees worldwide, 1980-1995	59
1.3 Asylum applications in EU15, 1980-1990.....	61
2.1 Annual immigration intake in Australia, 1970-1990.....	68
2.2 Asylum applications in Australia, 1989-1996	72
2.3 Percentage of labour force unemployed in Australia, 1988-1996.....	80
2.4 Boat People arriving in Australia, 1996-2001	89
2.5 Asylum claims in Australia, 2000-2005	101
3.1 Percentage of labour force unemployed in Italy, 1982-1991.....	117
3.2 Percentage of vote obtained by Christian Democrat Party and Italian Communist Party in general elections, 1953-1987	123
3.3 Movimento Sociale Italiano/Alleanza Nazionale share of the national vote, 1948-1994.....	125
3.4 Asylum applications in Italy, 1993-2000	138
3.5 Decisions on asylum applications in Italy, 2000-2005	148
4.1 Asylum applications in Ireland, 1988-1997	167
4.2 Irish daily newspaper circulation	170
4.3 Nigerian and Romanian asylum applications in Ireland, 1992-1999	172
4.4 Asylum applications in Ireland, 1997-2002	184
4.5 Asylum applications in Ireland per month, 1999	187
4.6 Deportation orders, Ireland, 2000-2004	194
4.7 Asylum applications in Ireland, 2002-2008	198
5.1 Asylum applications in Australia, Italy and Ireland in the 1990s.....	204
5.2 Percentage of the labour force unemployed in Australia, Italy and Ireland in the 1990s	211
5.3 Outcome of asylum applications in EU15 in the 1990s	219
5.4 Involuntary returns as a proportion of rejected asylum seekers in Germany, 1993-2000	220
5.5 Deportations as a proportion of rejected asylum seekers in the UK, 1996-2000....	220

5.6 Percentage of labour force unemployed in Australia, Italy and Ireland in the 2000s	225
5.7 Asylum applications in Australia, Italy and Ireland, 2000-2008	231

Abstract

The primary purpose of this interdisciplinary study is to show the value of history in investigating asylum policymaking from 1989 to 2008. *Chapter 1* provides a short summary of asylum before 1989. It focuses especially on the power, influence and composition of actors who advocated for generous asylum policies and actors who proposed restrictive asylum policies at crucial times throughout the twentieth century. *Chapters 2, 3 and 4* analyse the case studies of Australia, Italy and Ireland. By setting traditional emigration countries against a traditional immigration country, EU countries against a non-EU country, Catholic countries against a multid denominational country, islands against a peninsula, common law states against a civil law state, as well as countries where boat people drove asylum debates against one that lacked boat people, many divergences and convergences emerged. Every country had, to a certain degree, a unique asylum system based on its own history, identity and geography. The comparative *Chapter 5* reveals that despite inherent national differences, noticeable international asylum trends also appeared during this period. In contrast to people who applied for asylum during the Cold War, asylum applicants in the 1990s provided limited political and economic returns for receiver states. Accordingly, governing political parties inclined towards the formation of more restrictive asylum policies. But secular and religious NGOs, INGOs and certain opposition political parties loudly protested by referencing humanitarian ideals, national commitments to human rights and the rule of law. Acknowledging the challenges posed by actors sympathetic to asylum seekers, governments in the 2000s attempted to securitize and externalise asylum, reduce the influence of the courts, and expedite the deportation of rejected asylum seekers. The *conclusion* suggests that governments in Europe, North America and Australasia are likely to build on advances made through the 2000s to restrict asylum even further in the next decade, especially in the wake of the economic crisis of 2008-09.

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Introduction*

During the Cold War, people seeking asylum generally met with a sympathetic and compassionate response from western states because of the political kudos associated with accepting limited numbers of Soviet defectors. The collapse of communism and the globalization of asylum-seeking between 1989 and 2008 led to an enormous rise in applications for protection. In contrast to those who applied for asylum during the Cold War, applicants after 1989 provided limited political and economic returns for receiver states. This thesis seeks to determine how states reacted to such a development.

Political theorists, philosophers, international relations experts and legal authorities have all written extensively on western asylum policies in recent years.¹ Yet few historians have followed suit. Several historical studies focused on particular periods of asylum policymaking or asylum policies in specific countries; but more wide-ranging historical studies investigating asylum over the *longue durée* remain absent.² The one notable exception that stands out, Michael Marrus's *The Unwanted*, dealt with events up until the early 1980s.³ But the collapse of communism and the arrival of “jet-age” refugees from the Developing World sparked a new dawn of asylum seeking after 1989.

Too often, discussions of contemporary asylum policy fail to sufficiently contextualise asylum trends. By looking solely at one period without first extensively setting the scene, scholars often overlook crucial developments. H. Stuart Hughes remarked nearly half a century ago that historians who see no incompatibility between their different roles in the humanities and social sciences are uniquely equipped to

* Speeches given in parliamentary debates or comments cited in newspapers are referenced throughout in double quotation marks. Excerpts from archives, books and journals are referenced throughout in single quotation marks.

¹ See, for example, Matthew Gibney, *The Ethics and Politics of Asylum*, Cambridge: Cambridge University Press, 2004; Michael Dummett, *On Immigration and Refugees*, London and New York: Routledge, 2001; Gil Loescher, *The UNHCR and World Politics. A Perilous Path*, New York and Oxford: Oxford University Press, 2001; and, James Hathaway, *The Rights of Refugees Under International Law*, Cambridge: Cambridge University Press, 2005.

² For specific periods of asylum policymaking, see Vicki Caron, *Uneasy Asylum: France and the Jewish Refugee Crisis, 1933-1942*, Stanford: Stanford University Press, 1999. For a concise history of the asylum policy of one country, see Tony Kushner and Katharine Knox, *Refugees in an Age of Genocide: Global, National, and Local Perspectives During the Twentieth Century*, London: Routledge, 1999 or Gérard Noiriel, *La Tyrannie du National. Le Droit d'Asile en Europe 1793-1993*, Paris: Calmann-Lévy, 1991. Despite the titles, Kushner and Knox's book focuses on Britain's reception of refugees and Noiriel's deals mostly with the history of asylum in France.

³ Michael Marrus, *The Unwanted. European refugees in the Twentieth Century*, Oxford and New York: Oxford University Press, 1985.

illuminate the era in which we live.⁴ The primary purpose of this dissertation, therefore, is to show the value of history in the study of asylum since 1989.

Seeking Asylum after 1989

Whereas people who sought protection in western democracies after the Second World War came to countries with considerable labour shortages, those coming after 1989 appeared at a time of considerable economic uncertainty. For many European countries without established recognisable refugee or asylum systems, economic factors such as unemployment rates and economic growth played considerable roles in asylum debates, largely due to the fusion of asylum and immigration issues. With asylum seekers entitled, in some countries, to relatively generous welfare provisions and housing, political, media and public hostility towards asylum seekers began to rise.⁵ References to the large use of taxpayer money and welfare funds by political figures and media groups often met with receptive public audiences. Other, more prejudiced attitudes towards asylum seekers also developed relating to their perceived cultural and racial differences from the host population.⁶ This development reflected the increasingly varied origins of asylum seekers compared to what occurred between the 1950s and 1970s, when most refugee claimants derived from Soviet Europe. Claims that large numbers of asylum seekers submitted erroneous claims often led to a further escalation in hostility, especially when allied to allegations that asylum seekers took valuable education, health and housing provisions from natives at a time of increased financial insecurity. Critics also argued that asylum seekers represented a serious cultural and security threat. This became particularly apparent in resistance towards Muslim asylum seekers as the 1990s progressed. Opposition intensified further after the September 11th attacks in America in 2001. Some actors also noted that certain asylum seeker groups, particularly the Roma in certain European countries, assumed a physical threat to citizens because of their perceived propensity to engage in criminal activities.

All of these factors led governments in liberal democratic states to form increasingly parsimonious asylum policies by further codifying the legal rules

⁴ H. Stuart Hughes, *History as Art and as Science. Twin Vistas on the Past*, New York, Evanston and London: Harper and Row, 1964, p. 107.

⁵ This gave rise to what Gibson terms resource-based opposition Rachel Gibson, *The Growth of Anti-Immigrant Parties in Western Europe*, New York: Edwin Mellen, 2002, p. 74. Messina, more recently, refers to this trend as “objective opposition.” See Anthony Messina, *The Logics and Politics of Post-WWII Migration to Western Europe*, New York: Cambridge University Press, 2007, pp. 81-3.

⁶ Gibson terms this identity-based opposition while Messina terms it “subjective opposition.”

surrounding the asylum process. Accordingly, most experts have written that western states increasingly dismissed the plight of those seeking protection after 1989.⁷ This assumes that governments successfully implemented the restrictive asylum policies they formed. Unlike the 1930s, however, several avenues remained open to non-government actors to challenge asylum policy reform in the 1990s, most notably national courts, meaning a sizeable “gap” remained between asylum policies formed and asylum policies implemented.⁸ To test this hypothesis further, the case studies on Australia, Italy and Ireland will be divided into three distinct phases: asylum policy formation, asylum policy implementation and asylum policy outcomes.

Extensive debating between various actors interested in asylum often led to the formation of new asylum policies. The implementation of these newly formed policies depended on the influence of actors opposed to their substance, as well as the avenues available for them to contest the composition of new policies.⁹ Studying the outcomes of the resultant asylum policies will enable this study to conclude whether the creators of these instruments accomplished their goals. It will also outline the effects these policies had on asylum seekers. Political and public debate on asylum often coincided with general elections or perceived asylum crises when the issue of asylum became the subject of extensive discussion. While the examination of Australia, Italy and Ireland will be quite case-specific, the comparative chapter that follows will highlight international trends and national differences in asylum policymaking.

1.1 Competing actors

In the mid 1990s, Gary Freeman advanced a theory hypothesising that certain actors shaped immigration policy.¹⁰ This dissertation shares his approach by emphasising the influence certain actors played in determining asylum policy. Democratic states consist of a number of competing actors. A bargaining process ensues between these competing actors when debate takes place on the formation of new policies. As Fritz Scharpf

⁷ See, for example, Philip Marfleet, *Refugees in a Global Era*, Basingstoke: Palgrave Macmillan, 2006.

⁸ For more information about the ‘gap hypothesis’ in migration literature, see Wayne Cornelius and Takeyuki Tsuda, ‘Controlling Immigration: The Limits of Government Intervention’, in Wayne Cornelius, Philip Martin and James Hollifield (eds.), *Controlling Immigration. A Global Perspective*, Stanford: Stanford University Press, 2004 (1st ed. published in 1994), pp. 3-50 and especially p. 4-11.

⁹ Of course factors out of the hands of actors forming asylum policy also influenced whether or not it was successfully implemented. As will become clear in the case studies, geography, uncompromising sender states and unforeseen refugee situations also impacted upon the imposition of asylum policies.

¹⁰ Gary Freeman, ‘Modes of Immigration Policies in Liberal Democratic States’, *International Migration Review*, Vol. 29, No. 4, 1995, pp. 881-902.

contends, ‘it is unlikely, if not impossible, that public policy of any significance could result from the choice process of any single unified actor. Policy formulation and policy implementation are inevitably the result of interactions among a plurality of separate actors with separate interests, goals and strategies’.¹¹

A simple model set out here situates actors involved in contesting asylum policy into two broad groups, or, to borrow once more from Scharpf, into two “hypothetical coalitions.”¹² One group comprises those actors who empathised with the plight of asylum seekers. They strove to ensure that asylum seekers received access to certain rights and entitlements. Throughout the thesis, this broad group of actors will be referred to as the ‘sympathisers’. Stratham and Geddes termed these actors ‘expansionists’ in their recent study of asylum policymaking in the UK. This term remains problematic because of its demographic connotation, which potentially obscures the real humanitarian reasoning behind the views held by these actors. Matthew Gibney uses the term ‘impartialists’ to describe political theorists and philosophers who argue for open borders and equal rights for citizens and non-citizens. Though this term is accurate for his discussion, this study’s empirical focus on asylum debates in three countries rarely reveals such advanced views from pro-asylum actors, hence the need for the more eclectic term ‘sympathisers’.¹³

The pro-migrant actors Freeman mentions in his 1995 article on economic migration diverged significantly from sympathetic actors involved in asylum debates. Pro-migrant actors, such as employers in labour-intensive industries, businesses that profited from population growth and the family and ethnic relations of those making up immigrant flows promoted expansive migration policies mainly because of the benefits they stood to gain. By contrast, employers remained indifferent towards asylum seekers because of their disorganised arrival and because governments frequently barred the employment of asylum seekers. Although the ethnic lobby in settler-societies that Freeman refers to as pro-migrant sometimes advocated for generous asylum policies,

¹¹ Fritz Scharpf, ‘Interorganizational Policy Studies: Issues, Concepts and Perspectives’, Kenneth Hanf and Fritz Scharpf (eds), *Interorganizational Policy Making: Limits to Coordination and Central Control*, London: Sage, 1978, pp. 345-377, p. 347. Quoted in Michael Hill, *Implementing Public Policy: Governance in Theory and in Practice*, London: Sage, 2002, p. 59.

¹² As Scharpf explains, creating hypothetical coalitions ‘implies that we divide a given population of actors into two potential groups, each of whose members share a common interest in a certain potentially salient aspect of the expected outcomes of policy interactions.’ Fritz Scharpf, *Games Real Actors Play. Actor-Centered Institutionalism in Policy Research*, Boulder Colorado: Westview, 1997, p. 81.

¹³ See Paul Stratham and Andrew Geddes, ‘Elites and the ‘Organised Public’: Who Drives British Immigration Politics and in Which Direction’, *West European Politics*, Vol. 29, No. 2, 2006, pp. 248-269 and Matthew Gibney, *The Ethics and Politics of Asylum*.

certain ethnic groups actually called for restrictive asylum policies because they feared an increase in asylum numbers might jeopardise the entry of friends and families under organised government schemes.¹⁴ Sympathisers in asylum debates, contrastingly, promoted generous policies not for any benefit they acquired but because helping asylum seekers fitted into the humanitarian, moral and communitarian principles inherent in their beliefs and values. International and domestic pro-refugee non-governmental organisations (NGOs), intergovernmental refugee organisations (IGOs), religious groups and certain outspoken opposition political parties supported asylum seekers most vociferously.

In contrast to asylum sympathisers, opposing actors maintained that asylum seekers represented potential cultural, physical and economic threats to host societies. They repeatedly doubted the veracity of asylum claims and emphasised the potential problems increased numbers of asylum seekers would bring to domestic societies. Sceptics often worried more about how large numbers of asylum seekers bypassed their national immigration systems than whether asylum seekers required protection or not. Consequently, they favoured restricting asylum. This broad group of actors will be referred to throughout as 'sceptics'. Stratham and Geddes refer to these actors as 'restrictionists' and Matthew Gibney terms the political theorists that oppose open-border arguments by referencing communitarian principles as 'partialists'. Both represent accurate depictions of the actors involved but they fail to underline the suspicion of asylum seekers' motives that remains inherent amongst many of these actors. Hence, the use of the term 'sceptics' throughout, which also provides a more mellifluous distinction to its counterpart, 'sympathisers'.

Freeman identified only two anti-migrant actors in his article: popular opinion and anti-immigrant parties. Furthermore, he maintained that public opinion, although 'typically restrictionist', was 'not well articulated' and anti-immigration parties had 'little or no chance of participating in or forming governments' because challenging the ethnic composition of immigration might have led to charges of racism.¹⁵ Since Freeman wrote his article, anti-immigration parties' popularity rose considerably, leading to increased debates over immigration and asylum. To offset the loss of potential stray

¹⁴ In Australia, for example, a newspaper article from December 1994 recorded how 'Ethnic leaders yesterday warned the Federal Government had to act urgently and decisively to stop the influx of boat people from China, fearing the explosion of illegal immigrants w[ould] jeopardise legitimate migration programs.' See 'Ethnic leaders call for action as more boat people arrive', *Australian*, 28 Dec 1994.

¹⁵ Gary Freeman, 'Modes of Immigration Policies in Liberal Democratic States', p. 884.

voters, many mainstream political parties began to espouse arguments made by anti-immigration parties; although they tended to use more refined language. Instead, the media often employed more abrasive lexicology. Mainstream political parties and popular media outlets focused particularly on asylum seekers, who they understood to represent more legitimate targets for criticism than economic migrants because they often required state aid, offered little by way of visible economic benefits to the host state, and arrived uninvited. Sizeable majorities of public opinion also tended to regard the arrival of asylum seekers negatively.

Sympathisers v Sceptics

People who applied for protection in western countries after 1989 had mixed backgrounds: some fled political persecution, some escaped potential or actual humanitarian crises, and some used the asylum system to bypass immigration restrictions. Persecuted asylum seekers fled their countries to escape further maltreatment. Exposed to serious threat of harm, they frequently had little control over the transition from their home country to their host one.¹⁶ According to Hannah Arendt, these people lost the 'entire social texture into which they were born and in which they established for themselves a distinct place in the world' when they fled their homes.¹⁷ Asylum seekers fleeing potential or actual humanitarian disasters, caused by natural disasters, indiscriminate fighting or abject poverty, often fled to avoid death. As Zetter notes, 'In complex emergencies many people are caught up in conflict and flee, though they are not persecuted'.¹⁸ They faced a situation whereby their state remained incapable of providing them with the basic needs to ensure their survival.¹⁹ Other asylum seekers claimed refugee status to circumnavigate migration restrictions that otherwise would have denied their entry or stay in their host country. The prospect of attaining a better standard of living in the host state compared to their home state pulled them towards liberal democratic states.²⁰

¹⁶ Alejandro Portes and Ruben G. Rumbaut, *Immigrant America*, Berkeley: University of California Press, (2nd ed.) 1996, p. 169.

¹⁷ Hannah Arendt, *The Origins of Totalitarianism*, New York: Schocken, 2004 (1st publ. in 1951), p. 372.

¹⁸ Roger Zetter, 'More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization', *Journal of Refugee Studies*, Vol. 20, No. 2, 2007, pp. 172-192, p. 176.

¹⁹ See Aristide Zolberg, Astri Suhrke & Sergio Aguayo, *Escape from Violence. Conflict and the Refugee Crisis in the Developing World*, York and London: Oxford University Press, 1989, p. 33 and p. v.

²⁰ John Harris & Michael Todorov, 'Migration, Unemployment and Development: A Two Sector Analysis', *American Economic Review*, Vol. 60.1, 1970, pp. 126-142, p. 126. See also George Borjas, 'Economic Theory and International Migration', *International Migration Review*, Vol. 23, No. 3, 1989,

The problem with these three categories related to their relationship with the definition of a refugee contained in the 1951 UN Convention on the Status of Refugees, which made up the central fulcrum of most governments' refugee determination systems after 1989.²¹ The convention emphasised persecution as the primary factor in asylum claims by terming a refugee as someone, who:

Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.²²

As Michael Teitelbaum notes, this definition meant that a person fleeing a natural disaster or war failed to qualify as a refugee unless they experienced persecution or felt "a well-founded fear of persecution."²³ Many sympathisers felt this definition unfairly restricted asylum seekers' access to refugee status. Instead, they supported more generous proposals that advocated refugee status for people whose state failed to provide the basic safety and subsistence needs necessary to survive; views advocated by several experts writing on political asylum, such as Shacknove, Zolberg and Gibney.

According to Andrew Shacknove, refugees represented 'persons whose basic needs are unprotected by their country of origin, who have no remaining recourse other than to seek international restitution of their needs, and who are so situated that international assistance is possible.'²⁴ Aristide Zolberg, Astri Suhrke and Sergio Aguayo agreed: refugees moved abroad 'in order to survive, either because their own state is the cause of their predicament or because it is unable to meet these basic requirements'.²⁵ Matthew Gibney concurs but specifies further. For him, refugees required 'a new state of residence, either temporarily or permanently, because if forced to return home or

pp. 457-485, p. 460.

²¹ *United Nations Convention on the Status of Refugees*, 1951. Referred to throughout as the 'Refugee Convention'.

²² Article 1, *United Nations Convention relating to the Status of Refugees*, 1951.

²³ See Michael Teitelbaum, 'Political Asylum in Theory and Practice' *Public Interest*, Vol. 76, Summer 1984, pp. 74-86, p. 75.

²⁴ Andrew Shacknove, 'Who Is a Refugee?', *Ethics*, Vol. 95, No. 2, Jan. 1985, pp. 274-284, p. 277.

²⁵ Aristide Zolberg, Astri Suhrke and Sergio Aguayo, *Escape from Violence. Conflict and the Refugee Crisis in the Developing World*, p. 33.

remain where they are they would – as a result of either the brutality or inadequacy of the state – be persecuted or seriously jeopardise their physical security or vital subsistence needs.²⁶ Some sympathisers also advocated refugee status for certain economic asylum seekers. Michael Dummett, for instance, claimed that ‘all conditions that deny someone the ability to live where he is in minimal conditions for a decent human life ought to be grounds for claiming refuge elsewhere’. Although not as renowned as the others cited, Ambalavaner Sivanandan showed that some sympathisers also believed that ‘resistance to economic immiseration is inseparable from resistance to political persecution’, meaning that the ‘economic migrant is also the political refugee’.²⁷

Sceptics rarely agreed with such expansive conceptions. Instead, they sought to interpret the Refugee Convention’s definition considerably more narrowly than sympathisers. Rather than restricting asylum because they agreed with Matthew Price’s recent synopsis that calls for states to adopt a more political conception of asylum that would underline the problems facing political dissenters in certain countries, sceptics wanted to confine asylum because they felt asylum seekers represented a danger to their economic wellbeing, their nation’s sovereignty and their national identity.²⁸ It is likely that if all those who managed to apply for asylum in developed countries over the last twenty years had actually experienced persecution, many sceptics would still call for a large reduction in applications because of the supposed physical, cultural and economic threat they brought to national societies, as evidenced by what occurred in Australia from the late 1990s to the mid 2000s.

Bobo and Kluegel indicated that resistance to non-citizens stemmed from ‘[c]ategory membership and identification with a group and a sense of shared fate’, which in turn led to ‘group-based assessments of self-interest’.²⁹ When asylum seekers received state welfare and housing, for instance, sceptics wondered what effect this would have on nationals’ welfare. Michael Walzer’s view – that ‘communities must have boundaries: and however these are determined with regard to territory and resources, they depend with regard to population on a sense of relatedness and

²⁶ Matthew Gibney, *The Ethics and Politics of Asylum*, p. 7.

²⁷ Michael Dummett, *On Immigration and Refugees*, p. 37 and Ambalavaner Sivanandan, ‘Refugees from globalism’, *Campaign against Racism and Fascism*, Vol. 57, Aug/Sept 2000.

²⁸ Matthew Price, *Rethinking Asylum. History, Purpose, and Limits*, Cambridge and New York: Cambridge University Press, 2009.

²⁹ Lawrence Bobo and James R. Kluegel, ‘Opposition to Race-Targeting: Self-Interest, Stratification Ideology, or Racial Attitudes?’, *American Sociological Review*, Vol. 58, No. 4, 1993, pp. 443-464, p. 445.

mutuality' appeared to complement the opinions of many sceptics who regarded asylum seekers as a threat to state control of migration. For Walzer and many sceptics, 'the right to restrain the flow remain[ed] a feature of communal self-determination.'³⁰ Others felt concern for 'the preservation of a particular national identity (or identities) and widely shared values', which asylum seekers potentially threatened, according to some sceptics.³¹

Outline

In an attempt to situate what occurred between 1989 and 2008 in an historical perspective, the first chapter will provide a short summary of asylum in the twentieth century before 1989. Particular attention will focus on the makeup and influence of sympathisers and sceptics during this period. The chapter will focus most explicitly on developments from the 1920s onwards. The Inter-War period produced a number of instruments that, while not successful at protecting the asylum seekers of the epoch, would later provide the cornerstone for the 1951 UN Refugee Convention. Because asylum policy since 1989 frequently revolved around this convention, its formation and development will be described from the late 1940s until 1967, when the UNHCR produced the protocol to the convention, which led to the lifting of geographical and time restrictions. The shifting nature of liberal democratic states' asylum policies from the 1970s onwards, as well as the changing face of those in need of protection in western states, will dominate the latter part of this chapter in order to set the scene for the subsequent empirical chapters.

Chapters 2, 3 and 4 will provide case studies of how asylum policy developed since 1989 in Australia, Italy and Ireland. Because one of the principal questions of this

³⁰ Michael Walzer, *Spheres of Justice. A Defence of Pluralism and Equality*, Oxford: Martin Robertson, 1983, p. 50 and p. 52.

³¹ Myron Weiner, 'On International Migration and International Relations', *Population and Development Review*, Vol. 11, No. 3, 1985, pp. 441-455, p. 443. Although Weiner refers to people who oppose open-border policies, sceptics regularly cited reasons similar to the arguments referenced above to restrict asylum seekers.

Regarding 'a particular national identity (or identities) and widely shared values' that tie people together, Black pointedly notes that 'it is not clear what is the appropriate form of cooperation that will qualify people as suitable candidates for relations of justice. Should that concept be understood in relation to levels of trade, common political institutions, shared diplomatic initiatives, treaty arrangements, or perhaps other more trivial exchanges, such as common athletic events, a shared fondness for the same cuisine, and so forth? If liberals expect the concept of reciprocal exchange to explain why existing societies are selected as the privileged unit of analysis for relations of justice, then they will have to say a good deal more about what goes on in these associations to make them special'. Samuel Black, 'Individualism at an Impasse', *Canadian Journal of Philosophy*, Vol. 21, No. 3, 1991, pp. 347-377, p. 363.

study relates to the effect a country's migration history had on its more recent handling of asylum seekers, examining each country's migration past will form the introductory part of each case study. Other salient factors, apart from a country's history and traditions, affected a country's reaction to the arrival of asylum seekers after 1989, however. Therefore, each empirical chapter will devote considerable attention to explaining what political, economic, and social factors shaped asylum policies after 1989 by recounting, chronologically, the evolution of asylum policy under the three different headings already mentioned: policy formation, policy implementation and policy effects. 'Policy formation' will comprise the political and public debates that surrounded asylum and often led to policy reform. Views countenanced through parliamentary and media debates will illustrate what asylum policies competing actors desired. Furthermore, they will show whose view won out in the end and why. Discussions under the 'policy implementation' rubric will try to demonstrate whether new legislation achieved its stated intentions. Actors unhappy with the composition of new policies, for example, often used various tools to challenge their opponents, as the frequent references to certain court cases contained in this section of each empirical chapter will testify. The third heading, 'policy effects', will assess the consequences of policy changes by analysing asylum statistics and the treatment of asylum seekers themselves. Statistics will be provided by state and non-state actors whilst various studies by state, NGO and academic groups will provide information on asylum seekers' welfare in the wake of new asylum policies.

The examination of the empirical chapters will be quite country specific. By contrast, the comparative chapter that follows the case studies will, because of the three countries' relevant similarities and dissimilarities, highlight international trends and national differences in asylum policymaking. It will also seek to develop, using empirical evidence generated from the three case studies, exploratory theories and hypotheses about asylum.

By comparing and contrasting Australia, Italy and Ireland, critical convergences and divergences in asylum policymaking will become more evident. The contrasting role of migration histories in all three countries, for instance, will demonstrate how memories can promote or restrict the movement of people and affect their exclusion or inclusion into the host society. Ireland and Italy, for instance, both represented traditional sender societies before the relatively recent arrival of significant populations

of non-EU labour migrants and asylum seekers. Australia by contrast, is a country with a long history of immigration. Critical variations will transpire relating to states' dissimilar legal systems based on common and civil traditions. Similarly, the role of the EU will also become apparent when comparing governments' reactions to rising asylum figures, as will Australia and Ireland's isolated geographical positions when compared to Italy's representation as a bridge into Europe for many people hailing from Developing countries.

Chapter 2 concentrates on Australia. Debate in Australia regularly focused on asylum seekers arriving by boat rather than asylum seekers who originally came into the country on a valid visa and then applied for asylum, even though the latter tended to greatly outnumber the former. Sceptics frequently remarked that boat people undermined Australia's immigration and refugee policy. They maintained that implementing rigorous asylum policies to stem the flow of undesired boat people represented the only way to uphold Australia's long history of selecting migrants. The effect of Pauline Hanson's One Nation Party on mainstream Australian political parties at a time of moderate economic difficulty served to strengthen the power of sceptics.³² Australia developed a policy whereby it automatically detained asylum seekers arriving by boat while their applications underwent processing. Sympathisers challenged this trend in a number of important court cases in the mid 1990s but the 2001 *Tampa* crisis ultimately countered this movement with the implementation of the Pacific Solution. This characterised a clear attempt by the Australian government to deny boat people access to the Australian legal system by purposely detaining them in centres outside national jurisdiction. Boat people granted refugee status also acquired terms and conditions measurably worse off than their counterparts who originally arrived in Australia on a visa. Crucially, the Australian government provided boat people declared refugees with only temporary protection as opposed to the permanent protection offered other refugees until the return of Labor to power in late 2007.

Resembling Australia, much of the debate on asylum in Italy, the subject of chapter 3, also concerned asylum seekers arriving by boat. Initially, Italian people and political parties responded benevolently when Albanian boat people arrived in spring

³²James Jupp has written that John Howard's decision to deny *Tampa* permission to land, and his government's subsequent enforcement of the Pacific Solution, was an attempt by the Prime Minister to regain many of the one million votes that Jupp estimates his party had previously lost to Hanson's party. James Jupp, *From White Australia to Woomera: The Story of Australian Immigration*, Cambridge: Cambridge University Press, 2002, p. 194.

1991. Yet, the muddled reaction from authorities to the original arrival of Albanians served to guarantee a rather divergent reaction to a later upsurge in the summer of 1991. The collapse of Italy's two most popular political parties, the Christian Democrats and the Italian Communist Party, in the early 1990s served to bolster the rise of sceptical actors, such as the *Lega Nord* and *Alleanza Nazionale*, who focused on the perceived physical and cultural threats that boat people brought to Italy. Two features prevented Italy from implementing an asylum policy as restrictive and as effective as Australia's, however. First, Italy's historic inability to implement proposed immigration and asylum policies because of its geographical position and its ineffective bureaucracy meant that large numbers continued to arrive by various forms of transport. Second, sympathetic actors, most notably NGOs and the Catholic Church, and their relationship with certain mainstream political parties on the right and the left of the political spectrum successfully fudged attempts to restrict and repatriate large numbers of asylum seekers. Despite the ability of most asylum seekers to remain in Italy, it came at a high cost. Italy's failure to implement immigration reforms meant that asylum seekers received little or no support from the Italian state or regional and city councils. This led to many asylum seekers leading existences marred by uncertainty over living and working conditions.

Boat people never became a feature of Irish asylum policy – the subject of chapter 4 – in the same way as they did in Australia and Italy because of the country's northerly location. Frequent comparisons between asylum seekers and Irish emigrants, combined with the absence of an established anti-immigrant party meant that sympathisers held a noticeably stronger position in Ireland than in Australia during early asylum debates. Though the strength of sceptics increased from the late 1990s onwards, Ireland's economic boom meant that the rhetoric they invoked remained less forceful than their Australian and Italian counterparts. Instead, sceptics placed considerable focus on imitating other EU countries' asylum policies, particularly those of the neighbouring UK. The ability of sympathisers to exploit various legal loopholes, however, meant that asylum seekers continued to bypass many of the restrictive policy changes until 2003. The citizenship referendum the following year and subsequent policy developments arrested this trend.

Chapter 5 will compare and contrast asylum practices in Australia, Italy and Ireland since 1989 so as to identify international trends and national differences. In an attempt to historicise asylum policymaking somewhat, the comparative chapter is

divided into two parts: the 1990s and the 2000s. Certain critical national phenomena, such as a country's economic circumstances, social settings, political processes, and histories and memories affected asylum policies in different ways. In other words, national tendencies affected asylum policy, as did the political fallout they generated. Nonetheless, some noticeable international trends appeared. Despite governments' tendency to side with sceptics, sympathisers in the 1990s consistently managed to successfully contest increasingly restrictive asylum policies. Governments used the heightened security threat after September 2001 and the growth of public scepticism to offset the influence of sympathisers by tackling perceived legal loopholes and externalising the asylum process more and more. In addition to summarising the main points made throughout the thesis, the conclusion will seek to provide some insights into what form asylum policymaking will take in the wake of the 2008-09 economic crisis based on the historical lessons learnt from this study.

Chapter 1

Setting the Context for Future Problems: Asylum before 1989

The text of sub-paragraph 2 [Article 1, sub-paragraph 2 of the Refugee Convention] obviously did not refer to refugees from natural disasters, for it was difficult to imagine that fires, floods, earthquakes or volcanic eruptions, for instance, differentiated between their victims on the grounds of race, religion or political opinion. Nor did that text cover all man-made events. There was no provision, for example, for refugees fleeing from hostilities unless they were otherwise covered by article 1 of the Convention.

Israeli Representative to the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Geneva, 16 July 1951.

Too often, discussions of recent asylum practices have neglected to discuss what occurred in previous decades and centuries. By looking solely at a short, defined period without first extensively setting the scene, scholars have often failed to link what happened since 1989 with what happened previously. Consequently this chapter, after briefly discussing asylum's etymology, will provide a short history of asylum from the Early Modern period until the First World War before focusing more explicitly on developments since the 1920s. The Inter-War period produced a number of instruments that, while not successful at protecting the asylum seekers of the epoch, later provided the cornerstone for the 1951 UN Refugee Convention or Geneva Convention. It is important to set out how and why this convention exists, as well as to specify who created the convention and approved it, since debates on asylum after 1989 frequently revolved around different actors' interpretations of that same convention.

Origins of asylum

The concept of asylum has a long and intriguing history. Indeed, Luc Legoux has noted that the issue of asylum already represented a topic that instigated debate as far back as 2,500 years ago, when Aeschylus' oldest play, *The Suppliants*, discussed whether fifty daughters of Danaos should obtain asylum in Argos to escape forced marriages.³³ The

³³See Luc Legoux, 'Political Pressure', p. 333. To access the play online, go to <http://classics.mit.edu/Aeschylus/suppliant.html> (27 Aug 2009). For more classical references to asylum, see Otto Kirchheimer, 'Asylum', *The American Political Science Review*, Vol. 53, No. 4, 1959, pp. 985-

English term asylum also has its roots in ancient Greece, where it literally meant “an inviolable place” or, more simply, “sanctuary.” While people today associate the term with the granting of refuge to a persecuted migrant, during the medieval period and Middle Ages it retained an overwhelmingly religious connotation in Europe. The right to asylum stipulated that common law offenders could take refuge in certain religious sanctuaries, which prohibited authorities from entering. Richard Kaeuper records how this worked in the case of England in the Middle Ages:

Although the right of asylum may strike modern sensibilities as wonderfully picturesque, to medieval law officers hot on the trail of an escaping felon, sanctuary must have seemed an omnipresent obstacle. Every consecrated church or chapel, with its churchyard, could give asylum to the fugitive. A number of great abbeys and ministers provided an even more extensive haven, often extending a league beyond the church, with the limits of legitimate pursuit clearly marked by stone crosses. Within certain liberties held in secular hands those fleeing the law could live indefinitely. But the more common ecclesiastical sanctuary was strictly regulated and limited by provisions of the common law.³⁴

Henry VIII attempted to alter the system in the sixteenth century, before James I abolished it altogether in 1623.³⁵ The first historical example of what we might recognize today as political asylum occurred as a result of the French persecution of the Huguenots following the revocation of the Edict of Nantes in 1685. This symbolised the administration of asylum’s transformation under the Westphalian system; once firmly the right of religious entities, it slowly became a political tool and accordingly the responsibility of states to administer. England alone received approximately 50,000 Huguenot “refugees,”³⁶ as they became known, between 1680 and 1700. England and other countries chose to bestow entry on the Huguenots for several reasons. The principle ground for acceptance related to the Huguenots’ religious persecution at the hands of the French. Nonetheless, countries also welcomed the Huguenots because of the advantages they brought to their new countries through their renowned skill for

1016 and Matthew Price, *Rethinking Asylum*, pp. 26-31.

³⁴ Richard Kaeuper, ‘Right of Asylum’ entry in Joseph R. Strayer (ed.), *Dictionary of the Middle Ages*, Vol. 1, New York: Charles Scribner’s Sons, 1982, pp. 631-2, p. 631.

³⁵ *Ibid*, p. 632.

³⁶ W. Gunther Plaut records that the word ‘refugee’ came from the French ‘réfugié’, which was used originally to refer to the Protestant Huguenots. See W. Gunther Plaut, *Asylum. A Moral Dilemma*, p. 12.

economic trading and their considerable insight into the secrets of the clothing industry.³⁷

1.1 The secularisation of asylum

According to the historian Gérard Noiriel, the French Revolution signalled the secularisation of the concept of asylum. The Constitution of 24 June 1793 stated that the French people gave ‘asylum to foreigners banished from their land for the cause of liberty’.³⁸ The arrival of over 10,000 mostly well-off Polish political refugees in 1830s tested this assurance. A long, mostly supportive, debate on asylum in the public sphere and parliament ensued. One of the issues that received most attention centred on what people perceived “refugee” to mean. After much deliberation throughout the 1830s, the French government defined refugees as foreigners ‘without a passport, without any relations to any ambassador who authorised their presence on our territory’.³⁹

The compassionate debate in Britain on asylum throughout much of the nineteenth century resembled that of France. Indeed, Britain operated an open border policy from 1823 until 1905.⁴⁰ Britons, a *Times of London* editorial from 1853 noted, prided themselves on their open asylum policy throughout the nineteenth century: ‘Every civilised people on the face of the earth must be fully aware that this country is the asylum of nations, and that it will defend the asylum to the last ounce of its treasure, and the last drop of its blood. There is no point on which we are prouder and more resolute.’⁴¹ Numbers remained limited throughout the nineteenth century. Furthermore, as Kirchheimer notes:

The exile then was a rebel, a Mazzini or a Marx, a Herzen or a Bakunin. Whenever exiles appeared in larger numbers, they were survivors of revolutionary battles, like the men of 1848 or the participants of the Paris Commune. All had dared to defy the established powers with the pen, the revolver, or in armed campaigns ...⁴²

Most poor migrants forced to flee their homelands left during this period for North

³⁷ Bernard Cottret, *Terre d'Exil. L'Angleterre et ses Réfugiés, 1550-1700*, Paris: Aubier Montaigne, 1985, pp. 227-9.

³⁸ Gérard Noiriel, *La Tyrannie du National*, pp. 31-2.

³⁹ *Ibid*, p. 42.

⁴⁰ Bernard Porter, *The Refugee Question in Mid-Victorian Politics*, Cambridge: Cambridge University Press, 1979, p. 8.

⁴¹ The *Times*, 28 February 1853, quoted in *ibid*, p. 7.

⁴² Otto Kirchheimer, 'Asylum', p. 986.

America, such as poor Russian Jews experiencing widespread anti-Semitism or Irish migrants escaping Famine. Nonetheless, many also went to Britain. By the end of the nineteenth century and beginning of the twentieth century, debate in Britain towards those in need of shelter had become more hostile. Compelled by international pressure to place restrictions on the entry of possible anarchist terrorists and domestic pressure to limit the sustained arrival of thousands of mostly poor Jewish migrants fleeing pogroms in Russia, Britain began debating the imposition of restrictions on immigration from the late nineteenth century onwards. The Conservatives eventually succeeded in instigating the 1905 *Aliens Act* to deflect these destitute refugees. To appease the critical Liberal Party, which remained opposed to closing Britain's borders to potential refugees, the act included a provision for those in need of protection:

In the case of an alien immigrant who provides that he is seeking admission to this country solely to avoid persecution or punishment on religious grounds or for an offence of a political character, or persecution, involving danger of imprisonment or danger to life and limb, on account of religious belief, leave to land shall not be refused on the ground merely of want of means, or the probability of his becoming a charge on the rates.⁴³

Despite the Liberals return to power in 1906, the British government rarely implemented its provision on asylum, with one observer recording that authorities only allowed ten refugees to enter in 1910.⁴⁴

⁴³ Article 1, Paragraph 3, *Aliens Act 1905*. Quoted in Michael Collyer, 'Secret Agents: Anarchists, Islamists and Responses to Politically Active Refugees in London', *Ethnic and Racial Studies*, Vol. 28. 2, 2005, pp. 278-303, p. 289.

⁴⁴ Feldman quoted in Michael Collyer, 'Secret Agents', p. 290.



Source: The Jewish Museum of London. The caption reads: "Britannia: I can no longer offer shelter to fugitives. England is not a free country".

Nonetheless, the British definition of a refugee represented a considerably more detailed conception than its French precedent. It also pre-dated the UN Convention's personalisation of asylum and emphasis on 'persecution'.

Britain's move signalled the impending change that attitudes towards immigration would undergo in the first half of the twentieth century. Widespread belief in economic liberalism in Europe saw controls on foreigners diminish in the second half of the nineteenth century but this trend was reversed in the first decades of the twentieth century as countries returned to economic and territorial protectionism. As John Torpey chronicled, 'the booming of the guns of August 1914 brought to a sudden close the era during which foreigners were relatively free to traverse borders'.⁴⁵ States reintroduced

⁴⁵ John Torpey, 'Passports and the Development of Immigration Controls in the North Atlantic World During the Long Nineteenth Century', in Andreas Fahrmeir, Olivier Faron and Patrick Weil (eds.), *Migration control in the North Atlantic World*, New York: Bergahn Books, 2003, pp. 73-91, p. 84.

passport controls with vigour.

Instead of lifting these bellicose measures after the end of the First World War, states reinforced them. Crucially, this included many of the traditional settler-states, which had until then presided over a generous and open immigration policy for European migrants. The United States, which accepted approximately one million immigrants annually in the years immediately preceding 1914, led the way in introducing changes. The 1921 and 1924 US Immigration Acts limited arrivals by introducing quotas for countries. Ethnic composition also became important, with the U.S. preferring northern Europeans to eastern and southern Europeans.⁴⁶ Almost simultaneously, analogous developments took place across Europe, with the possible exception of France, whose historic fear of population decline delayed the move to restrict immigration immediately.⁴⁷ Nonetheless, with unemployment and negative public opinion growing by the 1930s, France too began to curb immigration.⁴⁸

Hobsbawm later termed the Inter-War years the ‘apogee of nationalism’, as popular nationalism began to replace its cultural antecedent.⁴⁹ New approaches to nationalism perceived that a named human population shared a common history, territory and language. Anyone considered ineligible from sharing these traits, such as ethnic minorities or migrants, became conspicuous in the eyes of the public and governments. To amplify this even further, the post-war emergence in many western countries of modern systems of social organisation – the so-called “welfare state” – led to an even greater distinction between citizen and non-citizen.⁵⁰

The consequences of increases in passport control, as well as the popular support for the ethnic state meant that entry – and stay – became more difficult to attain for refugees and economic migrants alike. In contrast to economic migrants, those in search of protection risked potential harm or even death if they returned to their origin state.

1.2 Inter-War Refugees

⁴⁶ Patrick Weil, ‘Races at the Gate. Racial Distinctions in Immigration Policy’, in *ibid*, pp. 271-297, p. 276.

⁴⁷ For further details of France’s historic fear of population decline, see Jay Winter, ‘Marianne and the rabbits: the French obsession’, *Estudios*, Madrid: Instituto Juan March de Estudios e Investigaciones, 1994.

⁴⁸ See Patrick Weil, *La France et ses Étrangers*, Paris: Galimard, 1995, pp. 32-5 and Ralph Schor, *L’opinion Française et les Étrangers en France, 1919-1939*, Paris: Publications de la Sorbonne, 1985, especially the section entitled ‘Le temps des crises : la montée de la xénophobie, 1931-1939’.

⁴⁹ See Eric Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality*, Cambridge: Cambridge University Press, 1992 (2nd ed.), pp. 101-163.

⁵⁰ James Hathaway, *The Rights of Refugees Under International Law*, p. 83.

Even as states' "expropriation of the legitimate means of movement"⁵¹ gained more verisimilitude, people continued to move on a massive scale. Fortunately, most of these people transferred to newly formed nation-states that welcomed them. Approximately one to two million ethnic Poles migrated to Poland; one million ethnic Germans to Germany; 300,000 ethnic Hungarians to Hungary; and the newly formed Balkan states welcomed tens of thousands of its ethnic countrymen and women.⁵² Following the end of the Greco-Turkish Wars (1919-22), vast numbers of Turkish, Greek and Bulgarian migrants moved en masse; often in opposite directions.⁵³

Not all ethnic and religious minorities possessed a country they could call their own, however. Europe's Jews and Roma, for example, remained in tentative positions in countries where antagonism towards different people began to rise. In an attempt to safeguard the wellbeing of these people, the newly formed League of Nations persuaded certain countries to sign the *Minority Treaties*. According to James Hathaway, this 'contributed in important ways to the evolution of both international human rights law and the refugee rights regime' by 'firmly establish[ing] the propriety of international legal attention to the human rights of at-risk persons inside sovereign states.'⁵⁴ Unfortunately for some ethnic groups in Europe, this represented a long-term goal that only developed properly after the horrors of the Second World War. Nonetheless, private voluntary organisations took up the fight for minorities and refugees.

According to Barnett and Weiss, more and more voluntary organisations promoting ethical commitments to strangers formed as the nineteenth century advanced. Drawing on many of the ideals developed during the Enlightenment and the Christian Reform Movement, these organisations began to fight against slavery, to garner charity for the poor and to seek certain social rights for workers.⁵⁵ In the 1860s, Henri Dunant founded perhaps the most famous voluntary organisation of all, the International Committee of the Red Cross (ICRC). The critical situation in Europe during and immediately after the First World War led to, in the words of Jorgen Lissner, 'the end to "adhocracy"' amongst private organisations promoting ethical commitments to strangers

⁵¹See John Torpey, 'Coming and Going: On the State Monopolization of the Legitimate "Means of Movement"', *Sociological Theory*, Vol. 16, No. 3, Nov. 1998, pp. 239-259.

⁵² Claudena Skran, *Refugees in Inter-war Europe*, Oxford: Clarendon Press, 1995, pp. 31-2.

⁵³ Gérard Noiriel, *La Tyrannie du National*, pp.101-2.

⁵⁴ James Hathaway, *The Rights of Refugees Under International Law*, p. 82.

⁵⁵ Michael Barnett and Thomas G. Weiss, *Humanitarianism in Question. Politics, Power, Ethics*, Ithaca, New York: Cornell University Press, 2008, p. 18.

and the move towards a more organised response to assisting vulnerable groups.⁵⁶ This unification of resources became particularly evident in private organisations' response to the crisis caused by the huge migration of Russian refugees into Europe in the 1920s.

Russian Refugees

Unlike the refugee that wandered Europe in the nineteenth century, the refugee in twentieth century Europe no longer solely represented people that had 'dared to defy the established powers with the pen, the revolver, or in armed campaigns'.⁵⁷ Instead they often comprised people escaping persecution, wars and humanitarian disasters, as the over one million Russian refugees entering Europe after the 1917 Russian Revolution, the ensuing civil war and the 1921 famine clearly demonstrated.⁵⁸ Crucially, private voluntary organisations set up to help those in need came to the rescue.

Statelessness symbolised the plight of the Russians. Following a meeting of private voluntary organisations (PVOs) concerned with Russian refugees in February 1921, the International Committee of the Red Cross (ICRC) demanded, on behalf of all PVOs, improved conditions for refugees from the recently established League of Nations. Gustave Ador, the then President of the ICRC, noted the plight of Russian refugees:

These people are without legal protection and without any well-defined legal status. The majority of them are without any legal means of subsistence, and one must particularly draw attention to the position of the young and the youths amongst them who are growing up in an ever increasing misery.⁵⁹

To tackle these afflictions, Ador suggested the 'possible appointment of a League of Nations Commissioner for the Russian refugees'. Defending the suggestion, Ador

⁵⁶ Jorgen Lissner, *The Politics of Altruism*, Geneva: World Lutheran Federation, 1977, p. 55. Drawing on many of the ideals developed during the Enlightenment and the Christian Reform Movement newly established private organisations began to fight against slavery, to garner charity for the poor and to seek certain social rights for workers throughout the nineteenth century.

⁵⁷ Quote taken from Otto Kirchheimer, 'Asylum', p. 986.

⁵⁸ Gilbert Jaeger records that estimates of the number of Russian refugees varied considerably. The League of Nations High Commissioner for Russian Refugees, Fridtjof Nansen, estimated in 1922 that 1.5m Russian refugees remained scattered throughout Europe; see *Official Journal*, May 1922, annex 321, p. 389. Sir John Simpson estimated that they numbered one million, see Sir John Hope Simpson, *The Refugee Problem. Report of a Survey*, London: Oxford University Press, 1939, p. 62 and Gilbert Jaeger, 'La Protection Internationale des Réfugiés', IEE Documents, no. 12, Louvain-la-Neuve: Université Catholique de Louvain, 1999, p. 1 and Claudena Skran, *Refugees in Inter-war Europe*, p. 33.

⁵⁹ Letter from Gustave Ador to the League of Nations, 20 Feb 1921. Published in the League of Nations, *Official Journal*, 'The Question of Russian Refugees', Annex 2, p. 228.

maintained that 'it is not so much a humanitarian duty which calls for the generous activities of the League of Nations as an obligation of international justice.'⁶⁰ French and British diplomats, who felt responsible for the flight of many White Army supporters they had supported and encouraged, also canvassed for the appointment.

The League of Nations named Fridtjof Nansen as the first High Commissioner for Russian Refugees in 1921. Nansen's background as an accomplished explorer, scientist and aid worker, not to mention his successful repatriation of over 400,000 soldiers after the First World War, ensured the High Commission immediate international recognition.⁶¹

When governments unanimously approved Nansen's September 1921 resolution to 'obtain the collaboration of private relief organisations which hitherto have contributed to the relief work in connection with Russian refugees' and 'to associate them directly with his work', it symbolised the vital role PVOs would play in the High Commission throughout the 1920s.⁶² To coordinate the work of PVOs and prevent overlapping, Nansen oversaw the formation of an Advisory Committee of Private Organisations that enabled PVOs to consult regularly with the High Commissioner.⁶³

The High Commission for Russian refugees, with consistent prompting from PVOs, began to tackle the legal limbo that Russian refugees found themselves in (as one League official commented, refugees could not 'travel, marry, be born, or die without creating legal problems'⁶⁴). Nansen set about introducing documentary material that entitled the Russian refugees to a certain legal status. What became known as the Nansen Passport bestowed the right to travel to certain destinations for a twelve-month period and established the holder's Russian nationality. The Russian refugees benefited from several factors. First, the 1920s represented a period of economic growth in Europe, particularly after 1924. Second, because of the support for the White Russians in their battle with the Bolsheviks, many European countries, most notably France, felt obliged to help the Russian refugees stranded outside their home state. Third, France's

⁶⁰ *Ibid.*

⁶¹ For more information on Nansen's personal background, see Claudena Skran, 'Profiles of the First Two High Commissioners', *Journal of Refugee Studies*, Vol. 1, No. 3/4, pp. 277-296, p. 278-80. For details of his background as an Arctic explorer, see Hampton Sides, '1,000 Days in the Ice', *National Geographic*, January 2009.

⁶² C.R.R./2nd session/P.V.2. 1921, League of Nations Conference on Russian Refugees, 17 Sept 1921. Taken from the League of Nations archives.

⁶³ 'Réunion tenue entre le Haut-Commissaire et les représentants des associations privées', 19 Sept 1921, C.R.R./P.V.Extraordinary, League of Nations archives.

⁶⁴ Quoted in Skran, *Refugees in Inter-war Europe*, 103.

desire to increase its population after the deaths of so many of its young males in the First World War meant that the 1920s represented a period of substantial immigration for the country.⁶⁵ Fourth, the Soviet Union's international isolation meant that League of Nations members felt that helping these refugees placed relatively little strain on their diplomatic policies.

Governments quickly adopted the Nansen passport system and by 1929 over 50 governments recognised it. The League later extended the system to include Armenian, Assyrian, Assyro-Chaldean and Turkish refugees scattered throughout Europe and the Middle East from 1924 onwards.⁶⁶ But the League excluded Italian refugees fleeing Mussolini's Fascist regime because of Italy's prominent membership of the League. Nonetheless, most Italians fleeing Fascism found refuge in neighbouring countries throughout the 1920s.

Defining Refugees

Establishing a description that defined a refugee and identifying what legal rights refugees could attain also became a challenging goal that the High Commission pursued. The 1926 *League of Nations Arrangement on Russian and Armenian Refugees* surmised that refugees from these countries had 'not yet acquired another nationality' but 'no longer enjoy[ed] the protection' of the Turkish and Soviet governments.⁶⁷ This resembled the French conception of a refugee conceived nearly one hundred years before. But voluntary organisations wanted more definitive rights for refugees. PVOs, particularly the Russian and Armenian legal experts representing the *Commission Centrale pour l'Étude de la Condition des Réfugiés Russes et Arméniens*, pushed for a draft convention on the rights of Russian and Armenian refugees from the late 1920s onwards.⁶⁸ Although Nansen managed to gather states to discuss the proposed convention, their reluctance to sign it resulted in the production of the *1928 Arrangement on Russian and Armenian Refugees*, which provided non-binding recommendations relating to refugees' right to work, their right to access the courts and

⁶⁵ Vicki Caron, *Uneasy Asylum: France and the Jewish Refugee Crisis, 1933-1942*, p. 6.

⁶⁶ Circular letter from the League of Nations Secretary-General, 24 Aug 1928. Published in the League of Nations, *Official Journal*, 1929, p. 323.

⁶⁷ '1926 Arrangement relating to the Issue of Identity Certificates to Russian and Armenian Refugees', *League of Nations Treaty Series*, 2004, p. 48.

⁶⁸ Catherine Gousseff, *L'Exil Russe. La Fabrique du Réfugié Apatricide*, Paris: CNRS Éditions, 2008, p. 236. See Jacques Rubinstein, 'The Refugee Problem', *International Affairs*, Vol. 15, No. 5, 1936, pp. 716-734 for a personal account of Jacques (Jacob) Rubinstein, a prominent committee member.

their protection from expulsion.⁶⁹ Not satisfied with this outcome, PVOs pressed the Intergovernmental Committee on Refugees for the League of Nations, which combined state delegates sympathetic to the plight of refugees and PVO representatives, to summon states together in 1933 once more to discuss the formation of a more definitive document.⁷⁰

Jacques Rubinstein and Baron Boris Nolde, prominent Russian legal experts from the *Commission Centrale pour l'Étude de la Condition des Réfugiés Russes et Arméniens*, Lord Robert Cecil, an ex-Conservative British minister who headed the British League of Nations Union and a French civil servant (de Navailles) remained to the fore of the committee's activity. Their work led the way to the establishment of the 1933 *Convention relating to the International Status of Refugees*, which codified many of the recommendations set out in the 1928 arrangement.⁷¹ It contained a number of significant recommendations relating to labour conditions, industrial accidents, and welfare and education. But only eight countries ratified the convention – and only then with varying reservations.⁷² The convention required states to treat refugees the same as their most favoured migrants. Nevertheless, the unfavourable economic climate jettisoned the aims of the convention, with even long established migrants receiving hostile treatment. Indeed, many of the outlined stipulations, including *non-refoulement*, remained largely ineffectual as refugees in the 1930s faced a much more perilous existence than that of their 1920s predecessors.⁷³

A New Refugee Crisis

The League of Nations failed to foresee the continuation of Europe's refugee problem. Indeed, Fridtjof Nansen himself repeated the widely held view in 1926 that refugee problems remained finite and solvable.⁷⁴ This coincided with western governments' insistence that the League's 'refugee work must be liquidated with the utmost

⁶⁹ James Hathaway, *The Rights of Refugees Under International Law*, p. 86.

⁷⁰ See the comments of Jacques Rubinstein, who represented the *Commission Centrale pour l'Étude de la Condition des Réfugiés Russes* in C1508/20A/19125/17222, League of Nations archives. For the Inter-Governmental Advisory Committee's support, see the committee's report of 18 May 1933 in C.266.M.136.1933, League of Nations archives. For an in-depth description of the evolution of the 1933 Refugee Convention and the extensive contribution PVOs made, see Robert Beck, 'Britain and the 1933 Refugee Convention: National or State Sovereignty?', *International Journal of Refugee Law*, Vol. 11, No. 4, 1999, pp. 597-624.

⁷¹ Robert Beck, 'Britain and the 1933 Refugee Convention: National or State Sovereignty?', p. 622.

⁷² Czechoslovakia, Bulgaria and Norway, Britain, France, Italy, Denmark and Belgium ratified the 1933 Convention.

⁷³ James Hathaway, *The Rights of Refugees Under International Law*, p. 88.

⁷⁴ Michael Marrus, *The Unwanted*, p. 109.

rapidity'.⁷⁵ The aftermath of Hitler's accession to power in Germany quickly contradicted this view, as people began to leave Nazi Germany in increasing numbers. Despite refugees numbering far less in the 1930s, contrasting economic conditions emanating from the 1929 Great Crash meant refugees fleeing Nazi persecution received more hostile treatment at the hands of European states. Furthermore, these same countries' efforts to appease Germany meant they repeatedly saw refugees as potential troublemakers.⁷⁶ Lamentably for the refugees fleeing the Nazi regime in the 1930s, governments strengthened legislative and enforcement mechanisms to facilitate easier expulsion measures.

Approximately 150,000 departed Germany from 1933 through to the start of 1938,⁷⁷ although accurate statistical data remains absent.⁷⁸ Some Jews, noted Yehuda Bauer, actually returned to Germany in this period because of the harsh conditions they endured in other countries, especially in Romania and Poland, where anti-Semitism remained rife.⁷⁹ To aid new refugees, the League of Nations appointed an autonomous High Commissioner responsible for German refugees, the American James MacDonald, in October 1933. In contrast to the High Commissioner for Russian Refugees, the new office had to appropriate all funds privately to appease Germany's objections to the League of Nations.⁸⁰

The League of Nations' attempts to administer more comprehensive definitions of states' obligations to refugees in the 1930s only applied to those already termed refugees by the League, such as the Russian and the Armenian refugees. Therefore, those fleeing Nazi persecution remained outside the gambit of the agreements on refugees already approved by states. James McDonald, Nansen's successor as head of the League of Nations Refugee Committee had noted in 1935 that 'the daily grace in the High Commissioner's office was "Thank God for Palestine,"'⁸¹ on account of its absorption of Jewish refugees. But the Arab Revolt of 1936 made the British wary of the effects continuing Jewish emigration could have on its ruling of Palestine. In 1937 the

⁷⁵ S. Lawford Childs quoted in Hannah Arendt, *The Origins of Totalitarianism*, p. 358.

⁷⁶ Michael Marrus, *The Unwanted*, p. 113.

⁷⁷ Sir John Hope Simpson, *The Refugee Problem. Report of a Survey*, p. 139.

⁷⁸ Michael Marrus, *The Unwanted*, p. 130.

⁷⁹ Yehuda Bauer, *A history of the Holocaust*, New York: Franklin Watts, 1982, p. 123. Quoted in Michael Marrus, *The Unwanted*, p. 135. See *ibid*, pp. 141-5 for details about Anti-Semitism in Romania and Poland.

⁸⁰ Louise Holborn, *Refugees: A Problem of Our Time*, Vol. I, Metuchen, N.J.: Scarecrow Press, 1975, p. 14.

⁸¹ Michael Marrus, *The Unwanted*, p. 163.

Palestinian Royal Commission – set up in the wake of the 1936 Arab revolt – recommended that the British government cap Jewish emigration to Palestine at 12,000 per annum for the following five years; leading to Palestine’s closure as an emergency escape route.⁸² Similarly, the United States, Britain and France began to frown upon Jewish emigration to Shanghai, an open city which required no documents to land and where 17,000 Jewish refugees had settled by 1939. They feared that increasing numbers would upset the delicate balance of interests that allowed their strange relationship with Japan over the area to continue.⁸³

Following just over two years as High Commissioner, MacDonald resigned from his post. In a widely publicised letter, MacDonald blamed the growing crisis facing Jewish and non-Jewish refugees from Germany on the intransigence of the international community:

The efforts of the private organisations and the League organisations for refugees can only mitigate a problem of growing gravity and complexity. In the present economic conditions ... European states have only a limited power of absorption of refugees. The problem must be tackled at its source if disaster is to be avoided.⁸⁴

He also stipulated that the decision to separate his office from the League of Nations fundamentally weakened his position.⁸⁵ MacDonald’s replacement as High Commissioner, Sir Neill Malcolm, inherited an even less powerful role than his predecessor as the League Council ‘carefully circumscribed the new High Commissioner’s sphere of activity’ to circumvent the unwelcome attention McDonald’s outspoken statements acquired.⁸⁶ Nonetheless, Malcolm still managed to bring together representatives from fifteen countries in late 1936 for a conference focused on the German refugee question.

States, although supportive of potential measures to alleviate the suffering of

⁸² See Sir John Hope Simpson, *The Refugee Problem*, pp. 434-5 and Michael Marrus, *The Unwanted*, pp. 152-3.

⁸³ Michael Marrus, *The Unwanted*, p. 181.

⁸⁴ ‘Letter of Resignation of James G. MacDonald’, 27 Dec 1935, C1538 20A-80732-22873, p. ix, League of Nations archives.

⁸⁵ *Ibid*, p. vi.

⁸⁶ In France, for example, substantial sections of the Communist and Socialist Parties, the League of Rights of Man and Citizen, the Catholic Left and several Jewish bodies continued to promote more generous policies, resulting in the Popular Front’s slackening of immigration restrictions in 1936. In the United Kingdom, pro-asylum opinion caused the British government to repeal its restrictive policies brought in after the *Anschluss* of 1938. See Marrus, *The Unwanted*, p. 9 and p. 357 for what occurred in France and 164 for the UK.

German refugees within their territories, remained particularly hesitant to commit to helping potential future arrivals from Germany. Romania noted that it had already reached its capacity for receiving refugees apart from those travelling through the country.⁸⁷ The Netherlands wanted to retain its power to allow or disallow refugees from entering its territory. Switzerland repeatedly drew attention to the problem of clandestine refugees and underlined the difficulties caused by their continued entry at a time of economic depression, stating its preference to ‘aid the refugee coming from Germany to settle elsewhere’ rather than allow him settle in its territory.⁸⁸ Resembling recent asylum debates, Belgium thought countries should be allowed to ask refugees to return to the country in which they found first asylum.⁸⁹ Nevertheless, all of these countries, with the exception of Romania, adopted the provisional non-binding arrangement set out in the conference with various amendments, in addition to the UK, France, Norway and Denmark.⁹⁰ Further efforts by the High Commissioner for German Refugees to attain states’ acquiescence to more authoritative rules defining their treatment of German refugees proved mostly futile, however. Only two countries, the UK and Belgium ratified the later *Convention concerning the Status of Refugees coming from Germany*, completed in February 1938 as restrictive measures against rising numbers of refugees from Germany and Austria became more widespread.⁹¹

Contrasting sharply with PVOs’ role in representing Russian and Armenian refugees in discussions throughout the 1920s and early 1930s, PVOs played a negligible role in the session debates for the 1936 and 1938 conferences. The absence of an advisory committee of private organisations until after the 1936 conference partly explained this distinction. Previously, the Advisory Committee of Private Organisations and the PVOs’ involvement in Inter-Governmental discussions had allowed PVOs to come together to extract the best outcomes for refugees but PVOs failed to receive these opportunities in international debates surrounding refugees escaping from Nazism. Despite their lack of international representation, pro-asylum actors did succeed in mitigating the severity of restrictive asylum policies in some countries, most notably in

⁸⁷ ‘Inter-Governmental Conference on the Legal Status of Refugee coming from Germany’, Second Meeting, 2 July 1936, S.R.A./1st Session/P.V.2., League of Nations archives.

⁸⁸ *Ibid.*

⁸⁹ Inter-Governmental Conference on the Legal Status of Refugee coming from Germany’, Fourth Meeting, 3 July 1936, S.R.A./1st Session/P.V.4, League of Nations archives.

⁹⁰ Belgium, Denmark, France, the Netherlands, Norway, the UK and Switzerland.

⁹¹ France also ratified the convention but this came in 1945. See Neremiah Robinson, *Convention Relating to the Status of Refugees. Its History, Contents and Interpretation*, New York: Institute of Jewish Affairs, 1953, p. 3.

France where the Popular Front government slackened immigration restrictions in 1936 and the UK government repealed its asylum regime after the 1938 *Anschluss* in Austria.⁹² In the United States, pro-asylum actors focused enough attention on the government for President Franklin D. Roosevelt to convene a conference on the subject of refugees fleeing Nazism in Evian in the summer of 1938. Indeed, in the months leading up to Evian, several prominent Jewish voluntary groups – and Christian voluntary groups, to a lesser extent – came together for a conference to discuss the refugee issue. Almost simultaneously, two prominent American Jewish politicians, Emanuel Celler and Samuel Dickstein, publicly raised the subject in Congress.⁹³ Dorothy Thompson's article in the April 1938 edition of *Foreign Affairs* gave further vent to the consternation amongst certain organisations surrounding America's failure to intervene.⁹⁴

In July 1938, twenty-nine governments came together in a small French town to discuss the problem. Thirty-nine voluntary organisations, including twenty-one Jewish groups, attended the conference. Again, they did so in an unofficial capacity, even though the conference maintained that all refugees' welfare would remain the responsibility of voluntary organisations rather than states.⁹⁵ Individual consultations between PVOs and government representatives at Evian demonstrated the disjointed position of many PVOs. Four different opinions resonated amongst PVOs according to the committee made up of various government representatives: (i) to encourage Jews to emigrate to Palestine by lifting the contemporary quotas; (ii) to integrate refugees in their present environment; (iii) to settle Jewish refugees in an as yet uninhabited location; and (iv) to guarantee Jews minority rights in their new countries of asylum.⁹⁶

Despite the original initiative, Roosevelt set out defined terms for discussion at

⁹² In France, for example, substantial sections of the Communist and Socialist Parties, the League of Rights of Man and Citizen, the Catholic Left and several Jewish bodies continued to promote more generous policies, resulting in the Popular Front's slackening of immigration restrictions in 1936. In the United Kingdom, pro-asylum opinion caused the British government to repeal its restrictive policies brought in after the *Anschluss* of 1938. See Marrus, *The Unwanted*, p. 153 and Philip Marfleet, *Refugees in a Global Era*, p. 136.

⁹³ Tommie Sjoberg, *The Powers and the Persecuted. The Refugee Problem and the Intergovernmental Committee on Refugees*, Lund: Lund University Press, 1991, p. 113.

⁹⁴ Dorothy Thompson, 'Refugees: A World Problem', *Foreign Affairs*, Vol. 16, No. 3, April 1938, pp. 375-387. See also Sjoberg, *The Powers and the Persecuted*, pp. 70-71 and p. 116.

⁹⁵ Resolution adopted by the Intergovernmental Committee (Evian) on July 14th, 1938. Published in *League of Nations Official Journal*, Vol. 19, 1938, pp. 676-677.

⁹⁶ 'Report for the sub-committee for the reception of organisations concerned with the relief of political refugees coming from Germany including Austria', 13 July 1938, S543, League of Nations archives.

the Evian conference so that existing immigration laws remained in place.⁹⁷ Instead, most of the focus concentrated on how the Jewish exodus had ‘become so great that it renders racial and religious problems more acute, increases international unrets [sic], and may hinder seriously the process of appeasement in international relations’. The resolution adapted at Evian also recorded that:

[T]he involuntary emigration of large numbers of people, of different creeds, economic conditions, professions and trades ... is disturbing to the general economy, since these persons are obliged to seek refuge, either temporarily or permanently, in other countries at a time when there is serious unemployment.⁹⁸

The resolution’s negligible recommendations – the highlight involved setting up the ineffective Intergovernmental Committee on Refugees – clearly demonstrated states’ reservations in helping refugees escaping Nazi persecution. Mixed motives caused the United States to ensure that any proposals concluded at Evian would be non-binding. Actors sceptical of the potential effects of accepting larger numbers of refugees remained in the ascendancy. Both restrictionist and isolationist actors from both sides in Congress loudly voiced their disapproval at the prospect of changing America’s immigration policies or in intervening in European politics. Public opinion polls also showed overwhelming opposition to refugees from Germany and Austria. At a time of rocketing unemployment caused by the 1937 recession, Roosevelt’s priorities rested with gaining the majority’s backing for his policies to tackle the economic crisis, which explains, in effect, Evian’s failure to genuinely tackle the refugee problem.⁹⁹

In Michael Marrus’s words, ‘Evian simply underscored the unwillingness of the Western countries to receive Jewish refugees’ with ‘one delegate after another read[ing] statements into the record, justifying existing restrictive policies and congratulating themselves on how much had already been accomplished for refugees’.¹⁰⁰ Soon after the Evian conference, Hungary and Yugoslavia closed their frontiers, Italy announced its 1938 anti-Jewish decrees, and Holland, Belgium and Switzerland reinforced their

⁹⁷ See Tommie Sjöberg, *The Powers and the Persecuted*, p. 124.

⁹⁸ Resolution adopted by the Intergovernmental Committee (Evian) on July 14th, 1938. Published in *League of Nations Official Journal*, Vol. 19, 1938, pp. 676-677.

⁹⁹ Tommie Sjöberg, *The Powers and the Persecuted*, p. 124.

¹⁰⁰ See Michael Marrus, *The Unwanted*, pp. 170-2.

borders to restrict the entry of refugees.¹⁰¹ Moreover, the newly established Inter-Governmental Refugee Committee, which represented Evian's main achievement, lingered in obscurity from October 1939 until 1943.¹⁰²

The annexation of Austria in March 1938 and *Kristallnacht* in Germany in November of the same year turned, in the words of Claudena Skran, 'a manageable refugee flow into an uncontrollable flood'.¹⁰³ To make matters worse, the 1938 Nazi laws forbidding Jews fleeing from taking their belongings and savings caused many European countries to step up their restrictions against the entry and stay of Jews. Previously, Jews brought certain economic advantages to host states because they arrived with significant financial resources but from 1938 onwards Jews frequently arrived penniless. The almost simultaneous arrival in France of approximately half a million Spaniards fleeing civil war hindered the reception of Jews in France even further.¹⁰⁴ By the outbreak of war in September 1939, the number of those that escaped Nazism since 1933 increased to 400,000.¹⁰⁵ More would have left except for the increasingly restrictive immigration policies of European countries caused by anti-Semitism, labour shortages and Jews' destitution.

¹⁰¹ *Ibid.*, p. 169.

¹⁰² Tommie Sjoberg, *The Powers and the Persecuted*, p. 126.

¹⁰³ Claudena Skran, *Refugees in Inter-war Europe*, p. 53.

¹⁰⁴ See Sir John Hope Simpson, *The Refugee Problem*, 1939, p. 145, Michael Marrus, *The Unwanted*, p. 169 and Aristide Zolberg, Astri Suhrke and Sergio Aguayo, *Escape from Violence. Conflict and the Refugee Crisis in the Developing World*, p. 19 for further details.

¹⁰⁵ League of Nations, 'International Assistance to Refugees: Supplementary Report to the Twentieth Assembly by Sir Herbert Emerson' (20 Oct. 1939), 2. It report recorded that 225,000 Jews fled from Germany, 134,000 Jews from Austria and Bohemia-Moravia, and 40,000 non-Jews from both. See also Claudena Skran, *Refugees in Inter-war Europe*, p. 54.



'The Refugee', Felix Nussbaum (1939)¹⁰⁶

When stories of the Nazi atrocities against the Jews came to light in December 1942, sympathisers again placed the American and British governments under severe public pressure to act. Critics attacked the British government's failure to help Jewish refugees in the House of Commons whilst prominent figures in the Anglican Church spoke out in favour of assisting refugees. In contrast, the Vatican refused to partake in the Allied declaration condemning the Nazi extermination of Jews.¹⁰⁷ In the United States, over 40,000 attended a performance to mark the murder of Europe's Jews.¹⁰⁸ The US and UK governments responded by organising a conference on ways of tackling the refugee crisis. They chose Bermuda as the location for the conference because of its isolation. Resembling Evian, the 1943 Bermuda Conference promised much but

¹⁰⁶ Nazis discovered Nussbaum, a German refugee, hiding in Brussels in July 1944. He died at Auschwitz two months later.

¹⁰⁷ See Tommie Sjöberg, *The Powers and the Persecuted*, p. 127.

¹⁰⁸ *Ibid*, p. 128.

produced little. It assuaged dissent somewhat but ultimately saw America maintain its immigration restrictions and Britain continue to disallow any increase in Jewish settlement to Palestine.¹⁰⁹

1.3 The genesis of the Geneva Convention

The end of the Second World War instigated several crucial developments. Countries vowed to make sure the newly formed United Nations would serve the world better than its predecessor, the League of Nations. The *Charter of the United Nations*, signed in 1945, insured, cemented and enhanced the role of non-governmental organisations (NGOs) in future discussions by stipulating that the UN could ‘make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence’.¹¹⁰ Nonetheless, it took several decades before NGOs made a real impact.

The horrors of the Second World War led directly to the development of the Universal Declaration of Human Rights (UDHR) and indirectly to the formation of the UN Convention on the Status of Refugees. The development of human rights law in the late 1940s had an enormous influence on the formation of the convention, as displayed in its preamble when it declared that ‘The High Contracting Parties, Considering the Charter of the UN and the Universal Declaration of Human Rights ... have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination.’ The principle author of the UDHR, René Cassin, also had extensive experience of asylum. As a French Jewish refugee during the Second World War, Cassin drafted the UDHR with refugees from the previous decades evidently in mind. Article 14.1 clearly declared: ‘Everyone has the right to seek and to enjoy in other countries asylum from persecution’.¹¹¹

In contrast to the lack of activity related to refugee relief for most of the Second World War, various states attempted to gain control of handling Europe’s refugees and displaced persons towards the end of the war. In addition to the IGCR, the Allies

¹⁰⁹ This led to one Jewish voluntary organisation to place a controversial advert in the *New York Times* on 4 May 1943. Its headline read: “To 5,000,000 Jews in the Nazi Death-Trap, Bermuda Was a Cruel Mockery.” For more details, see Rafael Medoff, ‘The Allies’ Refugee Conference - A “Cruel Mockery”’, April 2003. Accessed at <http://www.wymaninstitute.org/articles/2003-04-bermuda.php> (17Aug 2009).

¹¹⁰ Section 71, *Charter of the United Nations* 1945.

¹¹¹ Article 14.1, *Universal Declaration on Human Rights* 1948. See also Jay Winter, *Dreams of Peace and Freedom. Utopian Moments in the Twentieth Century*, New Haven and London: Yale University Press, 2006, pp. 99-120 and especially p. 109 for more details on Cassin’s drafting of the declaration.

established the United Nations Relief and Rehabilitation Administration (UNRRA) in 1943 to maintain and repatriate displaced persons.¹¹² As the war slowly came to an end, the United States pointedly favoured the establishment of an institution specifically designed to facilitate inter-governmental action on refugees and displaced persons and to underscore communism's flaws.¹¹³ In contrast, the Soviet Union favoured refugees' repatriation and hence supported the prolongation of the UNRRA.¹¹⁴ Between the two, the International Labor Organization and the newly-formed United Nations promoted international co-operation.¹¹⁵

In 1947, the UN founded the International Refugee Organisation (IRO), which eventually replaced both the IGCR and the UNRRA. Under the auspices of the United States, which contributed forty-six per cent of the organisation's operational budget, the IRO began its main task of resettling refugees.¹¹⁶ Western European countries remained largely incapable of taking sizeable portions of refugees because of their war-torn state; therefore, North America and Australia took in large numbers.¹¹⁷ By the late 1940s, most of the eleven million displaced persons and refugees leftover from the Second World War had found a home, with less than one million remaining.¹¹⁸

In March 1948, the Economic and Social Council of the United Nations requested the UN Secretary-General to undertake a study of the existing situation of the protection of refugees and the stateless with a view to making recommendations on how best the UN could protect those in question.¹¹⁹ In response to the UN's study, the Economic and Social Council appointed an Ad Hoc Committee comprising representatives from thirteen states on 8 August 1949. When delegates from states met at Lake Success for the first time in January 1950, the UN presented them with a provisional convention which it had drafted in the preceding months.

Most of the work behind the draft convention on refugees came from several leading members of the IRO legal division who had personal experience of asylum. The Swiss legal expert, Gustave Kullmann, led these efforts. Kullmann occupied the post of

¹¹² Rieko Karatani, 'How History Separated Europe and Migrant Regimes: In Search of Their Institutional Origins', *International Journal of Refugee Law*, Vol. 17, Issue 3, pp. 517-541, 2005, p. 527.

¹¹³ *Ibid*, p. 538.

¹¹⁴ Gil Loescher, *The UNHCR and World Politics. A Perilous Path*, New York and Oxford: Oxford University Press, 2001, p. 38.

¹¹⁵ Rieko Karatani, 'How History Separated Europe and Migrant Regimes: In Search of Their Institutional Origins', p. 517.

¹¹⁶ *Ibid*, p. 529.

¹¹⁷ Gil Loescher, *The UNHCR and World Politics*, pp. 39-40.

¹¹⁸ Aristide Zolberg, Astri Suhrke & Sergio Aguayo, *Escape from Violence*, p. 21.

¹¹⁹ Nehemiah Robinson, *Convention Relating to the Status of Refugees*, p. 4.

Deputy High Commissioner for Refugees in the League of Nations during the Second World War. His wife, who later set up the Pushkin foundation in London, had fled Russia in the wake of the Russian Revolution. Paul Weis, who represented the IRO at discussions in Lake Success in early 1950, also had extensive personal experience of refugeehood. He escaped to the UK in 1939 from Austria after spending several months imprisoned in a concentration camp. He worked for the World Jewish Congress during the war before joining the IRO in September 1947. He also represented the organisation at discussions on the 1948 Universal Declaration on Human Rights (UDHR).¹²⁰ Kullmann and Weis frequently consulted Jacques Rubinstein, the Russian refugee who helped author the 1928 arrangement that provided most of the text for the 1933 refugee convention. Kullmann termed the IRO draft a “realistic” refugee convention:

The Draft is “realistic” in the sense that it aims at not going beyond what can reasonably be demanded of a liberal democratic State.

It was appreciated that in contradistinction to previous instruments, the Draft had to be framed in such a way as to secure as universal application as possible. It was also appreciated that it had not to be designed for one category of refugees alone, but for all categories which might come under the mandate of the new High Commissioner.¹²¹

After extensive consultation with the Human Rights Division of the United Nations in New York in November 1949, whose head, John Humphrey helped draft the Universal Declaration on Human Rights, the IRO draft became the template for future discussions on the Refugee Convention. Nonetheless, it was submitted as a secretariat draft to the Ad Hoc Committee set up to discuss the convention in New York in mid January 1950.¹²² Soon after convening, the Ad Hoc Committee decreased from thirteen

¹²⁰ Kullmann to Biehle, 17 Jan 1950, PW/PR/IRO/6 and short biography held in the Refugee Studies Centre Library, University of Oxford.

¹²¹ Inter-office IRO memo from Gustave Kullmann to Donald Kingsley, 20 Dec 1949. Taken from the Paul Weis archive contained in the Refugee Studies Centre Library at the University of Oxford, PW/PR/IRO/6.

¹²² Kullmann provided a summary of how the draft evolved to the IRO Operations Officer in Washington in January 1950. He recounted: ‘Originally, the D[irector] G[eneral] contemplated submitting an IRO draft formally to the S[ecretariat] G[eneral]. However, such a procedure might have had drawbacks which could have handicapped the real purpose we want to achieve. In the first place there was only an informal request by the Human Rights Division to give them the gist of our experience, but there was not an official request for IRO to do so on the basis of an ECOSOC Resolution. In the second place, a draft under IRO flag might meet with more opposition and prejudice than a draft under SG flag. Lastly we agreed with our friends the Secretariat that it would be unwise to give to the Ad Hoc Committee two working papers, vis., a Secretariat draft and an IRO draft.

This being so, I brought over to New York in November a full-fledged text, save the final

to eleven members, as the Soviet Union and Poland left because of the continued presence of the [Republic of] China representation.¹²³ The remaining countries partaking in the committee comprised Belgium, Brazil, Canada, [Republic of] China, Denmark, France, Israel, Turkey, the UK, the United States and Venezuela. Paul Weiss acted as the IRO representative.

After a few days of discussions, Weis wrote to Kullmann in Geneva to inform him that three countries, the UK, France and the United States, had each taken a different stance regarding the definition of a refugee; a pattern that continued throughout subsequent negotiations. The UK favoured a definition that ‘included all unprotected persons’; the French proposal gave a wide definition of the term “refugee” ‘based on the right of asylum’; while the US suggestions amounted to an ‘historical enumeration of the various categories of refugees, based on the Constitution of I.R.O. with certain amendments’.¹²⁴ Following on from discussions over the definitions set out in the draft, a working group comprising France, the UK, the US and Israel further analysed the meanings attached to the IRO propositions, with Paul Weiss in attendance.¹²⁵ Their tentative conclusions, resembling the US proposals, considerably narrowed the scope of

clauses, and re-drafted it paragraph by paragraph with M. Giraud of the Human Rights Division. We then went over the same text again with Humphrey himself and his colleagues during a long session on the eve of my sailing.

Save for minor points, the IRO draft was adopted by the Secretariat (both by the Human Rights Division and the Legal Division) as a suitable working paper to be submitted to the Ad Hoc Committee.

At the moment when I left, Humphrey was not prepared as yet to commit himself as to whether the Secretary would adopt the draft as a joint draft of both Organisations or not.

Subsequently, we introduced into our IRO draft a few new points, which we considered of major importance. This improved draft was submitted to DG and approved by him after consultation with the Heads of interested Departments at Headquarters and with some Legal Advisers in the Field.

By the time we completed the job, we received the UN Secretariat’s suggestion to make it a joint submission. While the single working paper submitted would be clearly a UN Secretariat document, it was to be pointed out in the introduction that the draft reflected the broad common views of DG and SG, on the basis of material furnished by IRO. On any point where either DG or SG wished to submit to the Ad Hoc Committee their divergent views, they would do so in a separate submission. I agreed with DG that this was not perhaps politically very happy, as it might lead DG to start a controversy with the SG in front of the Committee. We therefore informed Lake Success:

- (a) that we would refrain from making a formal submission of our improved draft;
- (b) that we would prefer a less pointed formula in the introduction, vis. some such words as: “this working paper has been prepared in consultation with IRO, and with their valuable staff assistance;”
- (c) that we would prefer not to make a separate submission of our new points, but that we would hope that we might evolve a joint addendum with the Secretariat.’

Taken from Kullmann to Biehle (Operations Officer, IRO Washington), 17 Jan 1950, PW/PR/IRO/6. To the surprise of the IRO and the UN Secretariat, France also produced a draft for the Ad Hoc Committee. According to the rules of procedure, the French draft would have priority over the IRO/UN Secretariat draft (see Weis to Kullmann, 19 Jan 1950, PW/PR/IRO/6). However, the French, according to Weis, was most ‘obliging’ in discussions, deferring frequently to the IRO/Secretariat draft. See Weis to Kullmann, 25 Jan 1950, PW/PR/IRO/6.

¹²³ Weis to Kullmann, 19 Jan 1950, PW/PR/IRO/6.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

the draft by severely restricting the definition of a refugee.¹²⁶

In its lengthy description, the Working Group's draft noted that the convention would only apply to those termed refugees before the Second World War, victims of the Nazi and Falangist regime, and 'those persons whose persecution or fear of persecution is due to events in Europe after the outbreak of the Second World War and before July 1, 1950'.¹²⁷ The IRO's desires to create a convention that would cover all categories of refugees coming under the mandate of the new UN High Commissioner for Refugees appeared obsolete.

Internally, the IRO appeared dismayed, with one official writing to Weis that after discussing the Working Group's definitions with one colleague they 'were both horrified by it'. The main problem, the IRO felt, related to the draft convention's use of the rushed and finite 1947 IRO constitution as a template for its definitions:

The existing I.R.O. Definitions were produced without any detailed knowledge of the refugees they were intended to cover. They are not, as you know, easy to apply. It would, in our view here [Geneva office], be the gravest possible mistake if new Definitions were to be drafted without seeing how they would work out in practice. ... We all know that bad cases make bad law; it is equally obvious that no cases make no law.¹²⁸

Weis succeeded in making small changes to the draft declarations after submitting a memo to the Working Group detailing the IRO's input and objections. Nevertheless, the IRO remained dismayed at developments, fearing the consequences the Working Group's draft would have on future refugee policy:

I suppose at the most we as an Organisation can do is point out the difficulties as cogently as possible and let the Committee stew in its own juice. The less clear, however, the Definitions are, the more scope there will be for divergences of interpretation I have a dim vision of the chaos that will ensue and I can only hope

¹²⁶ As Weis noted, 'The United States does not want to include unknown groups in the definitions, fearing that this may result ultimately in financial commitments. France and Great Britain were in favour of a broad definition of refugees – the United States in favour of enumeration. The latter point of view prevailed.' Taken from Weis to Kullmann, 10 Feb 1950, PW/PR/IRO/6.

¹²⁷ Ad Hoc Committee on Statelessness and Related Problems, 'Provisional draft on parts of the definitions. Article of the preliminary draft convention relating [sic] the status of refugees prepared by the Working Group on the article', 23 Jan 1950, PW/PR/IRO/6.

¹²⁸ Hacking to Weis, 27 Jan 1950, PW/PR/IRO/6.

that the Ad Hoc Committee rather than myself will see it face-to-face.¹²⁹

The IRO remained especially sceptical of the consequences a specific dateline would have, with Kullmann telling Weis that it represented a solution that was ‘not merely unjust but also impractical’.¹³⁰ Jacques Rubinstein too wrote of his disapproval to Weis. Rubinstein maintained that governments remained haunted by the idea that history began in 1939 and finished in 1944. He implored this narrow-sightedness, telling Weis that not all refugees represented people displaced by war.¹³¹ But the Ad Hoc Committee, led by the United States, believed that a general definition without specific parameters ‘would be a blank cheque’ and would ‘undertake obligations towards future refugees, the origin and number of which would be unknown’.¹³² Another IRO grievance related to the Ad Hoc Committee’s decision to relegate the article stipulating refugees’ ‘right to asylum’ to the preamble. In Kullmann’s words, this represented ‘a very poor compensation’.¹³³ By the time the convention reached its conclusion, no place existed for the ‘right to asylum’ even in the preamble, thereby symbolising sympathetic actors’ failure to sufficiently affect the actions of powerful states.

Members of the UN’s Special Committee for Refugees and the Stateless met in Geneva in August 1950 to approve the Ad Hoc Committee’s draft convention. Talks remained cordial and most articles passed without adverse comment. Nonetheless, Britain called for a deferment of the draft convention so that a conference of plenipotentiaries could include the views of more states. As a consequence, twenty-five governments came together, along with representatives from twenty-one NGOs and the head of the newly formed UNHCR, in Geneva in July 1951.

When representatives met in mid 1951, it soon became apparent that France’s goals for the draft convention had transformed enormously. After month-long talks in New York in early 1950, Paul Weis had written to the head of the IRO underlining France’s willingness to compromise: ‘The Committee worked on the whole in a spirit of mutual understanding and collaboration, and the French delegation, in particular, showed great readiness to reach unanimous solutions.’¹³⁴ Yet in Geneva in July 1951,

¹²⁹ Hacking to Weis, 4 Feb 1950, PW/PR/IRO/6.

¹³⁰ Kullmann to Weis, 3 Feb 1950, PW/PR/IRO/6.

¹³¹ Rubinstein to Weis, 13 Feb 1950, PW/PR/IRO/6.

¹³² In relation to the American domination of discussions, Weis records ‘that the representative of the United States made himself most frequently spokesman’. Weis to Kingsley, 7 March 1950, PW/PR/IRO/6.

¹³³ Kullmann to Humphrey, 8 March 1950, PW/PR/IRO/6.

¹³⁴ Weis to Kingsley, 7 March 1950, PW/PR/IRO/6.

France took a markedly different stance; a process that appears to have begun when Robert Rochefort took over as the French representative in discussions relating to the statute of the new UNHCR office.¹³⁵ Most significantly, it voiced its desire to apply a refugee definition only to those coming from Europe, a condition that most members of the Special Committee opposed, with the notable exception of the United States. In line with the American argument, France had decided by 1951 that this ‘constituted a blank cheque’. Taking the situation of the Palestinian refugees as an example, the French representative suggested that only Europe ‘was ripe for the treatment of the refugee problem on an international scale’.¹³⁶ The U.S. backed the French stance, wholeheartedly recommending that the committee take ‘one constructive step at a time’.¹³⁷ The behaviour of the French representative, M. Rochefort, caused consternation for various delegates, with the British representative, Samuel Hoare, writing to a colleague in the Home Office that Rochefort ‘behaves fractiously and generates so much ill-will’.¹³⁸ Rochefort’s relationship with the Belgian representative remained particularly strained, with the record of one meeting omitting exchanges between the two on account of the hostile nature of the interchange.¹³⁹

The French change of heart meant that the Palestinian refugees forced to leave their homeland in 1948 and the Jews leaving Arab countries in North Africa and the Middle East remained outside the terms of the convention. At the time this measure was backed by the Arab states, who felt that their interests and that of the Palestinians would be served better by the UN agencies especially set up to deal with the refugees.¹⁴⁰

¹³⁵ One of the UK representatives at the 1950 discussions recorded that ‘the French no longer favour a broad definition. in the High Commissioner’s terms of references. Rochefort is now taking the line that, if the High Commissioner’s definition is a restricted one (i.e. the same as the Convention’s Article 1 as the French wish to see it finally emerge), there will be more chance of getting funds for material assistance out of the United States at some future date. ... This argument does not impress us and, in any case, as we have pointed out to Rochefort, could hardly commend itself to His Majesty’s Government (the second largest contributor to the I.R.O.) Beith (UK delegation to the Economic and Social Council [ECOSOC]) to the UK Foreign Office, 27 July 1950, FO 371/87400, UK National Archives, Kew.

¹³⁶ Rochefort (France), Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Nineteenth Meeting, 13 July 1951, A/CONF. 2/SR.19.

¹³⁷ Warren (USA), *ibid*.

¹³⁸ Hoare to Scopes, 17 Aug 1951, FO 371/95931, UK National Archives, Kew.

¹³⁹ The UK representative, Samuel Hoare, records that the exchange consisted of Rochefort accusing Belgium of taking advantage of France by assisting refugees to cross her frontiers, with the help of the national police in some cases. See *ibid* and Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Twentieth Meeting, 13 July 1951, A/CONF.2/SR.20.

¹⁴⁰ ‘The problem of the Arab refugees from Palestine, on the other hand, had actually arisen out of action taken by the United Nations, the various agencies and organs of which had been giving them protection and assistance since 1948. It was for that reason that the delegations to the General Assembly of the Arab States had requested and secured the temporary exclusion of the Palestine refugees from the mandate of the High Commissioner.’ Mostafa Bey (Egypt), Conference of Plenipotentiaries on the Status of Refugees

Instead, the Egyptian representative settled for an amendment that agreed that the Palestinians would be covered by the Convention when they no longer enjoyed other UN agencies' protection.¹⁴¹ Palestinians came under and remained the responsibility of the UN Relief and Works Agency for Palestinian Refugees (UNRWA) in 1948, thus explaining why Palestinians today still remain largely outside the terms of the convention.¹⁴² Similarly, the United Nations Korean Reconstruction Agency (UNKRA) assisted those fleeing North Korea and people displaced by the war there. Both of these operations contributed to the US goal of stabilising areas deemed under threat of communism.¹⁴³ The millions of Pakistanis and Indians that became displaced after the Transfer of Power from Britain to the two newly formed states in August 1947, however, failed to come under the terms of another UN agency or the Refugee Convention because the region remained outside US and western interests, according to Gil Loescher.¹⁴⁴

The French and American views found favour with the South American representatives from Venezuela and Columbia. By contrast, most of France's European neighbours – with the notable exception of Italy (participating as an observer) and, belatedly, Germany – appeared to favour a broader conception. The UK led the way in voicing its support for as broad a definition as possible. After already having made a concession regarding the date-line change because 'the Convention had to be made acceptable to a larger number of States than those sharing the UK view', Britain voiced its disquiet about having to make 'a further limitation'. To counter this, the UK representative adopted a remarkably progressive stance:

Even if an eastward movement were to take place, the European countries would be able to control it. They would, in fact, in relation to any such movement, become countries of immigration in the same way as the countries on the Continent of America were at present countries of immigration for European refugees and would enjoy the same controls.¹⁴⁵

The large group of NGOs present at the conference backed the British stance, with the

and Stateless Persons: Summary Record of the Twentieth Meeting, 13 July 1951, A/CONF.2/SR.20.

¹⁴¹ *Ibid.*

¹⁴² Aristide Zolberg, Astri Suhrke & Sergio Aguayo, *Escape from Violence*, pp. 23-4.

¹⁴³ Gil Loescher, *The UNHCR and World Politics*, p. 57.

¹⁴⁴ *Ibid.*

¹⁴⁵ Hoare (UK), Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Twentieth Meeting, 13 July 1951, A/CONF.2/SR.20.

International Association of Penal Law calling for the implementation of a ‘world-wide convention that would become the Magna Carta for the persecuted’.¹⁴⁶ Belgium also took up the fight, even accusing France of assuming an ‘attitude of self-defence vis-à-vis refugees’.¹⁴⁷ Iraq and Egypt backed this broad stance. Canada and Switzerland, while both willing and able to support a comprehensive definition, pleaded for agreement and hence sought to find a balance between the camps that the Israeli representative later referred to as the “Europeanists” and the “universalists.” The Vatican came to the rescue by successfully proposing to insert the line ‘in Europe, or in Europe and other continents’ as specified in a statement to be made by each country when signing the convention.¹⁴⁸ This won widespread approval.

Crucially, the Holy See also proposed several other amendments recommending the maintenance of the unity of the refugee’s family by extending the rights granted to refugees to all members of their families. It also advised representatives to insert generous terms and conditions for refugee minors, particularly unaccompanied children and girls. Furthermore, the Holy See proposed the inclusion of provisions providing for the intervention of non-governmental bodies in refugee affairs.¹⁴⁹ In addition, Sweden successfully proposed the insertion of another vital condition: ‘members of a particular social group’ that faced persecution would also be eligible to attain refugee status.¹⁵⁰ On 25 July 1951, the conference of plenipotentiaries was declared closed except for the signing of the convention.¹⁵¹

1.4 The Consequences of the Convention

The convention’s definition of a refugee borrowed heavily from various definitions of refugees formed in the previous one hundred and fifty years. It took in the French definition from the 1830s and the League of Nations’ definitions in the 1920s by underlining that a refugee was a migrant unable to attain any protection or representation from his or her own country. It resembled the British definition of 1905 almost identically by conveying the centrality of the term ‘persecution’ and placing an

¹⁴⁶ Habicht (International Association for Penal Law Representative), *ibid.*

¹⁴⁷ Herment (Belgium), *ibid.*

¹⁴⁸ Comte (Holy See), Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Twenty-third Meeting, 16 July 1951, A/CONF.2/SR.23.

¹⁴⁹ Comte (Holy See), Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Thirty-fourth Meeting, A/CONF.2/SR.34, 17 July 1951.

¹⁵⁰ Petrin (Sweden), *ibid.*

¹⁵¹ Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Thirty-fifth Meeting, A/CONF.2/SR.35, 17 July 1951.

emphasis on the individual. Elsewhere it added the 1933 Convention's condition of *non-refoulement*, by stating: 'No Contracting State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'¹⁵²

The 1951 UN Convention Relating to the Status of Refugees legalised many of the displaced people leftover after the Second World while apparently closing the door to future unwanted guests. This enabled western governments to attain a sense of control over newcomers to their lands. It also transferred considerable power back to states after the interstate coordination of the immediate post-war years. Nevertheless, the convention went on to cause various problems for western states in the longer term, albeit rather unwittingly, due to the UNHCR's success at expanding its role and broadening the terms of the convention throughout the 1950s and 1960s.

The convention's definition of a refugee created confusion over the role of the recently formed UNHCR. In addition to aiding those people defined as refugees by the convention, the UNHCR's statute, signed six months before the convention in late 1950, asserted that the organisation would also take responsibility for '[a]ny other person who ... has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion'.¹⁵³ Significantly, this definition included no time or geographical limits; unlike the convention. This meant, as the French representative at the conference of plenipotentiaries explained in late 1951, that '[t]hose who became refugees as a result of events occurring after 1 January 1951 would be just as much within the competence of the Office of the High Commissioner for Refugees' as those fleeing from Europe before 1951.¹⁵⁴

1.5 Asylum during the Cold War

In the early and mid 1950s, this proved largely inconsequential. Western states welcomed refugees with open arms because they came overwhelmingly from communist Europe. The competition between the UNHCR, the American government and the French government over who would provide assistance to these refugees clearly

¹⁵² Article 33, no. 1, *United Nations Convention relating to the Status of Refugees*, 1951.

¹⁵³ Chapter II, Article 6 (B), *Statute of the Office of the United Nations High Commissioner for Refugees*, 1950.

¹⁵⁴ Rochefort (France), Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Twentieth Meeting, 13 July 1951, A/CONF.2/SR.20.

demonstrated their considerable political value. The UNHCR began life as a financially and politically weak organisation mainly because of American reluctance to contribute to an organisation that functioned outside of its control. American hostility to the UNHCR intensified after the election of the Dutch first High Commissioner, Gerrit Jan van Heuven Goedhart, ahead of the American candidate and president of the IRO at the time, Donald Kingsley. When Goedhart appointed an American Deputy Commissioner, it caused the UNHCR to lose France's support because its candidate, the Chef de Cabinet of the French Foreign Minister and representative at the conference of plenipotentiaries Robert Rochefort, failed to receive the post.¹⁵⁵ While the IRO, the UNRWA and the UNKRA received enormous contributions from the US in the late 1940s and early 1950s, the UNHCR received nothing.¹⁵⁶ Indeed, the UNHCR initially received an annual budget of only \$300,000 even though it became responsible for 400,000 refugees when conceived. Furthermore, the UNHCR had to battle with a number of new refugee agencies, formed outside the UN remit, for control of refugees in Europe: the American-inspired Intergovernmental Committee for European Migration (ICEM) and the United States Escapee Program (USEP), as well as the French-inspired European Refugee Service attached to the Council of Europe.

To counteract this competition, Goedhart, the first High Commissioner, attempted to attain a much larger budget for the UNHCR. He gained permission from the UN General Assembly in February 1952 'to issue an appeal for funds for the purpose of enabling emergency aid to be given to the most needy groups among refugees within his mandate.'¹⁵⁷ The UNHCR, in collaboration with four large NGOs, The World Council of Churches, War Relief Services, the American Jewish Joint Distribution Committee and the Lutheran World Federation, immediately appealed to the Ford Foundation to contribute to this appeal. This underlined the UNHCR and NGOs' different approach to the American-inspired refugee agencies by emphasising the human needs required by refugees as opposed to the political benefits they produced:

New refugees today often feel they are without a friend in the world; especially the type of a friend who is concerned not only with their politics but with their well-being.

¹⁵⁵ Gil Loescher, *The UNHCR and World Politics*, pp. 50-53.

¹⁵⁶ The IRO received an annual budget of \$150million, of which the US provided the largest amount. The UNRWA and the UNKRA received \$150million and \$75million from the US by 1954 respectively. Numbers quoted in *ibid*, p. 51 and p. 64.

¹⁵⁷ UNHCR, 'Urgent Assistance for Refugees', March 1952. Appendix to *The Plight of European Refugees*, a statement prepared for the Ford Foundation, Geneva: UNHCR, 1952.

Assistance, immediately given to such new refugees may be the difference to their beginning their new life in their new world as a friend and believer in the democracy which they are seeking by their escape to the democratic world, instead of a disillusioned refugee in a seemingly uncaring world.¹⁵⁸

When discussions between the four NGOs, the UNHCR and representatives from the Ford Foundation took place in late March 1952, much of the focus inevitably centred on the identifiable differences between the goals and policies of the parties concerned and the US government. The Ford Foundation made clear its desire to 'participate in programs only where it could be sure to make "a single impact."' ¹⁵⁹ Consequently, the NGOs and the UNHCR outlined the downsides that accompanied the obvious political undertones of the US policies. One NGO representative told of the disadvantages inherent in the US approach:

Many of the refugees do not want to accept help from such an Agency as they had just escaped from situations where they had been subjected to too much propaganda pressure, and although they were definitely pro-Western in their point of view, they did not want to be subjected immediately to a similar kind of pressure.¹⁶⁰

Another maintained that 'too much attention was being paid to assisting either those who are able-bodied or those with special technical qualifications'.¹⁶¹

The UNHCR and the NGOs succeeded in attaining \$3.1million from the Ford Foundation to assimilate those left behind by US resettlement schemes.¹⁶² This provided the UNHCR with a welcome opportunity to display the value of its work, which led to the reception of large donations from other government and non-governmental actors.¹⁶³ The political expediency that states gained from welcoming Communist defectors meant substantial state funding to the UNHCR followed, causing the organisation to grow in prominence as the decade advanced. The US also began to donate to the UNHCR in 1954, in an attempt to stem the flow of refugees voluntarily returning to their homes in

¹⁵⁸ *Ibid.*

¹⁵⁹ Draft of minutes of meeting with Ford Foundation, 25 March 1952, 4.0 GEN, Voluntary Agencies. General 4, Series 4.0 GEN Fonds 11 UNHCR.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

¹⁶² UNHCR, *Final report on the Ford Foundation program for refugees, primarily in Europe, implemented by voluntary agencies and administered through the United Nations High Commissioner for Refugees*, Geneva: UNHCR, 1958, p. 3.

¹⁶³ Gil Loescher, *The UNHCR and World Politics*, pp. 66-7.

Soviet Europe, thereby confirming the UNHCR's emergence as an essential international player in refugee management. The 1956 Hungarian refugee crisis saw the UNHCR named as the lead agency to coordinate assistance.

Apart from the large exodus into West Germany in the early 1950s and the 200,000 that fled Hungary in 1956, numbers remained relatively small and politically convenient, leading these people to be 'endowed with protection and assistance that went far beyond the international obligations imposed on receiving states'.¹⁶⁴ Throughout the 1960s, and especially in the wake of the appearance of the Berlin Wall, escape from Eastern Europe became more difficult. As a consequence, numbers decreased steadily; a trend broken only by occasional spurts, such as the exodus that followed 1968 Prague Spring.

Most refugees in the 1960s originated from Africa and fled to neighbouring African countries. The time and geographical limits imposed by the 1951 UN Convention on Refugees limited the UNHCR's ability to assist refugees in Africa. Nonetheless, reacting to the outflows of people from the Algerian war for independence, the UN General Assembly asserted in 1961 that in addition to helping refugees within its mandate, the UNHCR could also assist those outside of its competence.¹⁶⁵ The UN General Assembly extended this further in 1965 by requesting the UN High Commissioner for Refugees to provide protection and permanent solutions to all groups within his competence.¹⁶⁶ But as the number of refugees rose in Africa throughout the 1960s, the pressures on the UNHCR magnified.

Colonial struggles in Algeria, Guinea-Bissau, Mozambique and Angola, internal strife in Zaire, Sudan and Eritrea, and ethnic conflicts and political instability in Rwanda and Biafra meant refugee numbers increased from 400,000 in 1964 to approximately one million in 1969.¹⁶⁷ Similar problems also began to arise in Asia, where tens of thousands of refugees from Laos and Tibet fled into Cambodia and India respectively in the early 1960s.¹⁶⁸ Consequently, the UNHCR sought to address the discrepancy existing between its wide role dedicated to refugees globally, as set out in its statute, and the limited time and geographic restraints that applied in the Refugee Convention.

¹⁶⁴ Christian Joppke, 'Asylum and State Sovereignty: A Comparison of the US, Germany and Britain', in C. Joppke (ed), *Challenge to the Nation State*, Oxford/New York: Oxford University Press, 1998, pp. 109-52, p. 111.

¹⁶⁵ Gil Loescher, *Beyond Charity*, p. 73.

¹⁶⁶ Gil Loescher, *The UNHCR and World Politics*, p. 113.

¹⁶⁷ Gil Loescher, *Beyond Charity*, p. 77.

¹⁶⁸ Gil Loescher, *The UNHCR and World Politics*, p. 110.

Article 8 (a) of the UNHCR statute allowed the High Commissioner to propose amendments providing for protection of refugees falling under his mandate.¹⁶⁹ Availing of this instrument, the High Commissioner drew up plans to address the convention's oversights by convening a colloquium of various international legal experts to debate 'whether any – and if so what – measures can be taken to adapt international law relating to refugees to present conditions'.¹⁷⁰ Funding came from the Carnegie Endowment for International Peace and the Swiss government and the conference took place at the Rockefeller villa in Bellagio, Italy, in April 1965. The High Commissioner's idea for the colloquium became clear in his address on the first day:

If considered exclusively from the point of view of legal technique, the problem of the dateline could be relatively easily solved. It would only be to envisage an appropriate legal instrument removing the dateline from the Convention, thereby extending its provisions to all refugee situations both present and future.¹⁷¹

In addition to approaching the subject of the removal of the dateline, the High Commissioner for Refugees, Felix Schnyder, recommended the colloquium consider whether specific regional approaches should be adopted for refugee problems in certain areas and whether any legal instrument should include a 'right to asylum'.

The colloquium believed a new convention would be too time-consuming and laborious to speedily achieve the immediate goals at stake. Therefore, it decided that a protocol to the convention would provide the best solution.¹⁷² Regional actions, the colloquium recorded, might be beneficial but they had to take place under the international framework of the UN. The 'right to asylum', it adjudged, would be too controversial and complicated to insert in this protocol because it might give rise to

¹⁶⁹Paul Weis, 'The 1967 Protocol Relating to the Status of Refugees and Some Questions of the Law of Treaties', *British Yearbook of International Law*, 1967, pp. 39-70, p. 41. See also article 8 (a), *1950 Statute of the UNHCR*.

¹⁷⁰ Invitation letter from Joseph Johnson of the Carnegie Endowment to International Peace to Michel Potuliki, Secretary-General of the International Committee for Voluntary Agencies, 3 March 1965, 16/1/3/AMEND International Status of Refugees – Convention Relating to the Status of Refugees (Protocol); Series 1; Fonds 11, Records of the Central Registry; Archives of the UNHCR. Hereafter referred to as 16/1/3/AMEND).

¹⁷¹ Statement by Felix Schnyder, UN High Commissioner for Refugees, at the Colloquium on the Development in the law of Refugees with particular reference to the 1951 Convention and the Statute of the UNHCR, 22 April 1965, 16/1/3/AMEND.

¹⁷²A. Martin, 'Rapport General, Colloque sur les aspects juridiques des problèmes relatif aux réfugiés', August 1965, p. 6. Contained in 16/1/3/AMEND.

serious political implications.¹⁷³ All countries – that is those that already signed the convention and those that had yet to sign – would have the option of subscribing to the protocol that would remove geographical and time constraints:

[The colloquium] noted that it was now increasingly recognized that the refugee problem was universal in nature and of indefinite duration and that, in this respect, the Convention was no longer adequate. ... The members of the Colloquium therefore considered that it was urgent for humanitarian reasons that refugees at present not covered by the Convention should be granted similar rights by means of an international instrument.¹⁷⁴

Moreover, new signatories would, on ratification, be bound to the conditions of the 1951 convention, as modified by the protocol.¹⁷⁵

Ten African countries,¹⁷⁶ as well as Pakistan, tabled a draft resolution to the UN General Assembly in late 1966 pressing for the protocol's acceptance. Thereafter, it entered into force in October 1967 when Sweden became the sixth country, following the Holy See, the Central African Republic, Cameroon, Gambia and Senegal, to sign up to the protocol.¹⁷⁷ Other states quickly followed and, fortunately for the UNHCR, numerous countries that never signed up to the original Refugee Convention, such as the United States, signed the protocol enabling the UNHCR to expand its operations globally.

The eagerness of western governments to sign the protocol was, according to Gil Loescher, at least partly motivated by the attempts of the African Union's precursor to conceptualise a more sympathetic definition of a refugee that included those fleeing from colonial and post-colonial conflicts. The prospect of this competing with the already familiar UN model encouraged western countries to sign the protocol.¹⁷⁸ Its

¹⁷³ *Ibid*, p. 14.

¹⁷⁴ Memo from the UN High Commissioner for Refugees on the Report of the Colloquium on Legal Aspects of Refugee Problems held in April 1966', 9 Aug 1965, 16/1/3/AMEND.

¹⁷⁵ States that had already ratified the 1951 Convention retained the option of applying its terms to Europe only. Italy and Turkey chose to adhere to the geographical restrictions of the 1951 definition.

¹⁷⁶ Algeria, the Congo (Brazzaville), Guinea, Libya, Mali, Mauritania, Morocco, Sudan, Tunisia and Zambia.

¹⁷⁷ Paul Weis, 'The 1967 Protocol Relating to the Status of Refugees and Some Questions of the Law of Treaties', p. 48.

¹⁷⁸ Two years later the Organisation of African Unity (now known as the African Union) did issue its own declaration on refugees, which was more lenient in its understandings than the West. The Convention on Refugee Problems in Africa regarded refugees by the same definition as the UN Convention although it felt compelled to add that it also applied to any person 'who owing to external aggression, occupation,

favourable acquiescence also derived from the relatively small and politically convenient number of people that had applied for protection in liberal democratic states up until that point. Indeed, this had allowed the UNHCR to dictate states' asylum policies throughout much of the 1960s and 1970s, thereby facilitating improved social and legal conditions for refugees and asylum seekers.¹⁷⁹

Significant developments involving non-state actors also took place in the 1960s and 1970s, as the number of NGOs and intergovernmental organisation (IGOs) involved in advocating for better human rights and better treatment of those in search of asylum began to expand, particularly in Europe. In 1961, the British lawyer, Peter Benenson, founded Amnesty International to combat human rights abuses. Ten years later, a group of French doctors founded *Médecins Sans Frontières* after experiencing at first-hand the horrendous suffering caused by the Nigerian civil war in the Biafra area. The increasing spotlight placed on humanitarian disasters by a more globalised media communicating to audiences through the visual medium of television also marked a key development. The peace marches against American involvement in Vietnam and Cambodia, for example, received significant backing after media reports showed shocking images of the suffering caused by American bombing. America's foreign policy in South America also led to increased non-state activity, as did the later Watergate scandal, which led people to turn their backs on the more traditional political system.

Most significantly in the 1970s, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) became fully international covenants. Crucially, this meant that the Universal Declaration of Human Rights' aspirations, which until then had remained non-binding, finally became inserted into international law.¹⁸⁰ This led to the birth of the UN Human Rights Committee and coincided with the Ford Foundation's decision to dedicate millions of dollars in funding to human rights groups.¹⁸¹ Almost concurrently,

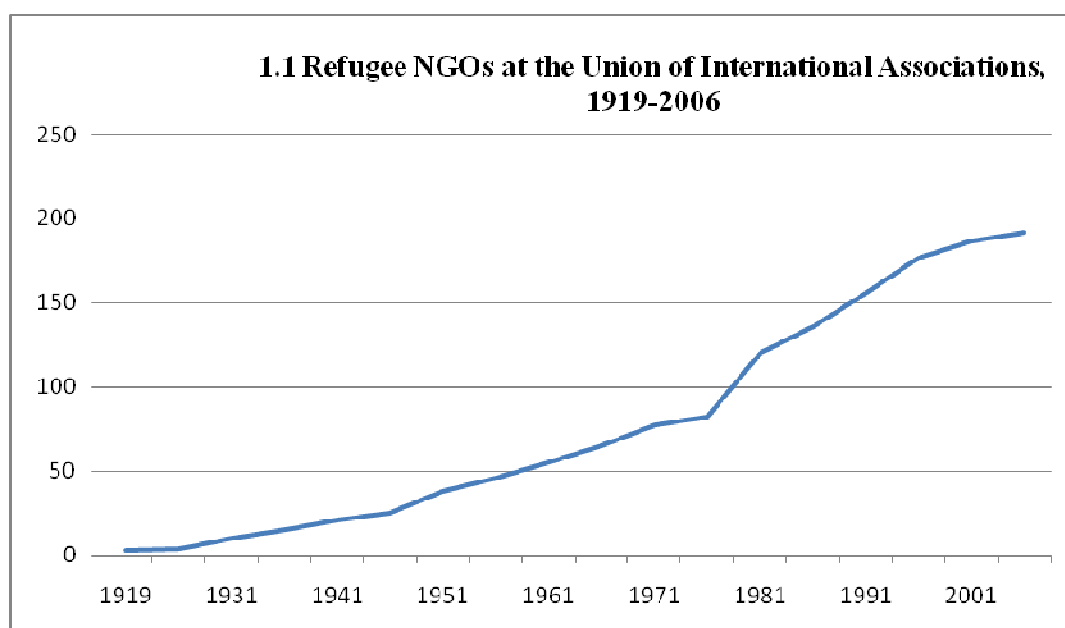
foreign domination or events seriously disturbing public order in either part of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality', Article 1, *The Convention Governing the Specific Aspects of Refugee Problems in Africa* 1969. See also, Gil Loescher, *Beyond Charity*, p. 80.

¹⁷⁹ Gil Loescher, *The UNHCR and World Politics*, pp. 176-7.

¹⁸⁰ David Jacobson, *Rights across Borders. Immigration and the Decline of Citizenship*, Baltimore/London: John Hopkins University Press, 1996, p. 77.

¹⁸¹ See Thomas Risse and Kathryn Sikkink, 'The socialization of international human rights into domestic practices: introduction', Thomas Risse Stephen C. Ropp and Kathryn Sikkink (eds.), *The Power of Human Rights. International Norms and Domestic Changes*, Cambridge: Cambridge University Press, 1999, pp. 1-38, p. 21 and Claude E. Welch Jr., 'Introduction', Claude E. Welch, Jr. (ed.), *NGOs and Human Rights: Promises and Performance*, Philadelphia: University of Pennsylvania Press, 2001, pp. 1-

there was a significant increase in the number of NGOs involved in human rights and refugee issues. Figures from the Union of International Associations' online database, for example, show that the number of NGOs working with refugees almost doubled from 1966 to 1981 (see graph below).



Figures: Union of International Associations online database, 2009.

This number rose further from the late 1970s onwards as various organisations, both secular and religious in nature, sprung up to cater for new asylum seekers and refugees. Europe underwent a marked transformation from a continent that transited refugees to a destination of first asylum.

1.6 The Age of the Asylum Seeker

Refugee figures continued to grow in the 1970s because of dictatorial regimes in Uganda, Chile, Argentina and Uruguay, religious and ethnic conflicts in Burundi and Chad, and independence movements in the Western Sahara and Bangladesh. Cold War conflicts also produced large numbers of refugees, none more so than from Indochina. Indeed refugees arriving by boat from Indochina sparked a noticeable change in many western states' refugee systems. To counter the sustained flows of boat people, western states devised a quota system to resettle a certain number of refugees every year. The

UN's Refugee and Humanitarian Programme, which commenced in 1979, undertook to take in an annual quota of refugees and migrants in need of humanitarian help. It often allowed people not officially classified as refugees *per se*, such as those fleeing civil wars, to resettle. Critics soon pointed out, however, that countries operating the scheme 'skimmed the cream and left the aged, crippled, psychologically disturbed, ill, and illiterate as a problem for ... countries with the least economic capability of handling them'.¹⁸² This inevitably caused poorer countries of first asylum to resent resettlement countries for leaving the unwanted behind. The main countries within the scheme included the United States, Canada, Australia and the Scandinavian countries.

The late 1970s not only gave birth to what David Martin calls "quota refugees" but also to "spontaneous refugees."¹⁸³ In a significant break from the past, non-Europeans began to arrive in North America, Europe and Australia in search of asylum. Western states never intended to provide non-Europeans, especially those hailing from non-communist regimes, with the privileges granted to communist defectors from Soviet Europe. Their arrival consequently caused various degrees of confusion and anxiety amongst western states. To check such a development, states began to set up the first signs of a recognisable "asylum" system to decide whether to confer these new people with refugee status, as well as all the rights that came with it. While awaiting the outcome of these deliberations, states increasingly termed these people as "asylum seekers" rather than "spontaneous refugees" because, for the first time since 1951, governments cast doubt over whether these people deserved the tag of refugees.¹⁸⁴

The number of people seeking asylum in the West began to rise just as labour migration became restricted. The availability of commercial transport also meant global migration became more accessible. West Germany presented a typical example of the changing character and profile of people applying for protection from the 1970s

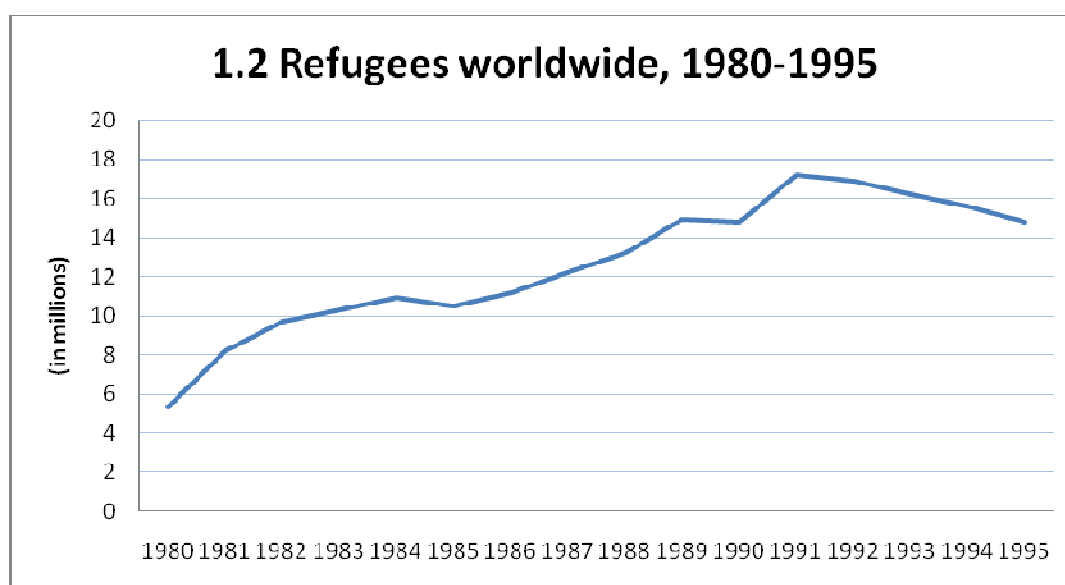
¹⁸² Howard Adelman, 'Refuge or Asylum. A Philosophical Perspective', *Journal of Refugee Studies*, Vol. 1.1, 1988, pp. 7-19, p. 8.

¹⁸³ David Martin, 'The New Asylum Seekers', in David Martin (ed), *The New Asylum Seekers: Refugee Law in the 1980s*, Martinus Mijhoff, Dordrecht, 1988, pp. 1-22, p. 4.

¹⁸⁴ Nonetheless, the term 'asylum-seeker' originated before the 1970s. Otto Kirchheimer, for instance, used it in his article 'Asylum', *The* p. 986. The reference above came from Luc Legoux, 'Political Pressure', in Graziella Caselli, Jacques Vallin, and Guillaume Wunsch (eds), *Demography*, Vol. II, Amsterdam/Boston: Elsevier, 2006, pp. 333-344, p. 338. For more critical discussions of the use of the term 'asylum-seeker' and the rhetoric of asylum debates see Stephen Moss, 'Mind your language: the semantics of asylum', *Forced Migration Review* 11, Oct. 2001, p. 39 and, especially, Niklas Steiner, *Arguing about Asylum: The Complexity of Refugee Debates in Europe*, New York: St. Martin's Press, 2000, pp. 8-10. For a detailed discussion about the transformation of the term 'refugee' see Roger Zetter, 'Labelling Refugees: Forming and Transforming a Bureaucratic Identity', *Journal of Refugee Studies*, Vol. 4, No. 1, 1991, pp. 39-62.

onwards. Numbers rose from 16,000 in 1977 to 108,000 in 1980.¹⁸⁵ This increase included Turks, who had previously gained access to Germany as part of the *Gastarbeiter* programme that ceased soon after the 1973 Oil Crisis. It also comprised large numbers of Ethiopians fleeing their homeland.¹⁸⁶ Before, these Ethiopians might have fled to neighbouring countries but now well-off refugees sought sanctuary in more developed countries.

Increasing uncertainty and conflict in the Developing World led to a massive increase in refugee numbers worldwide during this period. Susanne Schmeidl records that in 1975, 2.5 million refugees existed globally. By 1980 this figure rose to six million and by 1990 the number had climbed again to 17 million. Similarly, the number of refugee-producing countries went from twenty-five to fifty between 1970 and 1990.¹⁸⁷



Figures: UNHCR, *The State of the world's refugees, 1997-1998: A Humanitarian Agenda*, Geneva: UNHCR, 1998, p. 54 and Barry York (on behalf of the Department of the Parliamentary Library), *Australia and Refugees, 1901-2002: An Annotated Chronology Based on Official Source*, p. 138.

Nonetheless, David Martin speculated that something else occurred in this period to spark the enormous turnaround in numbers. In his opinion, the welcome given to Vietnamese boat people in the late 1970s by Canada, the United States and Australia,

¹⁸⁵ See Michael Teitelbaum, 'Political Asylum in Theory and Practice', *Public Interest*, 76, Summer 1984, pp. 74-86, p. 78-9 for more details.

¹⁸⁶ *Ibid.*

¹⁸⁷ Susanne Schmeidl, 'Conflict and Forced Migration: A Quantitative Review, 1964-1995', Aristide Zolberg and Peter Benda (eds.), *Global Migrants Global Refugees*, New York and Oxford: Berghahn Books, 2001, pp. 62-85, p. 65.

and the extensive media cover it generated, caused other people in similar situations to search for asylum further afield than past refugees.¹⁸⁸

Conflict and political uncertainty in Haiti, Cuba, Angola, Sri Lanka, Iran and Iraq, Afghanistan, Cambodia, Nicaragua and Poland led to further rises in asylum applications throughout the 1980s. Reacting to local developments, Central American countries took measures to extend asylum to those fleeing their homes because of 'foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order' by founding the 1984 Cartagena Declaration.¹⁸⁹ Western states, by contrast, took measures to stem the flow of those seeking protection. As Gil Loescher surmised, governments came to the conclusion that the most effective method of reducing the flow of asylum seekers was to prevent them from arriving in the first place – a philosophy that still exists today.¹⁹⁰ The United States introduced detention, denial of due process and interdiction, most notably against Haitian boat people, in an attempt to stem the flow of asylum seekers. Germany denied asylum seekers work permits and attempted to speed up processing of applications. The UK brought in carrier sanctions for travel companies transporting asylum seekers without the necessary documentation in 1987 and began to restrict visas for nationals of countries with high application rates. Canada too established restrictive legislation in 1989, although the country infrequently utilised the new law.¹⁹¹

Nonetheless, the upsurge continued, causing the UNHCR High Commissioner at the time to describe the arrivals as “jet-age refugees” because of their commercially facilitated entrance.¹⁹² During the 1980s, asylum applications in Europe, North America and Australia, increased by more than nine-fold.¹⁹³ Significantly, sixty per cent of the 1.3 million asylum applicants made in Western Europe between 1983 and 1989 came from the Developing World.¹⁹⁴

¹⁸⁸David Martin, ‘The New Asylum Seekers’, p. 5.

¹⁸⁹Niklas Steiner, *Arguing about Asylum*, p. 17.

¹⁹⁰ Gil Loescher, ‘Refugee and the Asylum Dilemma in the West’, in Gil Loescher (ed.), *Refugee and the Asylum Dilemma in the West*, Pennsylvania: Pennsylvania State University, 1992, pp. 1-7, p. 2.

¹⁹¹ For the US and Canada, see Gil Loescher, *Beyond Charity*, p. 101-8; for Germany see Michael Teitelbaum, ‘Political Asylum in Theory and Practice’, p. 80 and for the UK see Niklas Steiner, *Arguing about Asylum*, p. 103.

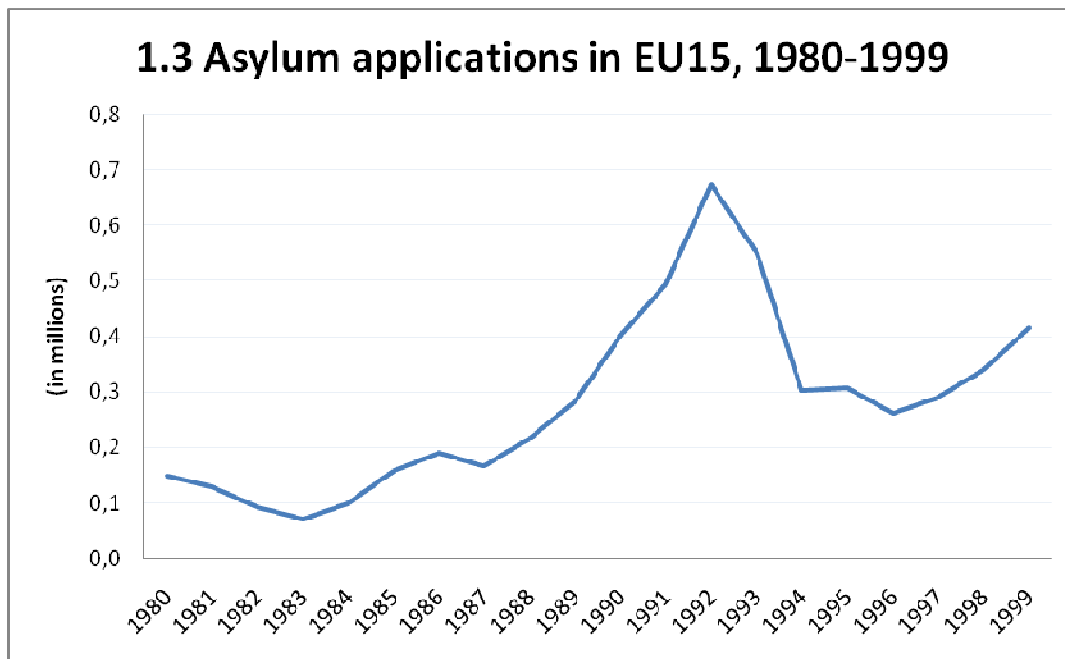
¹⁹² Poul Hartling, the UN High Commissioner for Refugees, quoted in Michiel Den Hond, “‘Jet-Age Refugees’: In Search of Balance and Cooperation”, in David Martin (ed.), *The New Asylum Seekers*, p. 49.

¹⁹³ Christian Joppke, ‘Asylum and State Sovereignty: A Comparison of the US, Germany and Britain’, p. 112.

¹⁹⁴ Gil Loescher, *Beyond Charity*, p. 111.

Asylum seekers after 1989

The conclusion of the Cold War sparked a mass movement of people from East to West Europe. In 1989, 1.3 million people left Eastern Europe and the Soviet Union for Western Europe; in 1990, 923,000; in 1991, 800,000.¹⁹⁵ Many of the initial migrants comprised ethnic Germans, Bulgarian Turks, and Soviet Union Jews. The figures also included a large number of asylum applicants. Nonetheless, by 1992, most people seeking asylum in Western Europe came from the brutal civil war that erupted in Yugoslavia in 1991. By late 1992, over 2.5 million people had become displaced as fighting in the Balkans spread.¹⁹⁶ Political instability in other European former communist states and intensified violence in Africa, Central America and the Middle East added further to the demand for asylum. Emphasizing this shift in asylum, certain western countries came face-to-face with asylum seekers for the first time, such as Ireland and Italy, which never had experienced extensive immigration flows in their modern history until the late twentieth century. Traditional English-speaking settler societies, such as Canada, the US and Australia also received larger numbers of applicants than ever before, complicating their structured refugee and humanitarian resettlement schemes in the process. EU countries, especially Germany, experienced a huge growth in the receipt of asylum applications in the early 1990s.



¹⁹⁵*Ibid*, p. 112.

¹⁹⁶*Ibid*, p. 114.

Figures: UNHCR, Asylum Applications in Industrialized Countries: 1980-1999, UNHCR: Geneva, November 2001.

For the first time since the end of the Second World War, liberal democratic states faced a situation where large numbers of people, who provided limited political and economic returns for receiver states, sought sanctuary in their countries. In effect, the upsurge in asylum applications after 1989 challenged Western Europe's dormant declarations on asylum for the first time since the establishment of the 1951 Refugee Convention. The aim of this thesis is to reveal how states reacted to this phenomenon. Did they react as they had done repeatedly in the 1930s by ignoring these people's pleas? Did they respond with sympathy and compassion, thus reflecting the dawn of a new, humanitarian age?

Chapter 2

Asylum in Australia and the Politics of Control

We will decide who comes to this country and the circumstances in which they come.

John Howard, Liberal election pamphlet, 2001

Australian Janus-faced asylum policy between 1989 and 2008 consisted of remarkably contrasting conditions. People who applied for protection in Australia whilst on a tourist, student or temporary visa went through a largely hospitable and sympathetic asylum procedure. They received the right to certain entitlements and, often, the right to work. In stark contrast, people who sought asylum in Australia after arriving by boat without any visa had to endure a parsimonious and antipathetic procedure whereby they remained in detention for the duration of their application. From the late 1990s onwards, even if defined as refugees, boat people only received temporary protection, as opposed to their luckier counterparts who received permanent protection and all the accompanying rights if deemed refugees. The former process transpired largely in private; the latter essentially in public. This chapter contends that successive Australian governments formed punitive asylum policies to deal with boat people to offset criticism of the country's migration policy more generally.

As occurred in various EU countries, where governments focused attention on certain voiceless migrants considered acceptable targets for criticism, such as asylum seekers, successive Australian governments chose to concentrate on boat people seeking asylum in order to offset criticism of more general immigration policies. In Australia's case it distracted voters unhappy with the country's migration policy by giving the impression that the government remained in control of who entered the country and under what conditions. Second, it avoided taking on the powerful actors involved in promoting economic and family migration who had comprehensively overwhelmed previous critics of Australian immigration policies in the 1980s. In the 1990s, however, the Australian governments' efforts to impose restrictive measures against boat people met with muted success as sympathisers consistently challenged Australian governments' asylum policy through the courts. Furthermore, Pauline Hanson's rise to

prominence in 1996 demonstrated continued popular dissatisfaction with Australian migration policy. Divergently, the 2000s saw a demise in the influence and effectiveness of sympathisers to successfully contest government asylum policy changes. The Liberal-National coalition's tough stance on boat people in the 2000s also allayed support for renegade anti-immigration parties, which had by then largely self-capitulated. This allowed the government to substantially increase economic migrant numbers while simultaneously retaining the veneer of control that Australians appeared to desire.

This chapter will first set out Australia's migration and asylum history in order to set the context for what occurred after 1989, particularly in relation to the emphasis that successive governments placed on control. Following on from this, the chapter will be divided into three distinctive time periods that marked important junctures in asylum debates: 1989-1996, 1996-2001 and 2001-2008. The first will encompass the Australian Labor Party's time in government, whereas the latter two will be dominated by the Liberal-National coalition that stayed in power from 1996 until late 2007.

2.1 Asylum in Australia before 1989

Ironically, critics of Australia's immigration policy in the 1980s refrained from targeting the country's refugee and humanitarian policy because many Australians felt that 'helping refugees is part of Australians' view of themselves'.¹⁹⁷ Indeed, the country had an extensive history of giving asylum to those in need since the end of the Second World War. Before 1945, Australia presided over a hostile asylum policy comparable to most other western states; with a racist tinge emanating from its White Australia immigration Policy. Australia displayed this trait at the 1938 Evian Conference by firmly stating 'we have no racial problem [and] we are not desirous of importing one by encouraging any scheme of large-scale foreign migration'.¹⁹⁸ Following the Second World War, however, Australia wholeheartedly changed its approach to people seeking asylum from Europe, with the country welcoming large numbers of displaced war victims from Eastern and Central Europe. They came to Australia for specific reasons: to boost the country's population and workforce. Although Australia deserves credit for

¹⁹⁷ Commission to Advise on Australia's Immigration Policies, *Immigration: A Commitment to Australia*, Canberra: Australia Government Publishing Service, 1988, p. 69. Quoted in Matthew Gibney, *The Ethics and Politics of Asylum*, p. 184.

¹⁹⁸ Quoted in Matthew Gibney, *The Ethics and Politics of Asylum*, p. 177. Gibney notes that, under a great deal of international pressure, Australia eventually accepted 15,000 refugees for entrance. Klaus Newman contends that this number was closer to 10,000. See Klaus Neumann, *Refuge Australia: Australia's Humanitarian Record*, Sydney: University of New South Wales Press, 2004, p. 21.

presiding over such an expansive post-War humanitarian and refugee policy in which approximately 300,000 arrived between the late 1940s and mid 1970s,¹⁹⁹ the country's implementation of this programme became a target for criticism. In the late 1940s, for instance, the International Refugee Organisation condemned Australia for being 'less interested in helping the unfortunate than in finding healthy and industrious "factory fodder" for its population and development programmes'.²⁰⁰ By the 1950s, Europe's post-war problems with displaced people had albeit ceased to exist, but Australia continued to take in people fleeing the Soviet regime. The 1954 Petrov case, in which Australian security agents seized the wife of a Russian defector from Soviet secret police as their plane refuelled in Darwin on its way out of the country, clearly showed the ideological advantages Cold War refugees could have on federal elections.²⁰¹ Nonetheless, numbers remained relatively small from 1957 onwards, with arrivals averaging only 2,500 per annum between then and 1967. This followed more general trends in the West.

Whilst Australia accepted extensive numbers of displaced persons and refugees between 1947 and 1975, it had never had a specific refugee and humanitarian policy during this time. Newcomers often had to partake in a state labour programme for a specific period of time before given a chance to seek Australian citizenship. This changed somewhat from the mid 1970s onwards, when Australia began to receive a number of "boat people" who fled Vietnam in the wake of the American and Australian withdrawal from Indochina. Although the number of boat people that actually made their way to Australia remained relatively insignificant (roughly 3,000 arrived between 1976 and 1981, the majority of whom – approximately 2,000 – came in 1977 and 1978),²⁰² the issue became prominent enough for Malcolm Fraser's Liberal-National

¹⁹⁹ Number taken from Barry York, *Australia and Refugees, 1901-2002: An Annotated Chronology Based on Official Sources*, Canberra: Department of the Parliamentary Library, 2003, p. 135.

²⁰⁰ Charles Price, 'Immigration Policies and Refugees in Australia', *International Migration Review* 15, 1/2 (Spring/Summer), 1981, p. 101. Quoted in Matthew Gibney, *The Ethics and Politics of Asylum*, p. 177.

²⁰¹ Vladimir Petrov, the husband of Evdokia Petrov and a former Soviet embassy employee, passed on information to the Australian authorities after his defection in which it was alleged that two members of the Labor Party's leader's staff were involved in a Soviet spy ring. Dr Evatt, the Labor leader, defended his staff in the Royal Commission that had been set up by Robert Menzies, the Prime Minister at the time, to look in to the matter. This then became an election issue. For more information on the Petrov case, see Klaus Neumann, *Refuge Australia: Australia's Humanitarian Record*, pp. 52-6. For its political ramifications, see Robert Manne, *The Petrov Affair: Politics and Espionage*, Sydney: Pergamon Press, 1987.

²⁰² Figures based on Nancy Viviani, 'Indochinese Refugees and Australia', S. Chantavanich and E.B. Reynolds (eds.), *Indochinese Refugees: Asylum and Resettlement*, Bangkok: Institute of Asian Studies, 1988, pp. 171-191 p. 176.

Government to adopt Australia's first explicit refugee and humanitarian policy. To stem the flow of boat people, Australia agreed to accept large numbers of Vietnamese living in neighbouring Asian countries' refugee camps. In return, those same countries' vowed to halt boats coming south.²⁰³ This occurred shortly after a remarkable transformation in Australia's immigration policy.

From its birth as a nation in 1901 until the mid 1960s, Australia principally identified itself as a bastion of the British race, using its White Australia immigration policy as 'a nationalist doctrine which reflected Australia's desire to maintain itself as a white, British nation'.²⁰⁴ From the mid-to late-1960s onwards, however, Australia slowly began to open its intake to include non-Europeans. Gough Whitlam's radical Labor government of 1972-5 confirmed this transition by declaring Australia a multicultural state that would oversee a multicultural immigration policy. Maintaining an immigration policy with racist overtones had become unacceptable to a post-colonial Asia contributing more and more to Australia's economy.²⁰⁵ Nonetheless, Whitlam radically reduced immigration during his time in office because of the economic downturn after the oil crises. Whitlam's successor as Prime Minister, Malcolm Fraser, increased immigration rates to nearly pre-oil crisis levels in the late 1970s and early 1980s – unlike European countries, which used the crisis as an excuse to cut migration indefinitely, according to Laurens.²⁰⁶ Asian migrants represented between 22 per cent and 38 per cent of the intake between 1979 and 1986.²⁰⁷ A large component of this Asian intake comprised Indochinese refugees, with Australia accepting nearly 100,000 between 1975 and 1985.²⁰⁸

Australia remained content to accept comparatively large numbers of refugees from camps dotted throughout South-East Asia so as to safeguard the ordered "points"

²⁰³ Katherine Betts, 'Boatpeople and public opinion in Australia', *People and Place*, Vol. 9, no. 4, 2001, pp. 34-48, p. 35.

²⁰⁴ Gwenda Tavan, 'The dismantling of White Australia policy: Elite conspiracy or will of the Australian people?', *Australian Journal of Political Science*, Vo. 39, No. 1, March 2004, pp. 109-125, p. 109.

²⁰⁵ As Geoffrey Bolton commented when referring to the early 1970s, 'Australia was becoming part of the Pacific economy', Geoffrey Bolton, *The Oxford History of Australia Vol. 5: 1942-1995*, p. 183.

²⁰⁶ See Sylvain Laurens, "'Suspendre l'immigration": "1974" passé au crible d'une sociologie de l'(in)décision'. Accessed at <http://barthes.ens.fr/clio/revues/AHI/articles/preprints/laurens.html> (9 May 2007).

²⁰⁷ In 1979-80, Asian migrants represented 28.5% of total intake, in 1980-1 22.4%, in 1981-2 22.3%, in 1982-3 26.3%, in 1983-4 36.3%, in 1984-5 37.8% and in 1985-6 31.7%. Note that Australian statistics do not always use the calendar year as when compiling statistics. 1979-80 means all those who arrived from June 1979 to the beginning of June 1980. Percentages taken from Nancy Viviani, 'Indochinese Refugees and Australia', p. 175.

²⁰⁸ Barry York, *Australia and Refugees, 1901-2002: An Annotated Chronology Based on Official Sources*, p. 32.

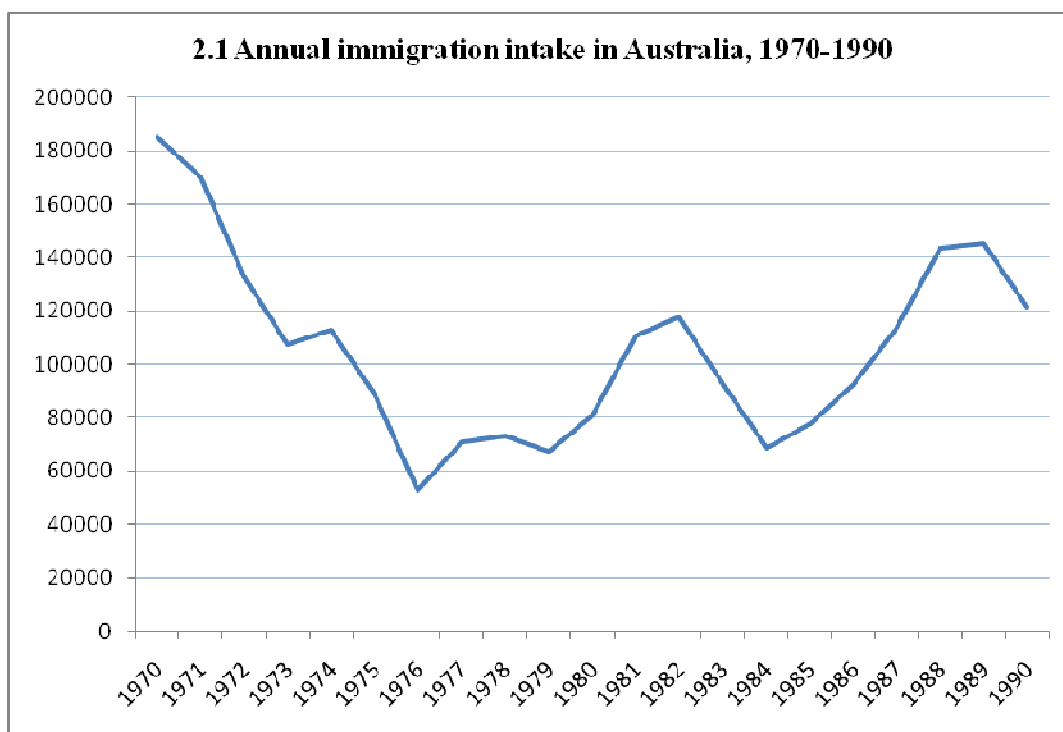
immigration system it established in the late 1970s, which separated labour migrants from refugee and humanitarian migrants. The latter part of the programme pledged to accept an annual quota of refugees and people facing drastic humanitarian conditions. Australia's adoption of such a policy represented an enormous achievement. During the early post-war decades, Australian governments justified their acceptance of refugees by highlighting the gaps refugees filled in the country's labour markets, the boost they gave to a population considered dangerously low, and the ideological victories accepting Soviet defectors scored during the Cold War. The 1980s required a different rationale to endorse the reception of refugees and humanitarian migrants because of the establishment of the country's skilled immigration policy in the interim and the diminished importance of the Cold War in Australian politics. Furthermore, the noticeable opposition from certain sections of Australian society that greeted the arrival of refugees and humanitarian entrants from the Vietnamese war, which represented the largest bloc of Asian migrants in the country since the dismantlement of the White Australia policy, meant the change in policy required different justification than that utilised in the past. Some critics, such as Geoffrey Blainey (discussed further below), highlighted the cultural threat of these newcomers whilst others lamented the character of people stemming from Pol Pot's Cambodia.²⁰⁹ In response, the government correlated the acceptance of these people with the maintenance of cordial relations with the country's Asian neighbours and used the country's refugee intake to demonstrate Australia's considerable humanitarian values to the rest of the world.

People seeking asylum in Australia during the 1980s mostly arrived in the country on valid travel visas. Annual numbers remained in the lower hundreds and the issue rarely came up for public debate. The Determination of Refugee Status Committee (DORS), formed in the late 1970s as part of the country's shifting immigration policy, assessed all asylum applications. The committee comprised representatives of the Departments of Immigration, Foreign Affairs, Prime Minister and the Attorney General, when applying for asylum.

From 1983 to 1991, Bob Hawke's Labor government presided over an annual average intake of 97,400 migrants, marking a return to the boom days of the late 1960s.²¹⁰

²⁰⁹ James Jupp, pers. comm., Sept 2009.

²¹⁰ Katherine Betts, 'Recent Developments in Population Policy in Australia: The Demographic Setting', *People and Place*, Vol. 5, No. 2, 1997.



Figures: Barry York, *Australia and Refugees, 1901-2002*, pp. 139-140. Numbers include refugee and humanitarian migrants also.

Nevertheless, a number of academic studies have demonstrated that Australian public opinion failed to replicate Labor's enthusiasm for consistently raising the annual intake.²¹¹ The policy of political bipartisanship on the issue of migration adopted by Australia's established parties after the Second World War had, until then, ensured that political debate on the issue had always remained remarkably positive. As Ian McAllister outlined, this ensured that successive governments continued to implement sometimes unpopular policies.²¹² Speaking at the launch of the book that included McAllister's views, Bob Hawke, the Australian Labor Prime Minister until 1991, explained the uniqueness of this arrangement: "There are no other issues on which the major political parties had been prepared to act in this [bipartisan] way ... to advance the national

²¹¹ See, for example, Murray Goot (on behalf of the National Multicultural Advisory Council), *Australian Multiculturalism for a New Century: Towards Inclusiveness*, Canberra: Commonwealth of Australia, 1999, p. 31; Gwenda Tavan, 'The dismantling of White Australia policy: Elite conspiracy or will of the Australian people?', p. 124; Katherine Betts, *Ideology and Immigration: Australia 1976 to 1987*, Melbourne: Melbourne University Press, 1988.

²¹² Ian McAllister, 'Immigration, bipartisanship and public opinion', in James Jupp and Marie Kabala (eds), *The Politics of Australian Immigration*, Australian Government Publishing Service, 1993, pp. 161-178, p. 176. See also 'Consensus on immigration policy in flux', *Canberra Times*, 4 Dec 1993 and Margo Kingston's 'Politics and public opinion', in Mary Crock (ed), *Protection or punishment: The Detention of Asylum Seekers in Australia*, Sydney: Federation Press, 1993, pp. 8-14.

interest ahead of where they believed the electorate to be.”²¹³ When certain individuals challenged Australia’s immigration policy during the 1980s, it led to controversy and ultimately, resignation for those who propounded such views. Political bipartisanship and the prominent intellectual preference for multiculturalism in the 1980s countered these outbursts by successfully isolating the protagonists.²¹⁴

In 1984, Geoffrey Blainey, an eminent Australian historian, publicly questioned the dramatic change in immigration policy by doubting the ability of Asian immigrants to integrate into Australian society.²¹⁵ In his view, public opinion opposed the advanced multicultural dimension introduced to Australia’s immigration policy from the mid 1970s onwards. In the ensuing debate, fellow University of Melbourne historians accused Blainey of potentially inciting racial intolerance towards Asians:

Raising such issues in racial terms (however much it is couched in the language of reason) becomes an invitation to less responsible groups to incite racial hatred. Framing debate in such racial terms can become a potent weapon to rouse public fears and prejudices and to direct hostility to certain groups in our society.²¹⁶

As a result of the tension his comments produced, Blainey resigned his chair at the university in 1988. That same year, John Howard, then leader of the opposition Liberal Party, called for a reduction of Asian immigration because of its threat to social cohesion. Predictably, this led to another highly controversial debate. Serious internal disharmony in Liberal circles ended only with Howard’s resignation as leader. Howard, resembling Blainey, would have to bear the brunt of what he said for many years to come.²¹⁷

Despite attacks on the country’s immigration policy in the 1980s proving unsuccessful, they met with much resonance among significant sections of the Australian public, with one opinion poll recording that 51 per cent agreed and 26 per cent partly agreed with John Howard’s statement calling for a reduction of Asian

²¹³ ‘Pact with Libs dictated policy, says Hawke’, *Australian*, 26 May 1993.

²¹⁴ Katherine Betts, *Ideology and Immigration: Australia 1976 to 1987*.

²¹⁵ This started with Blainey’s talk to the Warrnambool Rotary Club. His views were then put forward more thoroughly in his book that came out later that year. For more information on his position, see Geoffrey Blainey, *All for Australia*, North Ryde: Meuthen Hayes, 1984.

²¹⁶ Letter to the *Age*, 19 May 1984 signed by 24 historians from the University of Melbourne. Quoted in Frank Devine, ‘A conversation with Geoffrey Blainey’, *Quadrant*, Vol. L, No. 10, Oct 2006.

²¹⁷ In late 1994, John Howard, when discussing what occurred several years earlier, commented that “I think that was one of the more clumsy remarks that I’ve made in my political career.” Quoted in ‘Howard needs to kill his 1988 Asian migrants albatross’, *Australian*, 30 Nov 1994.

immigration in October 1988, leading Goot to remark that ‘since the mid-1980s the size of the migrant intake has failed to secure majority support’.²¹⁸ Significantly, Bob Hawke’s successor as Labor leader and Prime Minister, Paul Keating, proceeded to markedly reduce the annual intake after taking office at the end of 1991.

Despite the build-up of notable public hostility to immigration intake levels in the 1980s, which represented a decade of economic stagnation for Australia, the public continued to sympathise with the plight of those brought to the country under the Special Humanitarian Programme. This sympathetic attitude, however, failed to crossover to boat people when they began to arrive on Australia’s shorelines from 1989 onwards. Similarly, politicians immediately differentiated between boat people and other asylum seekers because the former failed to enter the country with valid visas; unlike the latter. Indeed, this distinction became a feature of debate after 1989.

Between 1989 and 1996, Australia experienced the reappearance of boat people for the first time in approximately a decade. This coincided with successive Labor governments under the leadership of Bob Hawke and then Paul Keating. Most boat people during this time came from South-East Asia. Although numbers remained low, the issue became a source of considerable political and public debate. Labor surprisingly won the 1990 and 1993 elections, first under Hawke, and then under Keating. According to Geoffrey Bolton, Labor’s promotion of privatisation and international competition stole the centre ground from a Liberal Party that went through five leaders between 1989 and 1995: ‘Labor repudiat[ed] socialism so convincingly it was hard for the Liberal-National Party coalition to form distinctive policies’.²¹⁹ But an extended period of Liberal-National government followed from 1996 until late 2007, when Labor returned.

In the mid 1990s, debate over boat people seeking asylum diminished in line with falling numbers. This changed by the late 1990s, when the number of boat people began to increase. Nonetheless, the unprecedented reaction of John Howard’s government to the *Tampa* boat incident in late August 2001 proved remarkable for the level of debate it sparked. The attacks of 9-11, in conjunction with the changing origin

²¹⁸ Only 8 per cent strongly disagreed, with 10 per cent partly disagreeing, *Australian*, 8 Oct 1988. Quoted in Murray Goot, *Australian Multiculturalism for a New Century: Towards Inclusiveness*, p. 54; quote comes from *ibid*, p. 31.

²¹⁹ Geoffrey Bolton, *The Oxford History of Australia Vol. 5: 1942-1995*, p. 299.

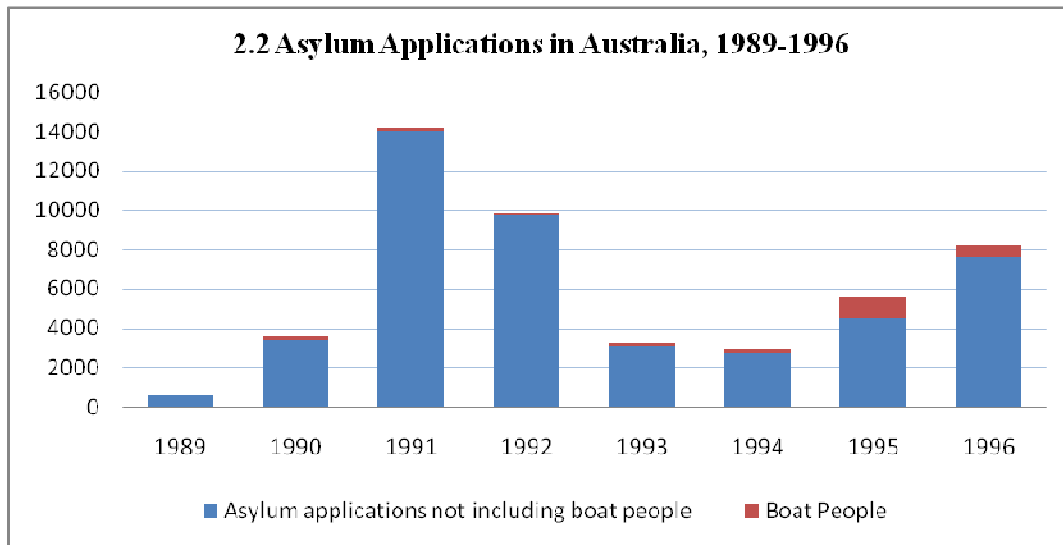
of boat people – they came predominantly from South-East Asia in the early and mid 1990s and from the Middle East from the late 1990s onwards – added a terrorist component to debates and policy initiatives. After *Tampa*, Australia's asylum laws underwent serious modification, resulting in drastically decreased asylum applications. These three specified time periods will be examined by analysing the formation, implementation and effects these asylum policy changes had on asylum applications and asylum seekers themselves.

2.2 The Return of Boat People to Australia, 1989-1996

Representing the first boat people Australia received in almost a decade, a boatful of Cambodians arrived in northern Australia in late 1989. Boats continued to arrive regularly until 1996. Most of these boat people came from China and Cambodia. They arrived at a period of economic difficulties for Australia. Towards the end of 1990, the country's Finance Minister declared the country in recession. Reflecting this state of affairs, the rate of unemployment rose to over eleven per cent; the highest level since the 1930s Economic Depression. Nonetheless, in-migration continued to occur, albeit on a notably reduced level. Furthermore, a significant shift occurred in Australian immigration policy whereby the focus of immigration became firmly linked to the contributions migrants could make to Australian economy in terms of skills and capital.²²⁰ As a consequence, family reunion and refugee and humanitarian migrants took a backseat in developments. Notwithstanding these moves, popular opinion towards immigration policy continued to grow. The Labor government reacted by focusing much of its attention on the remarkably small number of boat people arriving in search of asylum. When compared to the numbers accessing Australia through its organised migration programmes, the amount of boat people appeared minuscule – 224 compared to 121,320 in 1990. When contrasted with asylum applications more generally, boat people still represented a tiny minority of claims, comprising only 1.5 per cent of the backlog of asylum seekers by mid 1992 (see graph).²²¹ Yet, they became, for much of this period, the focal point of public and political disquiet with immigration.

²²⁰ Nancy Viviani, 'Indochinese Refugees and Australia', p. 179.

²²¹ Parliament of the Commonwealth of Australia's Joint Standing Committee on Migration Regulations, *Australia's Refugee and Humanitarian System: Achieving a Balance Between Refuge and Control*, Canberra: Australian Government Publishing Services, August 1992, p. 142.



Source: Barry York, *Australia and Refugees, 1901-2002: An Annotated Chronology Based on Official Sources*, pp. 140-1.

Formation

It appeared irrelevant that boat people were twice as likely to attain refugee status as those that applied after entering on valid visas.²²² Similarly, Cambodian boat people's inability to apply for visas because of the absence of an Australian visa issuing facility in Cambodia until December 1991 rarely figured in debates.²²³ Instead, deliberations concentrated on the significant threat to the integrity of Australia's immigration system boat people posed. The Labor Prime Minister, Bob Hawke, characterised this fear best in June 1990:

Say 200 people have come, they've encountered some difficulties. All right, they get here. What if it's 200,000, two million? It's got nothing to do with whether they are Cambodians, whether they are Irish, Greek, Italian. The fact is that I am making it quite clear as far as this Government is concerned, that we, as a sovereign country, will determine our immigration policy and its content, its size.²²⁴

Suddenly, he went from discussing 200 boatpeople to 2 million. And he was not the only one who partook in this massive inflation of numbers. Northern Territory Chief Minister, Marshall Perron, expressed fears that an "enormous avalanche of people"

²²² One in three boatpeople were given refugee status as compared to one in six of those who applied after arriving "legally" in Australia. See 'Missed the Boat', *The Bulletin*, 6 Sept 1994.

²²³ See 'No refuge', *Sydney Morning Herald*, 23 June 1993. The *Sydney Morning Herald* will be abbreviated to *SMH* for the rest of this text.

²²⁴ Quoted in 'Letting boatpeople stay would create great open door, says Hawke', *Age*, 11 June 1990.

might arrive on Australia's northern shore.²²⁵ When contrasted with the numbers languishing in South East Asian refugee camps however, the number of boat people arriving in Australia looked tiny. Hong Kong hosted 54,000 boat people while Indonesia sheltered 11,000.²²⁶ Instead, the emphasis always remained on the potential flood, rather than the genuine trickle that "jumped the queue."

Australia expected all newcomers to adapt to its cultural habit of queuing. Unfortunately for boat people, this also extended to the asylum process. Australians saw boat people as 'queue-jumpers' skipping in front of the many thousand people patiently awaiting the outcomes of their applications to come to Australia as part of its organised programmes. In many cases, it did not matter if these people turned out to be genuine refugees or not, they had unacceptably jumped the queue, as Bob Hawke confirmed: "Risk their lives or not, I mean, we have an orderly immigration program."²²⁷ The Melbourne *Age* editorial assured its readers that this practice was 'unfair, at least in terms of Australian cultural values'.²²⁸ For Australia, a country that prided itself on the structured nature of its immigration policy, it seemed essential to regain *control* over this queue.²²⁹

Surprisingly, given what later occurred in the late 1990s and early 2000s when the Liberals came to power, the opposition Liberal Party initially defended the plight of boat people. John Hewson, the Liberal leader at the time, strongly criticised Bob Hawke's statement regarding the veracity of the Cambodians' plea for asylum. It led to inconsistency and unfairness, he claimed, "by making blanket judgements about categories of people applying for refugee status."²³⁰ Similarly, Philip Ruddock, the Liberal spokesman on immigration and the man who later presided over the formation of the most restrictive Australian immigration laws since the demise of the White Australia policy, originally defended the Cambodians: "I have spent some time in Cambodia and I know many of them have legitimate fears about their safety."²³¹ As the 1990s wore on, however, the views of Ruddock and the Liberals changed dramatically from empathy to

²²⁵ Quoted in 'Braced for boatpeople 'avalanche'', *Herald*, 4 June 1990

²²⁶ 54,000 boatpeople were in camps in Hong Kong, 26,000 in the Philippines, 20,000 in Malaysia, 15,000 in Thailand and 11,000 in Indonesia.

²²⁷ Quoted in 'Machismo creates a muddle', *Age*, 8 June 1990.

²²⁸ 'What to do about boat people', *Age*, 20 June 1990.

²²⁹ My own emphasis. For a rundown of the importance of control in Australian immigration policy, see Kathryn Cronin, 'A culture of control: an overview of immigration policy-making', in James Jupp and Marie Kabala (eds), *The Politics of Australian Immigration*, Australian Govt Publishing Service, 1993, pp. 83-104.

²³⁰ Quoted in 'Machismo creates a muddle' *Age*, 8 June 1990.

²³¹ Quoted in 'Killing fields' image still haunts', *Daily Telegraph*, 17 June 1990.

enmity.

To counteract the slow assessment of asylum applications which had resulted in an extended backlog, the government established the Refugee Review Tribunal (RRT) to replace the Refugee Status Review Committee in 1992. In the whole of 1990, the RSRC only determined 295 applications to the primary stage. The RSRC had contained one official each from the Department of Foreign Affairs, the Department of Immigration, the Department of the Attorney General, as well as a member of the Refugee Council of Australia and someone from the UNHCR, who acted as a neutral observer.²³² The RRT, contrastingly, comprised a large number of independent part-time and full-time members, chosen by the Governor-General, on behalf of the minister for immigration. It reviewed appeals from those already rejected by the immigration department. The Immigration Minister, Gerry Hand, classified the new system as 'a credible and independent determinate system, which should help keep to a minimum appeals to the courts.'²³³

To further demonstrate its toughness on unsanctioned arrivals, the government drew on the 1958 *Migration Act* to detain boat people during the processing of their asylum applications. As stipulated under the act, 'an unlawful citizen ... must be kept in immigration detention until he or she is: (a) removed from Australia ... (b) deported ... (c) granted a visa'.²³⁴ The 1992 *Migration Reform Act* proposed to clarify the government's position on boat people. Announced to parliament on 5 May 1992, it predetermined that 'a court is not to order the release from custody of a designated person'. Gerry Hand, the Labor Immigration Minister at the time, explained to parliament the rationale behind such modifications:

It is crucial that all persons who come to Australia without prior authorisation not be released into the community. Their release would undermine the Government's strategy for determining their refugee status or entry claims ... The Government is determined that a clear signal be sent that migration to Australia may not be achieved by simply arriving in this country and expecting to be allowed into the community.²³⁵

Implementation

²³² Barry York, *Australia and Refugees, 1901-2002: An Annotated Chronology Based on Official Sources*, p. 44.

²³³ Ministerial Press Statement 35/92, 15 July 1992. Quoted in *ibid*, p. 128.

²³⁴ Section 196, subsections 1 and 3, *Migration Act* 1958.

²³⁵ Parliamentary Debates (Hansard), House of Representatives, 5 May 1992, p. 2371.

The 1977 *Administrative Decisions (Judicial Review) Act* enabled rejected asylum seekers in the 1980s to appeal to the Australian justice system against deportation orders.²³⁶ Frequently, the Australian courts took a more liberal approach to asylum applications than Australian state officials. In the 1989 the *Chan Yee Kin v Minister for Immigration and Ethnic Affairs* case concerning a Chinese asylum seeker, the Federal Court implemented a more lenient interpretation of a “well-founded fear of persecution” than the formula used heretofore by department officials.²³⁷ Notably, this led to a rise in successful applications for asylum.²³⁸ Three female Cambodian asylum seekers, in *Lim v Minister for Immigration*, challenged the veracity of their detention by pointing to legislation that ruled the state could only detain boat people until the boat they arrived on had departed from Australia. Because the Department had burnt and destroyed many of the boats, judges ruled in favour of Lim and ordered the government to free the applications and pay compensation for their unlawful detention. To ensure Cambodian boatpeople failed to gain comprehensive compensation, however, legislation introduced immediately after the court case ensured that the courts could grant the boat people no more than \$1 a day for every day spent unlawfully in detention.²³⁹

Sympathetic actors representing boat people caught the government out again in the same year when ten Chinese boat people landed on Australia’s coastline undetected and walked through what local north-western police described as ‘the worst country in Australia’ for ten days without being discovered.²⁴⁰ By doing so, they bypassed Australia’s laws, which maintained that all boat people detained at the border remained on the international side of the border and had not yet officially entered the country.²⁴¹ The Labor government responded rapidly to protect its measures against boat people from lawyers representing asylum seekers, whose work Hand described as an “unnecessary use of taxpayers’ money.”²⁴² He believed that these lawyers purposely manipulated the asylum process: a practice he determined to stop. He promised there would be no more than “seventeen months by lawyers manipulating the system to lodge

²³⁶ As ruled in the *Mayer* (1985) case; Mary Crock, *Immigration and Refugee Law in Australia*, Leichardt, N.S.W.: Federation Press, 1998, p. 127.

²³⁷ Mary Crock, *Immigration and Refugee Law in Australia*, p. 134.

²³⁸ *Ibid.*, p. 136.

²³⁹ See ‘Hand defends compo limits for boat people’, *SMH*, 18 Dec 1992.

²⁴⁰ See ‘22 boat people lost in outback’, *West Australian*, 17 Jan 1992 for details of the Chinese boatpeople’s adventures through ‘crocodile-infested creeklands’ in 50C heat.

²⁴¹ Parliament of the Commonwealth of Australia, *Australia’s Refugee and Humanitarian System: Achieving a Balance Between Refuge and Control*, Canberra: Australian Government Publishing Service, August 1992, p. 146. See also section 88 of the 1958 *Migration Act*.

²⁴² Quote taken from ‘Legal aid row as boat people appear in court’, *SMH*, 22 Jan 1992.

an application,” as he “hated sorting and if someone is sorting this system we’ve got to stop it.”²⁴³

In addition to establishing the administrative Refugee Review Tribunal (RRT) in 1992, the Australian Labor government proposed measures to reduce the amount of appeals entering the state’s court system from rejected asylum seekers by narrowing the options for judicial review. The Labor government delayed the implementation of its 1992 *Migration Reform Act* to facilitate these further amendments, culminating in the 1994 *Migration Legislation Amendment Act*. One of the measures intended to limit the grounds for legal review to the Federal Court only to cases where wrongful applications of the law took place. The amendments also served to remove the legal fiction that boat people had yet to land in Australia by distinguishing between all those that had come with a valid visa and those who arrived without. For boat people this meant mandatory detention; for those people who originally arrived in the country on valid visas and subsequently applied for asylum it meant the right to work and receive certain benefits. Asylum seekers that applied after the expiration of their visas qualified for the latter category because the government understood that they had passed immigration control; in contrast to boat people.²⁴⁴

The Joint Standing Committee on Migration, set up ‘following increased public concern and criticism relating to Australia’s policy of mandatory detention’ in 1994 studied these policy changes. The Committee, made up of various members of parliament, found that the government correctly imposed mandatory detention (apart from one Green senator’s dissension).²⁴⁵ Furthermore, the committee declared its support for further measures to dissuade the intervention of the courts into asylum decisions if proposed changes did not reduce the amount of appeals brought before the courts. One alternative, they suggested, would be to restrict asylum claims to a two tier administrative process, thereby closing off access to review and appeal in the higher courts; apart from the right of access to the High Court, which the Australian Constitution guaranteed.²⁴⁶ Its only stipulation of note related to its suggestion that ‘there should be a capacity to consider release where the period of detention exceeds six

²⁴³ Quoted in ‘Govt gets tough on refugees’, *SMH*, 13 Feb 1992.

²⁴⁴ Parliament of the Commonwealth of Australia, *Australia’s Refugee and Humanitarian System: Achieving a Balance Between Refuge and Control*, p. 88.

²⁴⁵ Senator Christabel Chamarette’s dissenting report can be found in Parliament of the Commonwealth of Australia’s Joint Standing Committee on Migration, *Asylum, Border Control and Detention*, Canberra: Australian Government Publishing Service, February 1994, p. 201.

²⁴⁶ *Ibid*, p. 103.

months'.²⁴⁷

Shortly after this change entered into force in September 1994, it became obvious that the new legislation failed to achieve its goal as the nature of appeals diversified. Most applications for judicial review claimed officials failed to consider whether asylum applicants faced a “real chance” of persecution or not. When this avenue became closed with the *Wu Shan Liang* reversal by the High Court, new appeals arose claiming that the RRT contravened the “substantial justice” principle enshrined in the *Migration Act*.²⁴⁸ Similarly, when the High Court rejected this approach, appeals on other diminutive details began to appear. The result was that the number of appeals brought before the Federal Court continued to rise. In 1993/94 appeals numbered 320 but by 1996/97 they figure grew to 673. In percentage terms, immigration cases went from comprising 55 per cent to 68 per cent of the Federal Court’s administrative caseload in these years.²⁴⁹ Furthermore, rejected asylum seekers’ inability to challenge asylum decisions (the Federal Court could only ask the department of immigration to review the case, according to the 1994 changes) led to a sizeable increase in appeals brought before the High Court, which remained accessible as a constitutional right. A number of court cases threatened these modifications in asylum policy.

Effects

The effects of mandatory detention on boat people became more apparent as the 1990s progressed. Whereas most of the boat people that arrived in 1989 and 1990 stayed in hostel type accommodation in Springvale, on the outskirts of Melbourne, their successors had to remain in remote detention centres whilst awaiting the outcome of their asylum requests. While security did exist in the former, it became much more visible and prevalent in the latter.²⁵⁰ After one year’s detention in the more comfortable environment of Springvale, some Cambodian boat people reported feeling suicidal and depressed.²⁵¹ Inevitably, when the government began to detain boat people in more

²⁴⁷ *Ibid*, p. 156.

²⁴⁸ John McMillan, ‘Federal Court v. Minister for Immigration’, *Australian Institute of Administrative Law*, No. 22, September 1999, pp.1-26, p. 6.

²⁴⁹ John McMillan, ‘The Courts vs. the People: Have the judges gone too far?’, Paper to the Judicial Conference of Australia, Launceston Colloquium, 27 April 2002.

²⁵⁰ According to the Parliament’s Joint Standing Committee, the accommodation was unfenced and had a reporting requirement. See the Parliament of the Commonwealth of Australia’s Joint Standing Committee on Migration, *Asylum, border control and detention*, Canberra: Australian Government Publishing Service, February 1994, p. 110.

²⁵¹ ‘Detained boat people ‘suicidal’’, *Sunday Age*, 10 March 1991.

isolated outposts, such as Port Hedland in Western Australia, their mental state deteriorated further as their form of accommodation became more obviously prison-like. Fewer visits from outsiders – because of the detention centres isolated locations – resulted in boat people maintaining less contact with the outside world, which in turn led to less knowledge and more frustration relating to their circumstances. To protest against such treatment, boat people launched a hunger strike at Port Hedland in March 1992.²⁵² Further negative publicity from various studies and reports researching the effects of detention led to a noticeable increase in the volume of criticism from actors sympathetic to boat people's plight, such as religious leaders, NGOs and authoritative public figures.

In April 1992, the Anglican Archbishop of Perth, Dr Peter Carnley, attacked the government's policy of detaining boat people: "We hear of boat people scandalously encaged behind cyclone wire in Port Hedland and kept waiting for two years not knowing their ultimate fate. ... It's like a concentration camp."²⁵³ In August 1993, the Red Cross published a damning report of the harmful effects of detention. It focused particularly on the damage detention inflicted on children and families, stating that 'within the Port Hedland facility children from two to six years of age displayed retarded fine-motor skills and an outlook which can be described as apathetic.' In further outlining how detention harmed normal family cohesion, the report highlighted the inability of parents 'to provide for even the most basic needs of one's child ... to provide security, guidance, food, hope or even a simple toy that a child can call its own.' It went on to state that parents' 'lack of interest in their own children and the children's disorientated perspective of their parents' role is regularly witnessed at Port Hedland. Their actual and perceived roles are progressively deteriorating, as is their feeling of self-worth.'²⁵⁴ The report explained the reasons and methods boat people took to express their discontent with detention: 'There have been and will continue to be, attempts at self-harm and suicide. These responses should not be seen as a response to a negative outcome but for what they are: a result of a long-term detention and its concomitant effects on personality and behaviour. The feeling of being denied justice is further exacerbated when it is apparent that only people who arrive by boat are automatically placed in detention.'²⁵⁵

The Chief Justice of the Family Court, Alastair Nicholson, accused the

²⁵² See 'Boat people strike goes on', *Western Australian*, 10 March 1992.

²⁵³ 'Boat people plight shameful: Bishop' *Western Australian*, 20 April 1992.

²⁵⁴ Quoted in 'Detention 'retards' minds of boatpeople's children', *SMH*, 21 Aug 1993.

²⁵⁵ *Ibid.*

government of treating boat people like “caged beasts” in 1995, highlighting the ongoing detention of 282 children to justify his condemnation.²⁵⁶ Malcolm Fraser, the ex-Liberal Prime Minister who allowed over 2,000 Vietnamese boat people to stay in Australia in the late 1970s, also hit out. In his opinion, it was “quite wrong” to locate the detention centres so far away from Australia’s major cities because it acted as a “deterrent to the media to go and see what was happening.”²⁵⁷ Australia also began to receive international criticism of the policies it reserved for boat people. In June 1993, one German diplomat castigated Australia’s treatment of its boat people when he compared Australia’s treatment of asylum seekers with Germany’s: “We have half a million asylum seekers in Germany and Australia keeps one or two thousand asylum seekers in places like concentration camps.”²⁵⁸ In early 1995, the Clinton administration followed this by citing Australia’s treatment of boat people in its annual report on human rights’ abuses around the world.²⁵⁹

Nonetheless, the majority of Australians advocated the heavy-handed treatment of boat people. Indeed, many citizens polled appeared to favour taking a tougher stand on the issue. One 1993 opinion poll asked Australians, ‘Do you think people who attempt to become migrants in this way [by boat] should be: sent straight back where they came from, despite what they say may happen to them; assessed with all other migrant applicants, and held in detention in the meantime; or allowed to stay as migrants in Australia?’ 44 per cent chose the first option, 46 per cent the second option and 7 per

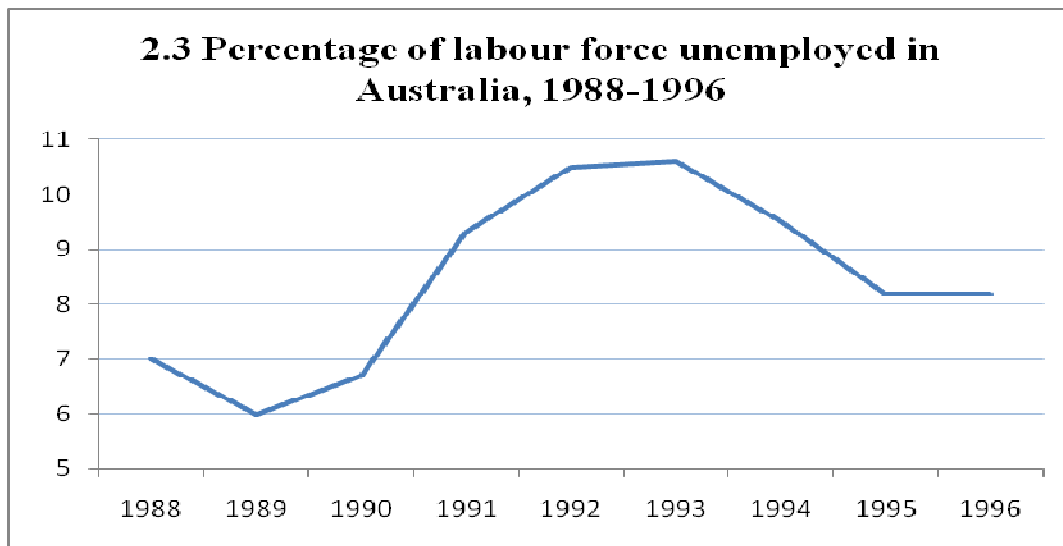
²⁵⁶ ‘Chief Justice gets harsh Govt rebuke’, *Canberra Times*, 20 July 1995. St Vincent de Paul reported that they could house asylum seekers outside detention for less than a third of the cost of detention. While it cost \$55.65 per day for one detainee to be kept in Port Hedland, St Vincent de Paul estimated that asylum seekers could be maintained in boarding style accommodation for \$95 a week. See ‘A bail system may help to ease the suffering of our boatpeople’, *SMH*, 21 July 1995 for more details.

²⁵⁷ Quoted in ‘Ex-PM hits out at condition of detention’, *Canberra Times*, 24 July 1995. It was never mentioned by government that it was nigh on impossible for asylum seekers to receive visitors from fellow nationals considering the cost and location of the centres. An article in the *Canberra Times* of 31 July 1995, entitled ‘The worry of the boat-people policy’, informed readers that to fly to Port Hedland from Perth cost AUS\$379, and to Curtin over AUS\$400. This meant that for someone coming from Sydney, where many of the boatpeople’s fellow nationals lived, it would have cost over AUS\$800 to visit.

²⁵⁸ Quoted in *SMH*, 23 June 1993. These numbers were not accurate. The total number of asylum seekers in Australia at the time was considerably less than 1,000. As an annotation, Isi Leibler, President of the Executive Council of Australian Jewry was to later voice his concern with the use of the term “concentration camp” to describe conditions in centres. When talking about the detention of children, he remarked: “We deplore the use of detention centres for these children but to compare them with what happened with the Nazis or for example with what is happening in Yugoslavia is outrageous,” *Australian*, 21 July 1995. When this term was used to describe living conditions of asylum seekers in Germany in the mid 1990s, it also caused uproar due to its obvious historical connotations, Michael Teitelbaum pers comm. 2006.

²⁵⁹ ‘US report hits at Australian rules for boat people’, *The Age*, 3 Feb 1995.

cent the last option.²⁶⁰ As the opposition spokesman on immigration, Jim Short, remarked in 1993: “There’s a feeling out there that detention is second best: first best would be turn them around and send them back.” Former Immigration Minister Clyde Holding concurred, commenting: “As far as most Australians are concerned, they wouldn’t care less if you sunk the boats. Anti-detention groups have made little impact on public opinion: in a period of high unemployment there’s not much sympathy around for boat people.”



Figures: OECD Factbook 2007: Economic, Environmental and Social Statistics, under the section entitled 'Labour'

Many Australians throughout the 1990s began to feel less and less comfortable with their country’s immigration system. A Saulwick Poll in June 1990 demonstrated that 46 per cent of those polled believed the annual immigration intake remained too high. By June 1996, in spite of a reduction in the annual intake by 40,000, the number of respondents holding such views had risen to 65 per cent.²⁶¹ Politicians tried to dilute this criticism by focusing on the issue of boat people because voicing explicit concerns over Australia’s immigration system led to the possibility of accusations of racism or xenophobia. They achieved limited success, as the subsequent rise of Pauline Hanson swiftly confirmed. Hanson went on to challenge Australian political bipartisanship on immigration like no other critic had managed previously.

²⁶⁰ *SMH*, 11Oct 1993. Quoted in Murray Goot, *Australian Multiculturalism for a New Century: Towards Inclusiveness*, pp. 58-9.

²⁶¹ *Age*, 14 May 1990; *SMH*, 29 June 1996.

2.3 Between Waves

Boat people figured only intermittently in mid 1990s because of decreasing numbers. Enormous changes in local Australian politics during this period would have significant consequences on later boat peoples debates, however. In 1993, the Labor senator Jim McKiernan, when discussing boat people, commented: “There’s very little interest from commercial TV or the tabloids. That’s good. When the tabloids get interested that’s when you get problems.”²⁶² As the 1990s progressed, these fears became real, as the issue of immigration, and subsequently the issue of boat people, gained more and more prominence in the public sphere.

Despite Australian governments reducing annual immigration in the mid 1990s, voters remained dissatisfied. Yet, when John Howard questioned immigration in the late 1980s it resulted in years of political isolation. Howard only returned after a long, painstaking public rehabilitation,²⁶³ and Labor politicians still attacked him for his comments several years later.²⁶⁴ Nonetheless, the potential benefits to be reaped from tapping into this previously untouched voter base meant that someone was bound to take advantage.

In an indication of the potential opposition to immigration, Australians Against Further Immigration (AAFI), a small party only formed in 1989, polled strongly in four by-elections in March 1994, gaining between 6.9 per cent and 13.7 per cent of votes. A *Canberra Times* editorial noted its disappointment: ‘what this country does not need is another damaging immigration debate, like we saw in the 1980s. Immigration is inevitably an issue, but it requires more than usual sensitivity when handling it.’²⁶⁵ In 1995 Geoffrey Blainey, the man who sparked significant debate about the racial makeup of immigration quotas in the mid 1980s, attacked such editorial and political opinion. In his estimation, the reluctance of the media and political parties to discuss the issue of immigration corresponded to an affront to democracy: ‘Again and again newspaper editors and others insist that there must be a partisan approach. We are told that the people can’t be trusted to vote on immigration. Nearly every Immigration Minister in the past 12 years has followed this line of argument.’²⁶⁶

In the run up to the 1996 federal elections, several high profile political

²⁶² Quote taken respectively from Margo Kingston’s ‘Politics and public opinion’, p. 14.

²⁶³ See, for example, ‘I was wrong on Asians, says Howard’, *Australian* 7-8 Jan 1995.

²⁶⁴ See ‘I was wrong on Asians, says Howard’, *Australian* 7-8 Jan 1995 and from ‘Parties warned not to abuse ethnic issue’, *SMH* 4 Nov 1995.

²⁶⁵ ‘No debate on immigration’, *Canberra Times*, 29 March 1994.

²⁶⁶ Geoffrey Blainey, ‘Immigration too readily embraced’, *Australian*, 9 March 1995.

candidates raised the issue of immigration. The National Party, the Labor Party and the Liberal Party all had to deal with renegade candidates making racist and anti-immigration comments. Bob Burgess of the National Party termed Australia's citizenship ceremonies "dewogging exercises," while his fellow party member, Bob Katter, called people who opposed immigration critics "little slanty-eyed ideologues."²⁶⁷ Meanwhile, Labor MP Graeme Campbell had by then become more and more outspoken in his opposition to immigration; going so far as to promote the Australians Against Further Immigration party on several occasions.²⁶⁸ The Liberals also encountered problems controlling one of its candidates, a certain Pauline Hanson, who made several outspoken attacks on immigrants and Aborigines during her campaign. The Labor and Liberal parties responded by sacking Campbell and Hanson whilst the Nationalist party officially reprimanded its candidates.²⁶⁹ Despite this setback, both won their respective seats as independents with Hanson's victory in the traditionally safe Labor seat of Oxley in Queensland representing one of the most remarkable electoral swings in Australian history.

In September 1996, Hanson raised many polemical issues when giving her inaugural speech to the Australian Parliament. In addition to attacking Aborigines, she confronted the issue of immigration head-on:

[F]or far too long ordinary Australians have been kept out of any debate by the major parties. I and most Australians want our immigration policy radically reviewed and that of multiculturalism abolished. I believe we are in danger of being swamped by Asians. Between 1984 and 1995, 40 per cent of all migrants coming into this country were of Asian origin. They have their own culture and religion, form ghettos and do not assimilate. Of course, I will be called racist but, if I can invite whom I want into my home, then I should have the right to have a say in who comes into my country.²⁷⁰

Hanson's speech sparked off a frenzy of tabloid interest. From the date of Hanson's speech in mid September to the end of 1996, for example, Pauline Hanson's name featured in no less than 521 articles in the tabloid *Daily Telegraph*.²⁷¹ It was not only the

²⁶⁷ 'Racism will ruin us in Asia, warns PM', *Daily Telegraph*, 16 Feb 1996.

²⁶⁸ 'ALP rebel speaks on migration', *Australian*, 25-6 Nov 1995.

²⁶⁹ 'Liberal sacked for race remark', *Daily Telegraph*, 15 Feb 1996.

²⁷⁰ Pauline Hanson's inaugural speech in the House of Representatives, 10 Sept 1996. For full text, see <http://www.australianpolitics.com/parties/onenation/96-09-10hanson-first-speech.shtml> (20 Nov 2006).

²⁷¹ The tabloid papers, the *Daily Telegraph* and the Melbourne *Herald Sun* (the most popular newspaper

tabloid press that was fascinated by her impact. The broadsheet *Age* identified her as ‘a social barometer’ while the *Australian Financial Review* believed she had hit the ‘public bullseye’.²⁷²

Hanson also fascinated talkback radio show hosts. With their penchant for the controversial and their claim to represent ordinary Australians, Hanson became an immediate hit.²⁷³ Alan Jones, perhaps the most famous of Australia’s talkback hosts, gave Hanson his implicit support, in between registering his own shock at her popularity. The day after her inaugural address, Jones told listeners: “I’ve got to tell you. Pauline Hanson. She doesn’t know what groundswell of public support she’s tapped.”²⁷⁴ The next day Jones informed his Sydney audience that: “There’s never been figures like this on any issue rung on an open poll ever. We took 37,430 calls yesterday, and 98.48 per cent supported Pauline Hanson.”²⁷⁵ Bob Francis, Wayne Roberts and Stan Zemanek also found their respective Brisbane, Adelaide and Sydney audiences supportive of Hanson’s policies.²⁷⁶

Significantly for Hanson, her election win coincided with John Howard’s onset as premier in a landslide election victory for the Liberal-National coalition over Labor. Howard immediately attempted to take away many of the formalities of Australian politics that had hindered his political career since his ill-fated comments on Asian migration in 1988; in effect aiding Hanson’s rise. Less than two weeks after Hanson’s infamous speech, for example, Howard signalled the death knell of the political correctness that previously symbolised Australian immigration debates:

in Australia), were owned by Rupert Murdoch, as was the only truly national newspaper, the broadsheet *Australian*.

²⁷² See ‘Liberal wets given food for thought’, *Age*, 15 Sept 1996 and ‘Hanson hits public bullseye’, *Australian Financial Review*, 19 Sept 1996.

²⁷³ To realise talkback radio’s influence on Australian politics, one should keep in mind this comment from John Howard in 2002: “Talkback radio is tremendously important in Australia. It has played a greater role in shaping and determining the outcome of elections over the past few years than perhaps has been the case with other sections of the media.” Taken from ‘How to win elections, Howard-style’, *Age*, 13 June 2002 (the article was an edited extract of Howard’s keynote speech to an International Democrat Union luncheon in Washington that same week). For further details about the influence of talkback radio on Australia politics, listen to Graeme Turner’s presentation ‘Talking about Talkback’, Queensland University, 22 Sept 2003. To access an audio version of the talk, go to <http://www.uq.edu.au/news/?article=4919> (23 January 2009).

²⁷⁴ 2UE radio station, 11 Sept 1996. Taken from Phillip Adams & Lee Burton’s *Talkback: Emperors of Air*, NSW: Allen and Unwin, 1997, p. 221.

²⁷⁵ 2UE radio station, 12 Sept 1996. Taken from *ibid*, p. 227. The poll asked listeners if they were in favour of what Pauline Hanson said or not.

²⁷⁶ Francis noted that he was “about 85% her way”, 5AA, 16 Sept 1996. See *ibid*, pp. 199-201. For Roberts and Zemanek’s views see pp. 228-9. The only talkback host of note to resist this Hanson-mania was Sydney’s John Laws. For Laws’ views, see *ibid*, pp. 93-100.

One of the great changes that have [sic] come over Australia in the last six months is that people do feel able to speak a little more freely and a little more openly about what they feel. I welcome the fact that people can now talk about certain things without living in fear of being branded as a bigot or as a racist or any of the other pejorative expressions that have been flung around in this country whenever somebody has disagreed with what somebody has said.²⁷⁷

The 1990s represented a decade of considerable change in Australian indigenous affairs, especially relating to Aborigines' land rights. The 1992 Mabo decision concluded that native land titles survived the settlement of the British in Australia and the 1996 Wik judgement ruled that pastoral leases did not necessarily extinguish native title. Hanson's outspoken opposition to these decisions and other welfare programmes assisting Aborigines won her many admirers. But the Liberal-National coalition allayed much of this criticism by producing a 'Ten Point Plan'.²⁷⁸ As Howard reminded listeners to Alan Jones' Sydney radio show in May 1997: "I'm the Prime Minister who took money out of the Aboriginal and Torres Strait Islander Commission budget. I'm the Prime Minister who was attacked by the media of the country for [doing so]...I'm the bloke who has been under constant attack from Aboriginal leaders for being insensitive to their situation. ... I'm also the Prime Minister who belonged to the party that voted against the Native Title Act in 1993."²⁷⁹ By introducing such moves, the Liberal-National coalition took the steam out of Hanson's sails. During the late 1990s and early 2000s the coalition also sought to address the other issue from which she received most of her popularity: immigration. Yet they achieved this goal through the prism of boat people seeking asylum.

2.4 Restricting Asylum Advocators and Advocating Restrictions, 1996-2001

In the light of Hanson's meteoric rise, one commentator in the *Australian Financial Review* wondered which of the main political parties 'will now be first to have both the

²⁷⁷ Quoted in 'PM ends political correctness', *Canberra Times*, 23 Sept 1996.

²⁷⁸ As Howard said himself at the time, it gave 'the pastoralists all the security and all the protection and all the guarantees that they reasonably need and reasonably require'. Taken from the transcript of John Howard's 'Doorstop Interview' before his address of the Asia Society, Sydney, 8 May 1997.

²⁷⁹ Quoted in Michael Bachelard, *The Great Land Grab: What Every Australian Should Know About Wik, Mabo and the Ten-point Plan*, South Melbourne: Hyland House, 1997, p. 97.

moral courage and the political savvy to (largely) agree with Mrs Hanson?'.²⁸⁰ The Liberal Party's decision to steadfastly amend many of Labor's migration policies soon after coming to office and John Howard's reluctance to label Hanson supporters in a negative light quickly answered this question. In Howard's opinion, fans of Hanson's policies were not "bigoted, narrow-minded and racist" but people concerned with "the pace of change and the pressures that parts of our community are under. These concerns deserve the most sensitive understanding."²⁸¹ Research in late 1997, illustrating that the majority of Hanson's supporters previously voted for the coalition parties, demonstrated why Howard and the Liberals discussed Hanson's potential supporters so carefully.²⁸²

In the summer of 1998, Pauline Hanson's One Nation Party published its proposed immigration policy.²⁸³ One central component related to asylum seekers. According to the policy proposal, those who qualified for refugee status would be provided only with 'temporary refuge until the danger in the refugee's country is resolved'.²⁸⁴ John Howard dismissed One Nation's immigration and asylum policies as "alarmist nonsense," while the Justice Minister, Amanda Vanstone, asked: "Why ... anybody tries to continue to give Ms Hanson and her ratbag nonsense collection of policy any publicity, I don't know."

Hanson's popularity peaked in June 1998, when her One Nation Party, formed following her election victory in 1996, took over twenty per cent of the vote in Queensland's state election. In doing so, One Nation became the second most popular party in Queensland following Labor. Shortly thereafter, the party self-imploded due to a number of internal rankles. Its influence lasted considerably longer, however, with the Liberals embracing some of her policies, most notably that relating to temporary refuge, and Labor silently watching for fear of alienating some of its voters.

Formation

From 1989 to 1996, Labor introduced various asylum policies to discourage future boat people from arriving and to impede boat people already in the country from remaining.

²⁸⁰ 'Hanson hits public bullseye', *Australian Financial Review*, 19 Sept 1996.

²⁸¹ John Howard, 'Empty populism offers bitter future', *Australian*, 19 May 1997.

²⁸² See 'One Nation lures Liberals, Nationals', *SMH*, 5 May 1997.

²⁸³ John Howard dismissed One Nation's policy as "alarmist nonsense," while Justice Minister, Amanda Vanstone, said: "Why ... anybody tries to continue to give Ms Hanson and her ratbag nonsense collection of policy any publicity, I don't know." See 'Refugees should be expelled: Hanson', *Age*, 2 July 1998 and 'Leaders line up to shoot holes in policy', *Australian*, 3 July 1998.

²⁸⁴ Taken from One Nation's 1998 policy paper, entitled 'Immigration, Population and Social Cohesion', <http://www.australianpolitics.com/parties/onenation/immigration-policy-98.shtml>.

The Liberals, under the leadership of John Hewson until 1994, regularly condemned Labor's asylum policies. But when John Howard took over the leadership of the party in early 1995, the Liberals began to support Labor's measures. After taking office in 1996, the Liberals resolutely vowed to continue Labor's tradition of attempting to deny actors sympathetic to boat people from influencing asylum policy.

The number of boat people arriving in Australia declined significantly from 1996 to 1998 (from 589 to 157). Consequently, discussion during this period centred on boat people's asylum applications and their possible repatriation (by May 1996, Australia had returned over 1,000 boat people to China).²⁸⁵ When the government refused to hand over Human Rights and Equal Opportunity Commission (HREOC) letters to detained boat people informing them of their right to claim asylum, the HREOC successfully challenged the Australian government in the Federal Court.²⁸⁶ The government quickly responded by introducing the 1996 *Migration Legislation (Amendment) Bill (No.2)* to continue its pre-court practice. The HREOC declared that the bill was "unjust, unfair and un-Australian."²⁸⁷ Labor, on the other hand, supported the bill wholeheartedly, with only the minor Democrat Party voicing any meaningful political opposition.

The Labor government introduced the *Migration Legislation Amendment Act* 1994 to limit the amount of appeals made to Australia's courts by asylum seekers. But because of its only partial success, the recently re-elected coalition government presented further amendments seeking to curtail boat people's access to the Australian judicial system in 1998. Philip Ruddock, the Liberal Immigration Minister, outlined the main objective of the 1998 *Migration Legislation Amendment (Judicial Review) Bill*: to reduce the "manipulation of Australia's judicial system by unlawful non-citizens seeking to delay their departures from Australia".²⁸⁸

To punish people who failed to "do the right thing" and apply for asylum from outside the country, as those entering the country as part of the Refugee and

²⁸⁵ Barry York, *Australia and Refugees, 1901-2002: An Annotated Chronology Based on Official Sources*, p. 70.

²⁸⁶ Human Rights and Equal Opportunity Commission & Another v Secretary of the Department of Immigration and Ethnic Affairs (Unreported, 7 June 1996, Lindgren J, NG 268 of 1996).

²⁸⁷ Chris Sidoti, the Commissioner of HREOC was quoted in 'New move against illegal migrants', *SMH*, 1996. For more discussion about the concepts 'Australian' and 'Un-Australian', see Tim Phillips and Philip Smith, 'What is 'Australian'? Knowledge and Attitudes Among a Gallery of Contemporary Australians', *Australian Journal of Political Science*, Vol. 35, No. 2, 2000, pp. 203-224 and Tim Phillips and Philip Smith, 'Popular understandings of 'unAustralian': An Investigation of the un-national', *Journal of Sociology*, Vol. 37, No. 4, 2001, pp. 323-339.

²⁸⁸ Quoted in Barry York, *Australia and Refugees, 1901-2002: An Annotated Chronology Based on Official Sources*, p. 79.

Humanitarian Scheme did, the government announced its intention to implement the 1999 *Migration Amendment Regulation (No. 12)*. The bill proposed that boat people given refugee status would only be entitled to three year Temporary Protection Visas (TPVs) instead of permanent protection, as Hanson had advocated in July 1998. Another part of the bill proposed that boat people classified as refugees would be ineligible from obtaining permanent visas and associated benefits, such as family reunion and the right to travel outside of Australia.²⁸⁹ Accommodation became the responsibility of the visa holders to find, as did the setting up of bank accounts and other administrative tasks previously performed by officials for refugees. Responding to NGOs' appeals concerning the lack of government assistance given to these TPV holders, a government spokesman replied: "They are the ones who chose to come here illegally. If they had come through the normal channels, their situation would be quite different."²⁹⁰ Labor backed the move.²⁹¹ This followed a number of measures enclosed in the *Border Protection Legislation Amendment Bill*, which was passed in September 1999. It contained similar instruments to the EU's Dublin Convention by allowing the state to return any boat person found to have applied for or received asylum in another country.

Implementation

Despite the government's stated aim to 'restrict access to judicial review in visa-related matters' – a policy 'upon which it was elected in 1998', according to the Immigration Minister – the amount of appeals made by asylum seekers to the Australian courts continued to grow.²⁹² In 1995/96, 282 asylum applicants sought judicial review of decisions made by the administrative Refugee Review Tribunal (RRT) in the Federal Court. By 1998/9 this rose to 651 and by 2000/01 to 914.²⁹³ A parallel rise occurred in the number of cases in which either the judge set aside the RRT's decision or the immigration department agreed to reanalyse the case. This occurred in eleven per cent of cases in 1996/7, sixteen per cent of cases in 1997/8 and twenty-five per cent of cases in

²⁸⁹ *Migration Amendment Regulation* 1999 (No. 12), s. 785.5.

²⁹⁰ See 'Ruddock accused of neglect over refugees', *Australian*, 18 July 2000.

²⁹¹ David Kerr and Marian Wilkinson, *Dark Victory*, Crows Nest, NSW: Allen & Unwin, 2003, p. 317.

²⁹² Philip Ruddock, 'Refugee Claims and Australian Migration Law: A Ministerial Perspective', *UNSW Law Journal*, Vol. 23.3, 2000, pp. 1- 12, p. 5.

²⁹³ Figures for 1995/6 and 1998/9 taken from Justice Ronald Sackman, 'Judicial Review of Migration Decisions: An Institution in Peril?', *UNSW Law Journal*, Vol. 23.3, 2000, pp. 190-207, p. 197 and figures from 2000/01 come from Jennifer Wellington, 'What's wrong with the refugee determination system in Australia? A Study of the Refugee Review Tribunal', A Study for the Edmund Rice Foundation, 2005, p. 4.

1998/9.²⁹⁴ Accordingly, the government began another attempt to stem the influence of the courts. Ruddock defended this by stating ‘the principle that the foundation of judicial powers lies in the will of the people as expressed through Parliament’.²⁹⁵

Appeals could only be brought before the Federal Court on limited grounds. Furthermore, it could only recommend a re-examination of the immigration department and the RRT’s decisions. The High Court still retained the right to change the decisions imposed by the administrative refugee determination process as guaranteed by the Australian Constitution. Consequently, the High Court began to witness a noticeable growth in appeals related to asylum cases. In 1995-6, one year after the terms under which asylum applicants could seek review before the Federal Court became more restricted; cases relating to asylum decisions comprised eighteen per cent of all High Court cases. By 1999-00, this had risen to forty-seven per cent.²⁹⁶ As Mary Crock and Ben Saul point out, the Australian High Court consisted of seven judges chosen to decide on the most pertinent legal questions facing the country rather than adjudicate over refugee appeals.²⁹⁷

The rise in appeals coming before the Federal and High Courts also reflected the increased number of boats arriving toward the beginning of the twenty-first century.²⁹⁸ Between 1999 and August 2001, over 8,000 boat people arrived in the country, compared to less than 600 the two years beforehand.

²⁹⁴ Figures taken from Justice Ronald Sackman, ‘Judicial Review of Migration Decisions: An Institution in Peril?’, p. 198.

²⁹⁵ Philip Ruddock, ‘Refugee Claims and Australian Migration Law: A Ministerial Perspective’, p. 7.

²⁹⁶ Mary Crock and Ben Saul, *Future Seekers. Refugees and the Law in Australia*, Sydney: Federation Press, 2002, p. 58.

²⁹⁷ *Ibid*, pp. 58-9.

²⁹⁸ In the first two weeks of November 1999, for instance, 717 boat people arrived in Australia in six boats. Barry York, *Australia and Refugees, 1901-2002: An Annotated Chronology Based on Official Sources*, p. 93.



Source: Barry York, *Australia and Refugees, 1901-2002: An Annotated Chronology Based on Official Sources*, pp. 140-1.

The coalition government consistently reinstated its desire to maintain and upgrade its detention measures in order to deter future arrivals. Yet, figures continued to increase despite implementation of increasingly punitive measures. Instead, they produced a series of domestic challenges that once again raised the issue of the ethics and feasibility behind the sustained detention of all boat people in Australia.

Effects

A combination of the Australian government's desire to mandatorily detain all boat people and rising numbers resulted in overcrowded detention facilities. This contributed to a notable escalation in the manifestation of various forms of peaceful and violent protests by those detained. These demonstrations often served to highlight the treatment meted out to boat people by Australasian Correction Management, a private company owned by the US security firm Wackenhut that supervised Australia's immigration detention centres. Nonetheless, they also led to a further build-up of hostility to boat people by an increasingly apathetic Australian public and government.

The first protest that captured public interest took place at Curtin airbase detention centre in West Australia in February 2000, when a number of boat people stitched their lips together in protest at detention camp conditions. The West Australia Premier, Richard Court, communicated his bewilderment at the situation:

We are looking after them here while we sort through whatever the paperwork details

are and yet they are protesting in this way. ... I mean, I can't quite follow the logic. What a nerve to be complaining about the system they have sort of thwarted. ... They have come in illegally and just have complete disregard for the proper processes of coming into this country, so I don't think they are in any position to protest.²⁹⁹

As detainees' protests against their inhumane treatment became more extreme, so too did many Australians' opposition to their release. In early June 2000, several hundred boat people escaped from Woomera detention centre in protest against conditions.³⁰⁰ Even though the centre only opened in the remote South Australia town in November 1999 – to accommodate the rising number of boat people arriving in Australia – it became the focus of boat people's protests in the forthcoming years.

Remonstrations reached a climax in late August 2000 when riots occurred at Woomera over its overcrowding problems. Demonstrations also took place simultaneously at several other detention centres around the country. Detainees set buildings alight and staff responded by using tear gas. The Australian public felt outraged, with 98% of nearly 5,000 calls to a *Herald Sun* opinion poll stating that Australia ought to expel protesting asylum seekers from the country.³⁰¹ Philip Ruddock also took a dim view of the rioters' actions and openly informed readers in the aforementioned *Herald Sun* what he thought of boat people: 'the people who demonstrated came to Australia without invitation or authority. ... Reluctantly, we have to accept their arrival, at least in the short term.'³⁰²

Incidents continued to occur throughout the following months. In January 2001, asylum seekers at the isolated Port Hedland centre staged another riot, which led Ruddock to suggest that chemical injections should be more "comprehensively implemented" in stemming these actions.³⁰³ In April 2001, two riots took place at Curtin and again at Port Hedland. Ruddock reiterated the government's stance on protests: "Some people seem to believe they will be able to force our hand, that they will be able to get different decisions if they are able to put pressure on us ... There is no way that we will succumb to that type of pressure."³⁰⁴

²⁹⁹ Quotes taken from 'Court hits out at 'nerve' of protesting detainees', *Australian*, 8 Feb 2000.

³⁰⁰ See 'Illegals storm town centre', *Australian*, 9 June 2000.

³⁰¹ See *Herald Sun*, 30 Aug 2000.

³⁰² Philip Ruddock, 'Riots will not sway us', *Herald Sun*, 30 Aug 2000.

³⁰³ See *SMH*, 23 Jan 2001 for details of the riot and Ruddock's response. An Australian court later found the centre's operation manager guilty of assaulting an Iranian asylum seeker. This actually sparked riot. 'Officer guilty of bash attack on refugee', *Australian*, 27 April 2001.

³⁰⁴ 'Ruddock won't give in to rioters', *Australian* 6 April 2001.

Contrastingly, actors sympathetic to detainees reasoned that these riots demonstrated the futility of mandatory detention, using the growing body of information on the ill effects of detention to highlight their arguments. In February 2001, a senior Australian diplomat, Philip Flood, produced a report into immigration detention procedures that found ‘a small proportion of detention officer staff was treating detainees, including children, as if they were criminals’.³⁰⁵ One month later, the Commonwealth Ombudsman, Oliver Windler, issued a report urging the government to find an alternative to detention: “My investigation revealed evidence at every (detention centre) of self-harm, damage to property, fights and assaults, which suggested there was systemic deficiencies in the management of the detainees, including individuals and groups, staff, women and children.”³⁰⁶ In June of the same year, a twelve member parliamentary Human Rights Sub-Committee, which included five MPs from the ruling Liberal Party, unanimously recommended a 14-week time limit on the mandatory detention of asylum seekers arriving in Australia without a valid visa. The report outlined the despair many asylum seekers felt detention instigated:

The most constant complaint from detainees was about the length of their detention. They felt that they were being held in a jail-like environment and treated as criminals. A comparison with prisoners was often made, with claims that prisoners were better off because they knew why they were in jail, were provided with better facilities and knew how long their sentence would be.³⁰⁷

Australia’s Immigration Minister, Philip Ruddock, and Prime Minister, John Howard, reacted with dismay to the findings and recommendations set out in the report. Both referred to the committee as naïve, with Howard underlining the committee’s innocence: “A jail is confronting ... a lot of people have never been inside jails in any kind of capacity. And when they first go there, even as a visitor, they find it very confronting.” Ruddock went further in his criticism of the committee, accusing them of indolence: “The report comes from a group of people who have not put in the hard yards.”³⁰⁸

³⁰⁵ Philip Flood, *Report of Inquiry into Immigration Detention Procedures*, 2001. Taken from ‘Conclusions and Recommendations’, 10.12. See <http://www.spareroomsforrefugees.com/pages/flood.htm>, p. 42 (20 Nov 2006).

³⁰⁶ See ‘Abuse claims false: Ruddock’, *Australian*, 2 March 2001.

³⁰⁷ Parliament of the Commonwealth of Australia: Report of the Joint Standing Committee on Foreign Affairs, Defence and Trade, *A Report on Visits to Immigration Detention Centres*, Canberra: Australian Government Publishing Service, June 2001, p. 89.

³⁰⁸ See ‘Let illegals out after 14 weeks: MPs’, *Australian*, 19 June 2001 and ‘Ruddock says sorry, but MPs

2.5 Boats and Votes: *Tampa* and Beyond, 2001-2008

Ruud Lubbers, the head of the UNHCR, wrote an article in the *Australian* in June 2001 criticising the substance of asylum debates in Australia and other liberal democratic states in recent and upcoming elections:

Statistics are frequently manipulated, facts are taken out of context, and the character of asylum seekers as a group is often distorted in order to present them as a terrible threat – a threat their detractors can then pledge to crush. Politicians taking this line used to belong to small extremist parties. But nowadays the issue is able to steer the agenda of bigger parties. Their opponents – finding their party presented as weak in the face of the foreign hordes clamouring at the gates – respond by seeking tighter laws, making it more difficult, for foreigners of any sort to cross into their territory. It becomes a numbers game: reduce arrivals at all costs.³⁰⁹

Despite Lubber's plea for change, the debate over boat people in Australia from July 2001 until the general election in November 2001 corresponded almost unerringly with the scenario Lubbers wanted to avoid. The Liberals made the issue a topic of primary importance, pledging to reduce the number of boat people at all costs. Their rhetoric frequently resembled that of the One Nation Party. Predictably, Labor, fearing the loss of voters, begrudgingly followed the government's hard-line on boat people. This enabled the coalition government to oversee the enforcement of Australia's most restrictive policies on boat people since the dismantling of the White Australia immigration policy in the late 1960s. Labor's return to power in early 2008 saw a reprieve in the rhetoric used against boat people although question marks remain over whether this will lead to a noticeable change in policies.

Formation

A spokesman for the Immigration Minister in August 2001 remarked: "If we get another few large boats it's going to put the system under strain."³¹⁰ The appearance of the Norwegian *Tampa* off the coast of Christmas Island in late August 2001, with over 400

still 'naïve', *SMH*, 20 June 2001 for relevant quotes.

³⁰⁹ Ruud Lubbers, 'Don't kick refugees just to score points', *Australian*, 20 June 2001.

³¹⁰ 'Detention facilities filling fast', *Australian*, 22 Aug 2001.

rescued asylum seekers onboard realised this prophecy. Nonetheless, the government would convert this practical problem into a tool to achieve considerable political gains in the subsequent pre-election weeks. Before the political storm caused by the *Tampa* incident, polls suggested Labor would comfortably return to power at the November federal elections. But the *Tampa* crisis sparked brought voters back to the coalition like no other issue. Despite Howard insisting that “It’s got nothing to do with the upcoming elections,”³¹¹ it had everything to do with them.

The Australian government categorically denied the *Tampa* permission to land at Christmas Island as it approached in late August. The government took this move, according to the Prime Minister, “in the national interest” because it “prevent[ed] beyond argument people infringing the sovereignty of this country.”³¹² An international standoff ensued between Indonesia – in whose waters the *Tampa* rescued the boat people, Australia and Norway. Australia’s decision to disallow the *Tampa* to land on Christmas Island incurred the wrath of the UNHCR, as well as widespread international condemnation. But the coalition remained determined to disallow the boat from approaching the island, with Ruddock insisting: “If these people were to enter Australia now, it would be seen as the sign for all of them [boat people] to continue coming in the way in which they are.”³¹³

Labor initially supported the government’s stance. But when the coalition attempted to rush through emergency legislation to reinforce its power to forcibly move the ship, Labor hesitated and rescinded its approval. The coalition responded by attacking Labor’s perceived weakness on the issue. Nevertheless, in early September, with the standoff slowly developing into a critical international situation, it appeared Howard and his cohorts had unsuccessfully overstepped the mark. Australia received few international offers to share the asylum burden,³¹⁴ and it looked increasingly as if Australia would have to let the *Tampa* land because of the mounting humanitarian situation facing the boat’s Norwegian captain. But just as it seemed the Australian government would have to perform an embarrassing volte-face, it produced its saving grace: the so-called ‘Pacific Solution’.

The Pacific Solution involved transferring the rescued boat people on the *Tampa*,

³¹¹ Quote taken from ‘Tampa stance not linked to election: Howard’, *Age*, 31 Aug 2001.

³¹² Quoted in the *Australian*, 30 Aug 2001.

³¹³ Quote taken from ‘Australia fights to save face’, *SMH*, 31 Aug 2001.

³¹⁴ New Zealand was the only country to offer to take some of the asylum seekers during the standoff. In November of that year, Ireland offered shelter for some of the asylum seekers.

and future asylum seekers found on course for Australia, to a small number of islands dotted around the Pacific. Nauru, the smallest republic in the world with a population of 12,000, became the first island to accept Australia's offer of substantial compensation in exchange for housing the asylum seekers in detention centres built with Australian money. When Nauru agreed to Australia's venture, Howard's relief was palpable. He exultantly announced: "I have had a goal, and so far it looks as if that is being achieved. ... I am very pleased that the people are now on the way." In his opinion: "What has been achieved is that we have demonstrated a determination not to just meekly accept a situation where people can, without authorisation say 'we are coming to your country'." ³¹⁵

As Michael Gordon pointed out in the *Age*, Howard's uncompromising stand was 'untidy, costly [and] damaging to Australia's international standing ... [b]ut it has put the Prime Minister back in contention for the election that seemed a lost cause just four months ago.' ³¹⁶ Gordon also reflected on how the episode had damaged Labor's election chances. For some voters, the Labor leader, Kim Beazley, had faltered on the issue of boat people by appearing too soft and inconsistent; for others he appeared overly harsh and compliant with the government on the issue.

The Australian government's Pacific solution to the Tampa crisis failed to signal the end of the debate on boat people. By 2001, the majority of boat people came from Muslim countries, particularly Iraq and Afghanistan. Consequently, after the terrorist attacks in New York and Washington on 11 September 2001, the issue of boat people entered political debate once again, as actors opposed to the entry of boat people raised the possibility of potential links existing between boat people and terrorism. The Australian Solicitor-General, for example, drew a powerful analogy between boat people and the perpetrators of the New York terrorist attacks only two days after the 9-11 attacks. ³¹⁷ So too did Peter Reith, the Liberal Minister for Defence, when linking asylum policy with terrorism: "I have no doubt whatsoever that the horror of the last 36 hours, 48 hours, is only going to reinforce the whole security issue in terms of dealing with terrorism. And that means you have got to be able to control your borders, otherwise if you have got people moving in and out willy nilly, then this can be a

³¹⁵ Both quotes are taken from 'Howard: Goal reached', *Age*, 4 Sept 2001.

³¹⁶ Michael Gordon, 'Tampa gives PM refuge from sinking poll hopes', *Age*, 4 Sept 2001.

³¹⁷ "Suppose there was a vessel with terrorists and weapons on board and no state of war exists," Mr [David] Bennett said. "They are to be regarded as friendly aliens (if the Government has no power to expel them). The people who did what happened in New York the other day are friendly aliens." For more details, see 'Terror attack fears in boat people law', *Herald Sun*, 14 Sept 2001.

conduit for extremist terrorist groups.”³¹⁸

Worse caricatures of boat people followed some weeks later. On 6 October the Australian government announced that intercepted boat people had jumped in the water and thrown their children overboard to stop the navy towing their boat back to Indonesian waters. Ruddock considered this action despicable: “I regard this as one of the most disturbing practices I’ve come across.” He also inferred that because those in the water wore life jackets, it represented a callous, calculated act by the boat people in question.³¹⁹ Two days later, John Howard added his voice to the discussion: “Quite frankly, I don’t want in this country, people who are prepared, if those reports are true, to throw their children overboard.”³²⁰ The government distributed two photos showing the Australian navy rescuing several children in the water to support its account. The tabloid *Daily Telegraph* also revealed that the boat people included ‘a man believed to be a “sleeper” agent with connections to Osama Bin Laden’.³²¹ The navy subsequently transported these asylum seekers to a new detention centre set up on another Pacific neighbour, Papua New Guinea, under the terms of the new Pacific Solution.

Two weeks later, 353 asylum seekers destined for Australia drowned. The boat, referred to as the SIEV X (Suspected Illegal Entry Vehicle – the X stood for unknown), encountered serious difficulties after hitting bad weather on the first night of its journey from Indonesia on 18 October 2001. Exceedingly overcrowded, by midday on 19 October, the boat’s engine ceased to work. Later that same afternoon, the ship sank rapidly. On 20 October, Indonesian fishermen rescued the remaining forty-five survivors.³²² Instead of arousing bilateral compassion, a slugging match between Labor and the Liberals ensued. Kim Beazley, the Labor leader, sparked the clash by indirectly linking the disaster with the government’s perceived foreign policy failure to force Indonesia to stop boats leaving for Australia. Philip Ruddock replied in kind: “If there is a linkage, it is in the failure to get reform through which would have addressed thoughts of Australia as an easy touch.”³²³ The tragedy of the SIEV X related to the amount of

³¹⁸ ‘Terrorist link with boat people – Reith’, *Daily Telegraph*, 14 Sept 2001.

³¹⁹ ‘Boatpeople jump in bid to stay’, *Age*, 7 Oct 2001.

³²⁰ John Howard was talking to radio 2UE. Quoted in ‘Refugees rescued as their boat sinks’, *Canberra Times*, 9 Oct 2001.

³²¹ See the frontpage of the *Daily Telegraph*, ‘What really happened aboard HMAS Manoora’, 13 Oct 2001. HMAS Manoora was the Australian navy ship that transported the asylum seekers to Papua New Guinea, as their boat had become unsafe to travel in.

³²² For more details about the tragedy, see the chapter in David Kerr and Marian Wilkinson’s, *Dark Victory*, entitled ‘The Boat that Sank’, pp. 296-314.

³²³ See ‘Black day for refugee debate’, *Australian Financial Review*, 24 Oct 2001.

victims who had attempted to join family members already residing in Australia on Temporary Protection Visas. Previous legislation would have enabled these refugees to facilitate family reunion but changes made in 1999 made this an impossibility.

Several days before the November election, John Howard chose to attack Kim Beazley again over his perceived weakness toward boat people: “Can you believe ... with all the fraying at the edges that is now occurring, that if Mr Beazley were to become Prime Minister he would maintain the policy I have adopted?”³²⁴ Simultaneously, houses across Australia received Liberal Party pamphlets containing John Howard’s photo alongside his popular statement on boat people: “We will decide who comes to this country and the circumstances in which they come.”³²⁵ Days before the election, Howard again revived the possible link between terrorism and boat people: “You don’t know who’s coming and you don’t know whether they do have terrorist links or not – I just don’t know but I think a country has got a perfect right to try [to] find out. And the only way you can find out is for them to be processed in a proper and reasonable fashion.”³²⁶

Implementation

Several government bills proposed to counter the arrival of boat people in a ‘proper and reasonable fashion’. One bill to excise certain Australian islands from the country’s territorial waters for boat people (the *Migration Amendment [Excision from Migration Zone] Bill* 2001). Another reduced the rights of boat people to access the Australian judicial system by transporting them to Pacific islands outside the remit of Australian law (the *Migration Amendment [Excision from Migration Zone] [Consequential Provisions]*). Another stipulation allowed officials to direct a ship carrying boat people from Australian territorial water back into international waters. The government also introduced a privative bill to ensure rejected asylum seekers in Australia could not access the national courts. In early October 2001, Philip Ruddock outlined the effects this hard-line political response would have: ‘unauthorised arrivals do not achieve their goal of reaching Australian soil; there is no automatic access to Australian residency; [and,] there is no access to the judicial system’.³²⁷ Though sympathisers successfully disputed the privative clause in *Plaintiff S157/2002 v Commonwealth*, the government

³²⁴ ‘PM ups the ante on boat people’, *SMH*, 7 Nov 2001.

³²⁵ See ‘A sly-dog race card’, *Bulletin*, 13 Nov 2001.

³²⁶ ‘Beware of terrorists in refugee clothing’, *Australian*, 8 Nov 2001.

³²⁷ Philip Ruddock, *Australian Financial Review*, 6-7 Oct 2001.

managed to implement the other measures it presented after *Tampa*.

When Ruddock brought in temporary protection visas (TPVs) for boat people in October 1999, he reduced the rights and benefits available to those entitled to refugee status. The changes effected in the wake of the *Tampa* crisis proposed to reduce the rights for those people even further. While the 1999 changes denied access to permanent residency and family reunion for three and five years respectively, the new model intended to deny permanent residency or family reunion for an unlimited period. Furthermore, if refugees on TPVs ever left Australia they would nullify any entitlement to return.

James Jupp has written that John Howard's decision to deny *Tampa* permission to land, and his government's subsequent enforcement of the Pacific Solution, represented an attempt by the Prime Minister to regain many of the one million votes that Jupp estimates his party had previously lost to Hanson's party.³²⁸ Whether this won the election for the coalition or not, it definitely helped it to a decisive victory on 10 November.³²⁹ In the words of a later Senate Committee report:

The timing of the Tampa incident in the lead up to the Federal election provided an opportunity for a hardline political response which reflected popular sentiment. The terrorist attacks in the USA on 11 September further fed fears concerning unauthorised boat arrivals, many of whom were Muslims from Iraq and Afghanistan, through a loose linking of the asylum seeker issue with national security concerns.³³⁰

Effects

In the wake of the November federal election, actors sympathetic to boat people became more vocal than ever before. Several former leading politicians severely criticised the government's stance. Most consistently vocal of these was former Liberal Prime Minister, Malcolm Fraser. Others included former prominent Liberals, John Hewson, Ian Macphree and Fred Chaney. Prominent academics and journalists also questioned the messages communicated to the public by politicians. As the Australian Defence Force

³²⁸ See James Jupp, *From White Australia to Woomera*, p. 194.

³²⁹ It is impossible to answer the hypothetical question: would the Liberals have lost the federal election if the issue of boat people had not arisen. It seems fair however, to conclude that the issue helped the Liberals to what David Kerr and Marian Wilkinson aptly declared a 'Dark Victory'.

³³⁰ Australian Senate Report, *Select Committee on A Certain Maritime Incident*, October 2002, p. 252. A reference is also made to Scott Bennett, Gerard Newman and Andrew Kopras's, *Commonwealth Election 2001*, Research Paper No. 11 2001-02, Department of the Parliamentary Library, 19 March 2002, p. 10.

Academy's William Macey pointed out, the offshore program was "not a place in a queue but a ticket in the lottery".³³¹ Tim Colebatch, the *Age* journalist, concurred: 'each year, just one in every 2000 people living in refugee camps gets a ticket to enter Australia. We take one Afghan refugee a year for every 4000 in the camps.'³³² Critics also questioned the "wonderful humanitarian record" that Howard promoted at the height of the *Tampa* crisis, with one journalist finding that out of 71 countries that took displaced persons, Australia came in 32nd in the ranking. When calculated on a per capita basis, Australia slipped down to 38th on the standings. Of twenty-nine developed countries that accepted refugees and asylum seekers, only four placed asylum seekers into detention centres.³³³ To emphasise the disapproval of policy regarding boat people among a significant section of Australian society, a new Melbourne based group, Australians Against Racism, began running TV advertisements querying the government's asylum policy in December 2001.³³⁴

When Dr Aamer Sultan and Dr Kevin O'Sullivan published an article in December 2001 attempting to determine the psychological impact of indefinite imprisonment on asylum seekers, it gave these actors' further ammunition to attack government practices. Sultan, himself an asylum seeker detained in Villawood Detention Centre, and O'Sullivan, a consultant psychologist at Villawood, determined that the 33 detainees in their study displayed traits that demonstrated psychological problems on four different levels caused by their detention. This went from detainees feeling aggrieved and shocked at their imprisonment, to 'develop[ing] frankly psychotic symptoms' with some of them engaging in 'repeated acts of self-harm or self-mutilation leading to acute hospital admissions'.³³⁵

In May 2002, the Catholic Commission for Justice, Development and Peace produced a report, entitled *Damaging Kids*, which found that 'widespread psychological and emotional abuse of children and young people [wa]s occurring as a result of being incarcerated in Immigration Detention Centres.' It firmly pointed the finger of blame at the Department of Immigration: 'Responsibility for this human destruction and psychological child abuse lies not with the people detained but with DIMIA

³³¹ 'Toxic rhetoric blurs sorry truth', *Australian*, 25 Sept 2001.

³³² Tim Colebatch, 'Refugees: as you do unto the least of them ...', *Age*, 14 Nov 2001.

³³³ Mungo MacCallum, 'Our door is open – but less open than others', *SMH*, 1 Oct 2001.

³³⁴ See 'TV aid queries government's policy on refugees', *Age*, 10 Dec 2001.

³³⁵ Aamer Sultan and Kevin O'Sullivan, 'Psychological disturbances in asylum seekers held in long term detention: a participant-observer account', *Medical Journal of Australia*, Vol. 175, 2001, pp. 593-596. See also http://www.mja.com.au/public/issues/175_12_171201/sultan/sultan.html.

[Department of Immigration, Multicultural and Indigenous Affairs].³³⁶

In October 2002, criticism of the government's handling of asylum seekers reached new levels, with the release of a senate report into the government's allegation that asylum seekers deliberately threw their children overboard after an altercation with the Australian navy in early October 2001 (discussed above). The report found that the government had misled the media by mislabelling the photographs distributed.³³⁷ Although some sources questioned the veracity of the government's claims in the run-up to the general election,³³⁸ 'through a combination of denial, obfuscation, and misleading statements the media, senior officials and the public were deliberately and systematically deceived about the evidence for the veracity of the claim.'³³⁹

In late 2002, one NGO alleged that those responsible for the management of detention centres on Nauru and Christmas Island treated asylum seekers in an inhuman, cruel and degrading way.³⁴⁰ Nauru later denied entry to lawyers, human rights activists, health care professionals and independent observers during the trial of twenty-one asylum seekers prosecuted for their alleged involvement in riots that took place on Christmas Eve 2002.³⁴¹ The timing of these reports, following the Bali Bombings that took the lives of eighty-eight Australians, meant that sympathy for boat people repeatedly linked with Islamic terrorism by government politicians remained relatively muted.

In addition to NGOs, academics and former politicians highlighting the plight of asylum seekers kept in detention centres; asylum seekers themselves launched a series of protests aimed at drawing attention to their troubles. In January 2002, a series of protests took place at Woomera detention camp when approximately 200 Afghans went on hunger strike. Dozens sewed their lips together to protest against the postponement of Afghans' asylum applications, which followed the fall of the Taliban. The government's first reaction mirrored earlier responses, with Ruddock maintain that protestors would change nothing by protesting.³⁴² Days later however, the government rescinded its hard-

³³⁶ Taken from the Executive Summary of the Catholic Commission for Justice, Development and Peace produced a report entitled, *Damaging Kids*, May 2002. Accessed at http://www.hreoc.gov.au/human_rights/children_detention/submissions/cath_justice.html (31 May 2007).

³³⁷ Australian Senate Report, *Select Committee on A Certain Maritime Incident*, October 2002, p. xiv.

³³⁸ See 'Navy scuttle', *Australian*, 9 Nov 2001.

³³⁹ Australian Senate Report, *Select Committee on A Certain Maritime Incident*, October 2002, p. 119.

³⁴⁰ Spare Room for Refugees, *Soldiers, Sailors and Asylum Seekers*, 2002. See also 'Asylum seekers being tortured, report claims', *Age*, 21 Dec 2002.

³⁴¹ 'Nauru bars outsiders during riot trial', *Age*, 25 Aug 2003.

³⁴² See, for example, 'Go home, Ruddock tells Afghan protestors', *SMH*, 21 Jan 2002.

line stance, agreeing to fast-track Afghans' asylum applications after protests intensified.³⁴³

Simon Crean, who took over from Kim Beazley as Labor leader after its 2001 election defeat, obviously felt that public opinion towards boat people had softened enough for him to publish a Labor policy paper on asylum and refugee policy with his immigration spokeswoman, Julia Gillard, in December 2002. The paper declared Labor's opposition to the denial of permanent residence in Australia to boat people and its intention to grant boat people with refugee status similar rights to overseas refugees, including English lessons and access to the Job Network. It also proposed the end of the "Pacific solution" and promised instead to treat people in detention in a more humane and 'Australian way'.³⁴⁴

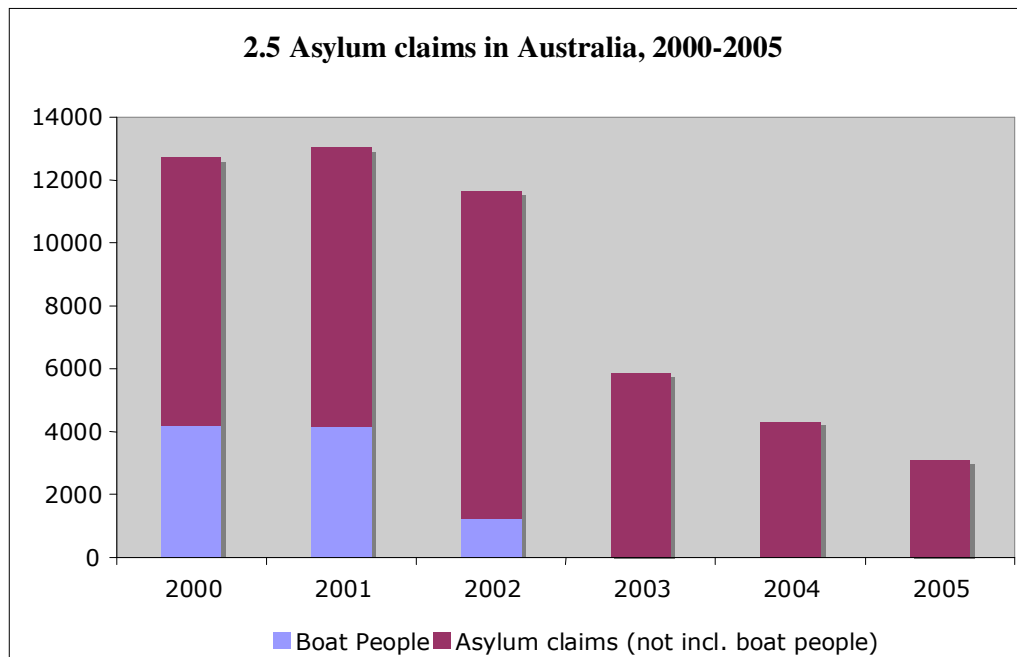
Unfettered, the coalition government announced in the same month Labor launched its policy initiative that no boat people managed to land on Australian land between 17 December 2001 and 17 December 2002.³⁴⁵ Changes imposed in the wake of the *Tampa* crisis, they argued, had successfully stopped boat people. As a bonus, Australia's tough new stance also resulted in the number of people applying for asylum while 'legally' in Australia dropping by 50 per cent, in what Hatton and Lim's referred to as the 'Tampa effect'.³⁴⁶

³⁴³ 'Ruddock's promise to fast-track asylum bids', *Age*, 25 Jan 2001.

³⁴⁴ Simon Crean and Julia Gillard, *Protecting Australia and protecting the Australian Way. Labor's Policy on Asylum Seekers and Refugees*, December 2002, pp. i-ii.

³⁴⁵ Barry York, *Australia and Refugees, 1901-2002: An Annotated Chronology Based on Official Sources*, p. 133.

³⁴⁶ Timothy Hatton and Audrey Lim, 'Australian Asylum Policy: The Tampa Effect', *Agenda*, Volume 12, Number 2, 2005, pages 115-130, p. 128. It is important to note that the authors of this article end their piece by stating that 'the fact that they [policy changes] are effective does not necessarily mean that they are desirable'.



Figures: Barry York, *Australia and Refugees, 1901-2002: An Annotated Chronology Based on Official Sources*, pp. 140-1 for 2000 to 2002 and Australian Parliamentary Library, *The Detention and Removal of Asylum Seekers*, 2005, http://www.aph.gov.au/library/intguide/SP/asylum_seekers.htm (Accessed on 24 Jan 2009).

Despite those in favour of more expansionist policies managing to keep the issue of detained boat people in the news, they failed to influence the government's asylum policy in any meaningful way. When Mark Latham replaced Simon Crean in December 2003 as leader of the Labor Party, formidable political opposition to the government became once again muted. Though the Justice Project, a group formed by several leading Australian figures, such as ex-politician Malcolm Fraser, academic Robert Manne and the barrister Julian Burnside, attempted to keep the issue of asylum seekers and refugees in the public sphere in the run up to the 2004 federal elections, asylum failed to figure in key debates.³⁴⁷ Kim Beazley's return to the Labor leader's position soon after the elections ensured this trend continued. Nonetheless, when it came to light in 2005 that the department of immigration had detained and deported several foreign born people legally resident in Australia, the department became the subject of investigation.

Inquiries into the detention for ten months of Cornelia Rau, a German citizen with permanent Australian residence, and the deportation of Vivian Alvarez Solon, an Australian citizen originally born in the Philippines led to criticism of the department of

³⁴⁷ 'Refugees get high-profile friends', *Age*, 13 July 2004.

immigration's negative culture, which 'had shifted from settlement towards compliance, detention and prevention'.³⁴⁸ Further condemnation of the department followed in mid 2007 when the then Immigration Minister, Liberal Kevin Andrews, who had replaced Amanda Vanstone earlier that year, cancelled the work visa of Mohamed Haneef, an Indian medical doctor arrested on suspicion of terrorism in early July 2007. Despite Australian authorities releasing Haneef and dropping all charges against him, Andrews maintained that Haneef had little chance of having his work visa cancellation revoked, sparking widespread condemnation.³⁴⁹

When Kevin Rudd became the new Labor Party leader in late 2006, he called for the return to a more liberal Australia immigration and asylum policy. Labor dedicated one chapter of its national platform and constitution, published in late April 2007, to the subject of human rights and indigenous affairs. Much of it centred on the fair treatment of asylum applicants, as the chapter's title, "Respecting Human Right and a Fair Go for all," clearly indicated. Labor pledged to 'administer a fair and flexible refugee and humanitarian program', detain asylum seekers only for health, identity and security checks, end the Pacific Solution, and provide permanent protection for asylum seekers given refugee status.³⁵⁰ Since Labor's crushing defeat of the Liberal-National coalition in late 2007 (symbolised by the loss of Howard's own seat), Kevin Rudd and his Immigration Minister, Chris Evans, has begun to implement these and other policies relating to asylum seekers. The opposition Liberal Party responded by discussing boat people and asylum seekers in a more conciliatory tone than under John Howard.

Conclusion

Labor's return to power under Kevin Rudd led to a remarkable turnaround in rhetoric used in debates on boat people. From 1989 to 2007, successive Labor and Liberal-National coalition governments, as well as the majority of opposition politicians, portrayed boat people as potentially unwanted migrants from undesirable locations breaching Australia's shores without permission. Consequently, Australia introduced draconian measures to stifle the arrival of boats. This did an injustice to the sophisticated and egalitarian migration system that Australia built up since the 1970s because it

³⁴⁸ James Jupp, 'The new Australian government and recent policy developments in immigration', address to the European University Institute's Migration Working Group, Florence, 22 Oct 2008.

³⁴⁹ 'Haneef to leave tonight', *SMH*, 28 July 2007.

³⁵⁰ See points 153, 154 and 161 of chapter 13, Australian Labor Party, 'ALP National Platform and Constitution 2007', http://www.alp.org.au/platform/index_new.php (Accessed on 30 Sept 2009).

embodied methods that went against the country's "fair go" culture. The often lengthy detention of asylum seekers arriving by boat, the desire to reduce legal avenues open to these people and the forced processing of their claims outside Australia after 2001 contrasted sharply with the generous and liberal welcome extended to people who applied for asylum after arriving on a valid visa or those hospitably received as part of the country's extensive refugee and humanitarian intake programme.

One reason for the Australian overreaction to what in effect amounted to an extremely small proportion of its overall annual migration intake related to the supposed threat boat people posed to the national migration system. Michael Walzer wrote in 1982 that 'if we offered a refuge to everyone in the world who could plausibly say that he needed it, we might be overwhelmed'.³⁵¹ Australian politicians, voters and the national media largely agreed with this sentiment for much of the 1990s and 2000s when debates turned to boat people. These reactions displayed Australia's insularity and tendency to exaggerate the consequences of allowing certain migrants to enter the country, since the number of people seeking asylum in other industrialised states in North America and Europe in the same period dwarfed what occurred in Australia. This can be partly explained as maintaining Australia's long tradition of effective immigration control since its foundation as a country. Another reason Australian politicians chose to focus so much of their attention on boat people was because it served to counterbalance growing criticism of the national immigration policy amongst the public and the media, particularly after the emergence of Pauline Hanson in 1996, who threatened the country's heretofore bipartisan political support for migration more generally.

Almost eighteen years of targeting boat people for especially harsh treatment bred certain consequences, however. In more recent years, a noticeable rise in sympathy for boat people languishing in isolated detention centres began to occur in the light of regular reports highlighting the psychological and physical ill-effects of long-term detention on boat people who, it turned out, had a much greater chance of attaining refugee status than people who applied for asylum in Australia after entering on valid visas. In August 2004, for example, 61 per cent of Australians polled said they favoured allowing all or some boats in to Australia – an increase of twenty per cent since October

³⁵¹ Michael Walzer, *Spheres of Justice. A Defence of Pluralism and Equality*, p. 51.

2001.³⁵² When Kevin Rudd's Labor Party, in stark contrast to the John Howard's coalition government, called for more humane treatment of boat people in April 2007, it appeared to strike a chord amongst voters. Kevin Rudd's government's determination to treat asylum seekers with dignity and fairness since coming to power in late 2007 suggests, therefore, that there may be a limit to how far governments can restrict asylum policy before enduring humanitarian principles prevail.

³⁵² 'Sympathy shifting towards asylum seekers', *Age*, 22 August 2004.

Chapter 3

Seeking asylum in Italy

Lo straniero, al quale sia impedito nel suo paese l'effettivo esercizio delle libertà democratiche garantite dalla Costituzione italiana, ha diritto d'asilo nel territorio della Repubblica.

Article 10.3 of the Italian Constitution

Despite a large rise in asylum applications in Italy since the late 1980s, Italy still lacks an official asylum policy. This is despite the 1948 Italian Constitution's assertion that foreigners have the right to asylum; despite Italy's ratification of the Geneva Convention in 1954; despite the extension of the same convention's geographical restrictions to all parts of the world in 1990; and despite the inclusion of sections on asylum in immigration legislation enacted in 1990, 1998 and 2002.

Legislation that does exist has placed those seeking asylum in a precarious position. Doubts arose over who was an asylum seeker, how they were to be treated, and who was responsible for their welfare because of the varied treatment asylum seekers received. Some obtained temporary work visas, such as the Albanians who arrived in the spring of 1991. Some faced incarceration in a football stadium without access to any asylum procedures before being shipped back to their country of origin, such as those Albanians who came in autumn 1991. Some acquired a favourable reception, such as the Kurds in the late 1990s. Some attained temporary humanitarian visas, such as the Kosovars who arrived before July 1999. Some were classified as clandestines, such as the Kosovan Roma who came after June 1999. Some waited over one year in shanty-towns and squats for a response to their applications because of little access to welfare or accommodation support, such as those escaping various African countries in the early 2000s. And some were repatriated before they submitted their appeals, such as some of those who disembarked from Libya's shores.

This chapter will give a chronological account of Italy's asylum policymaking after 1989, by focusing on asylum policy debates, asylum policy changes and asylum policy effects. It will begin with the Martelli Law, formed by the centrist coalition led by the Christian Democrat leader, Giulio Andreotti, in 1989-1990 in response to the rise of immigration and asylum as issues in Italian political and public debate. The enormous

political changes Italy underwent in the early 1990s with the disintegration of the Christian Democrat, Communist, Socialist and Republican parties will also feature on account of the influence it would later have on the politics of immigration and asylum in subsequent years. Into the breach this rupture created in the centre and on the right of the political spectrum stepped Berlusconi's *Forza Italia*, the *Lega Nord* and the reformed ex-fascist party *Alleanza Nazionale*; on the left came the *Partito Democratico della Sinistra* and the Refounded Communists. The latter two parties helped instigate the so-called Turco-Napolitan laws from 1998 onwards, which sought to form a coherent asylum policy similar to other EU countries. In 2002, following the election victory one year earlier by a coalition of *Forza Italia*, *Alleanza Nazionale*, the *Lega Nord* and two small parties linked to the former Christian Democrats, the Bossi-Fini Law again sought to redefine the country's immigration and asylum policy. These policies and others will be discussed in chronological order after briefly introducing Italy's considerable history of emigration and under-researched immigration past, especially in relation to the country's hosting of refugees before 1989.

3.1 Seeking asylum in Italy before 1989

In contrast to Australia but in common with Ireland, Italy had a rich history of emigration, particularly in the years from its foundation as a modern state in the mid nineteenth century until the outbreak of the First World War. Italy had a large population surplus in the late nineteenth century, with demand often outweighing supply. To escape the growing poverty, many chose to leave their homeland for Europe and the Americas. At the turn of the twentieth century, the promise of earning higher wages meant that many turned to North America. While emigration from northern Italy to neighbouring European countries had dominated emigration in the last quarter of the nineteenth century, in the first quarter of the twentieth century most emigrants hailed from southern Italy and headed to the Americas. Though Italy's population steadily increased from 27.6 to 35.7 million between 1871 and 1911, it did so without over 13 million Italians, who left their country of birth between 1876 and 1914.³⁵³ Nonetheless, a small number of foreigners came to Italy; sometimes in search of asylum. Between the mid- and late-1860s the recently founded Italian state drew up a number of civil codes

³⁵³ See Lorenzo Del Pantà, 'Dalla metà del settecento ai nostri giorni', Lorenzo Del Pantà et al (eds.), *La Popolazione Italiana dal Medioevo a Oggi*, Editore Laterza: Bari, 1996, pp. 131-212, p. 134 and Gianfausto Rossoli (ed.), *Un secolo di Emigrazione Italiana: 1876-1976*, Rome: Centro studi emigrazione, 1978, p. 345.

and public order laws that specified that foreigners, especially nomads, vagabonds and those without work could be subject to surveillance. Accordingly, the state applied sometimes drastic measures upon ostracised foreigners, such as Roma nomads and Russian and Austro-Hungarian anarchists. Nonetheless, Italy maintained the right to asylum after the rise of Fascism, following the First World War. A number of Russian refugees fleeing the Bolshevik revolution, for instance, settled in Italy while political refugees from Albania received asylum in 1925. Simultaneously, the number of Italians seeking asylum from Fascist Italy rose significantly, with many settling in neighbouring France. Although emigration from Italy recommenced following the First World War, it never reached the heights of pre-war days because of the introduction of immigration restrictions, especially after the economic problems that occurred in the wake of the 1929 Great Wall Street Crash, and the decision of the Fascist Italian government in the late 1920s to make emigration illegal.³⁵⁴ Emigration to Italy's colonies, which the Fascist government keen promoted, proved a noticeable exception.

Surprisingly, Mussolini's Italy allowed Jewish refugees fleeing Nazi Germany to enter its territory from 1933 to 1938. Indeed, Italy represented one of only eight countries to sign the League of Nations 1933 *Convention relating to the International Status of Refugees*.³⁵⁵ The mood towards Jews changed considerably by the late 1930s, however, leading the Fascist government to bar Austrian Jews from entering Italy six days after the 1938 *Anschluss*. Later that same year, the government introduced measures to revoke Italian citizenship from any Jews that attained it after 1919.³⁵⁶ Indeed, Michele Sarfatti notes that for a brief period in the autumn of 1938, certain Italian anti-Jewish laws were harsher and more oppressive than their German counterparts.³⁵⁷ Italy interned many of the foreign Jewish refugees living in the country during the Second World War in the southern location of Ferramonti di Tarsia.³⁵⁸ Luckily for them, the order to transfer all Jewish refugees to the northern city of Bolzano – and so into the hands of the Germans – failed to occur because Mussolini's

³⁵⁴ Carl Ipsen, *Dictating Demography: The problem of population in Fascist Italy*, Cambridge: Cambridge University Press, 1996, p. 62.

³⁵⁵ The Convention was ratified by Czechoslovakia, Bulgaria and Norway and later signed by Britain, France, Italy, Denmark and Belgium. Sir John Hope Simpson, *The Refugee Problem. Report of a Survey*, p. 244.

³⁵⁶ Luca Einaudi, *Le politiche dell'immigrazione in Italia dall'Unità a oggi*, Bari: Editori Laterza, 2007, p. 36.

³⁵⁷ Michele Sarfatti, *The Jews in Mussolini's Italy. From Equality to Persecution*, Wisconsin: University of Wisconsin Press, 2006, p. x (1st published in Italian as *Ebrei nell'Italia fascista* in 2000).

³⁵⁸ Amedeo Osti Guerrazzi, 'I campi di concentramento per civili in Italia durante la Seconda Guerra Mondiale', *Studi Migrazione/Migration Studies*, XLII, No. 164, 2006, pp. 797-820, p. 812.

government fell on the very day of the order.³⁵⁹ Those approximately 43,000 Jews unfortunate enough to find themselves in the northern part of the country, which came under the control of the Third Reich, suffered a crueler fate. Of the roughly 35,000 Italian and 8,000 non-Italian Jews present in the northern German-dominated territory, the Fascist authorities arrested approximately 8,000 (of whom no real figures exist specifying the number of Italians and non-Italians).³⁶⁰ Of these, only 1,000 survived.

Debates about what happened to the thousands of Italian and non-Italian Jews transported to Nazi concentration camps in the Holocaust rarely occurred in the new Italian Republic until after Primo Levi's death in 1987 and later by the publication of books on Jews in Fascist Italy by historians such as Liliana Picciotto and Michele Sarfatti.³⁶¹ Less remarked upon, however, but nonetheless just as horrific and even more deadly was the extermination of an estimated 25,000 Roma transported from Italian territory to German extermination camps during the War.³⁶² The tragic history of Europe's Jews and, to a much lesser extent Europe's Roma community, contributed to the establishment of a right of asylum in the new Italian republic's constitution, which came into force in 1948.

While the constitution's affirmation and Italy's ratification of the UN Convention on Refugees in 1954 suggested the new republic welcomed people seeking political asylum, Italy's practices throughout much of the Cold War period suggested otherwise. Instead of settling refugees, Italy transported them. Between 1952 and 1978, almost 80,000 refugees from Soviet Europe temporarily stayed in Italy on their way to one of the traditional English-speaking receiver states. Italy remained very much a country of emigration rather than immigration. After the fall of Fascism and the end of the Second World War, emigration began to reoccur. Many went to neighbouring European countries but began to return from the late 1950s onwards, when Italy experienced extensive economic growth. Indeed, between the 1950s and 1970s, approximately nine million people migrated within the country from the 1950s to the 1970s.³⁶³ Most transferred from rural areas – the South, the islands and the Veneto

³⁵⁹ See Luca Einaudi, *Le politiche dell'immigrazione in Italia dall'Unità a oggi*, p. 37 and Michele Sarfatti, *The Jews in Mussolini's Italy*, p. 143.

³⁶⁰ See Michele Sarfatti, *The Jews in Mussolini's Italy*, pp. 178-9 & 200-1.

³⁶¹ See *ibid* and Liliana Picciotto, *Il libro della Memoria. Gli Ebrei deportati dall'Italia (1943-1945)*, Milan: Mursia, 2002 (1st ed. published in 1991).

³⁶² Luca Einaudi, *Le politiche dell'immigrazione in Italia dall'Unità a oggi*, p. 39.

³⁶³ Paul Ginsborg, *History of Contemporary Italy. Society and Politics 1943-1988*, London: Penguin, 1990, p. 219.

region – to industrial cities located predominantly in the North and especially Turin, Genoa and Milan.³⁶⁴ From the mid 1970s, however, Italy began to receive a positive net inflow of migrants made up predominantly of returning migrants, although some foreign migrants also arrived; a pattern that would intensify throughout the 1980s. Concurrently, the number of people seeking asylum in Italy rose considerably.

In the late 1970s, 2000 Vietnamese boat people came to Italy. They all received refugee status because of the government's decision to override the country's continuing enforcement of the geographical reservation pertaining to the Refugee Convention, which meant that Italy theoretically only provided asylum to Europeans.³⁶⁵ Displaying the critical involvement of secular and religious NGOs in future work in Italy with refugees and asylum seekers, the Red Cross and Caritas played crucial roles in helping the Vietnamese on arrival. By the mid to late 1980s, the number of people in search of asylum that came to Italy rose considerably because of easier access to tourist permits in Soviet Europe than in previous decades. Most asylum seekers stayed in a special camp set up in 1957 to house refugees from Soviet Europe in Latina, a small city located south of Rome.³⁶⁶ Conditions at the camp deteriorated to such an extent that in August 1987 hundreds had to move to hostels and a local church after the collapse of one of the camp's dilapidated buildings.³⁶⁷ Overcrowding of the camps also occurred, leading to an inevitable build-up of pressure on the limited services provided. Hostels housed 4,327 refugees; the Latina camp accommodated 2,223 – even though the official capacity measured 800; and another camp, Capua, contained 720 refugees.³⁶⁸ Though most of these refugees subsequently travelled to North America and other countries to join their relations, people seeking asylum in Italy from outside Europe often lacked such an option.

Italy, along with Malta, remained one of the only countries in 1980s Europe, outside the Warsaw Pact, which failed to rescind the geographical limitation on refugees to Europe alone. Nonetheless, small presences of non-European *de facto* refugees already resided in Italy from Iran, Ethiopia, Iraq, Sri Lanka, Ghana, Zaire and Vietnam.

³⁶⁴ Franco Alasia and Danilo Montaldi, *Milano, Corea. Inchiesta sugli immigrati*, Milan: Feltrinelli, 1975 (1st ed. 1960), pp. 30-1.

³⁶⁵ Mara Dinnuno, 'L'accoglienza dei *boat people* vietnamiti in Italia', *Studi Migrazione/Migration Studies*, XLIII, No. 164, 2006, pp. 875-886, p. 884.

³⁶⁶ Matteo Sanfilippo, 'Introduzione', Matteo Sanfilippo (ed.), *I campi per stranieri in Italia*, special issue of *Studi Migrazione/Migration Studies*, XLIII, No. 164, 2006, pp. 787-796, p. 789.

³⁶⁷ 'Io profuga della Polonia', *La Repubblica*, 8 Aug 1987.

³⁶⁸ 'Per quei profughi non ci sono piu' soldi', *La Repubblica* 12 Aug 1987.

Many of these appeared in the first government amnesty to legalise immigrants in 1986. Of the 116,000 immigrants regularised, for instance, 3,607 came from Sri Lanka, 3,004 from Iran and 2,492 from Ethiopia. Elsewhere in Europe between 1980 and 1985, over 125,000 people from the same three countries applied for asylum.³⁶⁹ Non-Europeans in Italy unable to take advantage of the first amnesty failed to qualify for any state aid. Consequently, the Italian state refused to accommodate *de facto* refugees, unlike their counterparts fleeing Soviet Europe. Many had to work without the necessary documentation in order to survive. As one UNHCR employee interviewed in the late 1980s commented: “In Italy anyone can have asylum ... but what asylum? To live off air, off the sun, to not eat? ... [i]f you can’t give a person the right to work, to live adequately ... one can’t talk of asylum.”³⁷⁰ Consequently, the UNHCR regularly provided accommodation for non-European refugees for the first three months of their stay, while simultaneously trying to protect their rights thereafter against the threat of expatriation from the Italian authorities on account of their tenuous legal situation.³⁷¹

Many worked in underpaid, undocumented and dangerous employment. Accommodation remained a major problem with demand and rents often forcing these people to live in irregular housing, as demonstrated by the case of Jerry Masslo, a South African refugee. Due to the restrictions on non-Europeans, Italian law barred Masslo from applying for political asylum in Italy. Instead he hoped to resettle in Canada. After one and a half years in Italy, however, his status remained unclear. Despite living in a centre for refugees run by a religious group, Masslo constantly sought work to garner some kind of income. This led him to the tomato farms south of Naples, where he worked irregularly alongside many other African migrants.³⁷²

3.2 The Martelli Law and the “Albanian Effect”, 1989-1991

In 1985, a European Parliamentary report indicated that Italy had one of the lowest rates

³⁶⁹Claudia Finotelli, ‘Accolti o sanati? L’asilo e la protezione umanitaria in paesi di “nuova” e “vecchia” immigrazione’, Francesca Decimo & Giuseppe Sciortino (eds.), *Reti Migranti*, Bologna: Il Mulino, 2006, pp. 211-245, p. 225.

³⁷⁰ Interview with Laura Carugo of the UNHCR office in Rome, 28 July 1987, recounted in Maria Macioti, ‘Le condizioni di vita, l’accoglimento e le prospettive’, Maria I. Macioti & Enrico Pugliese, *Gli Immigrati in Italia*, Roma: Laterza, 1991, pp. 93-199, p. 155.

³⁷¹*Ibid.*, p. 157.

³⁷² ‘Viveva in Italia da un anno e mezzo e chiedeva un mondo senza apartheid’, *La Repubblica*, 26 Aug 1989.

of racist incidents in Europe.³⁷³ By the late 1980s this changed as a dramatic increase in racist incidents took place,³⁷⁴ culminating in the murder of the aforementioned Masslo in August 1989. The reaction to his murder marked the growth of Italy's anti-racist and pro-migrant groups. Several state politicians attended Masslo's funeral, which Italian television broadcasted live.³⁷⁵ In the weeks following Masslo's murder, immigration became an issue of political and public importance for the first time. Masslo, according to one author, became 'a symbol for the concern felt about racism, the exploitation of immigrant workers, and their deplorable living conditions'.³⁷⁶ Suddenly, Italian public opinion became more hospitable to immigrants than only two years before, with several opinion polls showing a notable decrease in animosity towards immigrants.³⁷⁷ Highlighting this change one month later, between 100,000 and 200,000 people, supported by a broad range of groups including Catholic and secular NGOs, trade unions and the Italian Communist Party, marched in Rome to protest against racism in Italy and urge political intervention.³⁷⁸ 'Riding this wave of public sympathy and concern', the Italian vice Prime Minister, the Socialist Party's Claudio Martelli, proposed new, expansive immigration legislation.³⁷⁹

Formation

Jessika ter Wal records that the positive debate following the Masslo murder and the anti-racism demonstration 'created the conditions for the presentation of the Martelli law as a positive and liberal policy.'³⁸⁰ Martelli made a point of including many sympathisers in discussions about the proposed legislation, such as various secular and

³⁷³ The European Parliament report is quoted in Giovanna Campani, 'Immigration and racism in southern Europe: the Italian case', *Ethnic and racial studies*, 16.3, 1993, pp. 507-535, p. 517.

³⁷⁴ See 'Buttiamo quel negro dal balcone', *La Repubblica*, 6 July 1989 for an example of this.

³⁷⁵ Corrado Bonifazi, 'European Migration Policy: Questions from Italy', in Russell King, Gabriella Lazaridis & Charalambos Tsardanidis (eds.), *Eldorado or fortress? Migration in southern Europe*, Hampshire and New York: Macmillan and St. Martin's Press, 2000, pp. 235-252, p. 241.

³⁷⁶ Jessika ter Wal, *The Reproduction of Ethnic Prejudice and Racism through Policy and News Discourse. The Italian Case (1988-1992)*, Florence: European University Institute, PhD, 1997, p. 36.

³⁷⁷ Ted Perlmutter compares two public opinion polls taken in 1987 and 1989 which shows less hostility to immigrants in 1989 than two years previously. See Ted Perlmutter, 'Immigration Politics Italian Style: The Paradoxical Behaviour of Mainstream and Populist Parties', *South European Society and Politics*, Vol. 1, No. 2, 1996, pp. 229-252, p. 234. For more references to public opinion polls, see Luca Einaudi, *Le politiche dell'immigrazione in Italia dall'Unità a oggi*, p. 134 and, in particular, Corrado Bonifazi, *L'immigrazione straniera in Italia*, Mulino: Bologna, 1998, pp. 219-227.

³⁷⁸ 'Neri e bianchi in piazza. 'Insieme si può' vivere', *La Repubblica*, 8 Oct 1989.

³⁷⁹ Ted Perlmutter, 'Immigration Politics Italian Style: The Paradoxical Behaviour of Mainstream and Populist Parties', p. 234. See also 'E già pronto un disegno di legge sull'ingresso degli stranieri in Italia', *La Repubblica*, 2 Sept 1989.

³⁸⁰ Jessika ter Wal, *The Reproduction of Ethnic Prejudice and Racism through Policy and News Discourse. The Italian Case (1988-1992)*, p. 36.

religious NGOs and leftist trade unions that favoured the promotion of expansive immigration policies. Nevertheless, real political opposition to immigration began to manifest itself when the Republican Party disputed many of the law's measures. Although the party had little popular political support, its presence in the power-sharing executive government meant that the issue became one of large media interest. The legislation developed into a personal battle between the deputy Prime Minister, Martelli, and the Republican Party leader, Giorgio La Malfa. Interestingly, the media devoted little or no coverage to the views of the two most popular political parties in the country, the Christian Democrats, who headed the coalition, and the opposition Communist Party.³⁸¹ The Christian Democrats' silence stemmed largely from its desire to appease the Catholic Church, which consistently displayed a sympathetic attitude towards immigrants.³⁸² The Communist Party, although in support of the new legislation, rarely commented on the subject because of the ideological turmoil that befell the party after the fall of the Berlin Wall – a subject dealt with in further detail below. The media also chose to ignore the neo-fascist *Movimento Sociale Italiano* (MSI) party, even though it opposed the legislation more vehemently than the Republican Party.³⁸³ Yet, the anti-immigrant northern leagues demonstrated their future controversial stance on immigration when the Lombard League announced its slogan against the Martelli law: "Whites and blacks do not integrate."³⁸⁴

The political debate ignited by the Martelli law summoned the popular media's attention to the subject of immigration. Previously, only certain experts in the field had covered immigration. From 1989 onwards, however, popular journalism "discovered" the topic.³⁸⁵ As a result, the issue became politicised, social conflict became amplified

³⁸¹ Perlmutter found that the Christian Democrats and the Communist Party, who between them received 61 per cent of the vote, accounted for only 11 minutes of the news time devoted to the subject on television, while the Republican Party, which received 4 per cent of the vote, and the Socialist Party, which received 14 per cent, accounted for 18 minutes and 37 minutes respectively of the coverage. Taken from Ted Perlmutter, 'Immigration Politics Italian Style: The Paradoxical Behaviour of Mainstream and Populist Parties', p. 238.

³⁸² Giovanna Campani, 'Migrants and Media: The Italian case', Russell King and Nancy Wood (eds.), *Media and Migration. Constructions of Mobility and Difference*, London and New York: Routledge, 2001, pp. 38-52, p. 44.

³⁸³ Ted Perlmutter, 'Immigration Politics Italian Style: The Paradoxical Behaviour of Mainstream and Populist Parties', p. 239.

³⁸⁴ 'L'ultimo slogan del senatore Bossi 'Bianchi e neri non si integrano', *La Repubblica*, 15 Aug 1990.

³⁸⁵ Asher Colombo & Giuseppe Sciortino, 'The flows and the flood: the public discourse on immigration in Italy, 1969-2001', p. 102. Marletti also links this development to the success of Jean-Marie Le Pen in France in April 1988. See Carlo Marletti, 'Mass media e razzismo in Italia', *Democrazia e Diritto*, n. 6, 1989, pp. 107-125, p. 119.

and generalisations about immigrants quickly spread.³⁸⁶

Implementation

The broad-ranging Martelli law affected all facets of immigration. In relation to asylum, it rescinded the geographical restriction that previously disallowed non-Europeans from applying for asylum in Italy. In addition, the state bestowed a temporary residence permit on asylum seekers as well as a small daily allowance for the first forty-five days of their application.³⁸⁷ The government established a central commission for the recognition of refugee status in May 1990 to fulfil the conditions outlined in the Martelli law.³⁸⁸ This comprised of representatives nominated by the Minister of the Interior and the Minister for Foreign Affairs, as well as a representative from the UNHCR, who participated at commission meetings in an advisory capacity.

Despite Italy's recognition of the right of non-Europeans to apply for asylum, Europeans fleeing the collapse of communism in Eastern Europe made up the bulk of asylum applications in the early and mid 1990s. Italy's reaction to such developments would show that the favourable Martelli law merely represented window dressing for a strategy constantly in flux, with no identifiable parameters within which to operate.

With trouble flaring in Albania in spring 1991 – over 100,000 took to the Tirana streets on 20 February to protest against the government, knocking down the statue of Xoxha en route – many Albanians escaped the country. Some of the first Albanians to flee encountered gun fire from Albanian patrol boats but as the numbers departing grew, the military opposition lessened.³⁸⁹ By 7 March, several thousand Albanians had arrived in southern Italy by boat. Confusion and ineptitude marked the Italian state's reaction.³⁹⁰ Initially, the government used the recently installed Martelli law that dealt with labour migration – and not the section that dealt with asylum – to claim that only those Albanians with work permits would be allowed to enter Italy.³⁹¹ Days later, and after the

³⁸⁶ Two examples of how the media generalised the media were the use of the derogatory terms *vu cumprà* ("Do you want to buy?," which was meant to symbolise street-sellers) and *extracomunitari* (non-EU citizens). Asher Colombo & Giuseppe Sciortino, 'The Flows and the Flood: The Public Discourse on Immigration in Italy, 1969-2001', p. 106.

³⁸⁷ Article 1.7, Law no. 39, 28 Feb 1990 (also known as the Martelli Law). Taken from *Gazzetta Ufficiale n. 49 del 28 febbraio 1990*.

³⁸⁸ *Decreto del Presidente della Repubblica*, 15 maggio 1990, n. 136.

³⁸⁹ 'Albania, fuga tragica', *La Repubblica*, 1 March 1991.

³⁹⁰ See, for example, 'Abbandonati come cani randagi', *L'Unità*, 9 March 1991, 'Svengono stremati dalla fame', *L'Unità*, 10 March 1991, 'Traditi dall'Italia', *La Repubblica*, 11 March 1991.

³⁹¹ See 'Boat people, linea dura del Governo', *Corriere della sera*, 7 March 1991 and "'Ora basta con i profughi albanese'", *La Repubblica*, 7 March 1991.

UNHCR appealed to Italy to allow the Albanians land, the government appeared divided.

Martelli clearly stated his intentions: the Albanians would be taken in and given help but afterwards they would be sent back to Albania.³⁹² Taking another view altogether, Giulio Andreotti, the Italian Prime Minister at the time and leader of the Christian Democrat party, called for Italians to ‘adopt’ their ‘Albanian brethren’.³⁹³ Emphasising this affinity with the Albanians, Andreotti’s party colleague, Flaminio Piccoli, explained to parliament that these newcomers shared several traits with Italians:

Attention must be drawn also to another fact: those who disembark in Italy [...] even in their weakness, even in their fragility, even in their destitute appearance, are people with their own families, who in fact have a culture [*culto*] of family, who love their own land, who have a tradition, a history of utmost respect that has many similarities to our history and our traditions.³⁹⁴

Reflecting this turnaround in official attitudes towards the Albanians, the government decided that neither the labour restrictions of the Martelli law nor its asylum rules applied to the newcomers. Instead, the government introduced a special law specifically exempting them from the Martelli legislation and giving the Albanians a three-month visa during which time they would have to find work. If they failed to attain a job within three months, they would be sent home.³⁹⁵

Local people from the Puglia region initially reacted positively to the boatpeople. Under the direction of voluntary agencies, such as the Red Cross, they fed and assisted the Albanians. The government delayed intervening because it thought providing help to the Albanians would attract more people from the small Balkan state, who followed the drama from across the Aegean on Italian TV.³⁹⁶ Indeed, some commentators suggested that Italian TV attracted many of the Albanians because of the false glitzy promise it

³⁹² See ‘L’Onu : “Non cacciateli via”’, *La Repubblica*, 9 March 1991 and ‘Martelli : “Daremo soccorso anche ai clandestini poi li riporteremo a Tirana”’, *L’Unità*, 9 March 1991.

³⁹³ See ‘Andreotti inventa l’adozione di massa’, *La Repubblica*, 10 March 1991 and ‘Anche io addotterò un albanese’, *L’Unità*, 10 March 1991.

³⁹⁴ Flaminio Piccoli, *X legislatura: Camera dei Deputati (Atti parlamentari: discussioni)*, 8 March 1991, p. 80632.

³⁹⁵ ‘Una legge speciale per i profughi dall’Albania’, *Il Sole 24 ore*, 12 March 1991 and ‘Dalla Sicilia al Veneto una “patria” per i profughi’, *La Repubblica*, 12 March 1991.

³⁹⁶ See ‘In Puglia c’è chi fiuta l’affare Albania’, *L’Unità*, 10 March 1991 and ‘Il ministro Lattanzio arriva e spiega : “Soccorsi ritardati per scoraggiare l’esodo”’, *L’Unità*, 10 March 1991.

provided to those watching in Albania.³⁹⁷

By 9 March, the sanitary and humanitarian crisis facing Brindisi, the main destination for the Albanians, became more serious, with vocal criticism coming from voluntary agencies and from the Vatican attacking the government's nonchalance.³⁹⁸ One local representative commented: "They (the state) have left us alone. After the initial confusion, the local council successfully put in place an emergency plan. But what we can do is like a drop in the ocean. Fifteen thousand, twenty thousand refugees are a fifth of the population of Brindisi."³⁹⁹ Nonetheless, no state aid came, forcing the council to accommodate the Albanians in tent camps for months on end. The propensity of the Italian state to place the onus of responsibility for the welfare of asylum seekers on regional and city council, without sufficient financial compensation, would become another common trait of Italian asylum policy over subsequent years, as would those same councils' criticism of the state's apparent disregard for the difficult situations the councils regularly encountered.

The sanitary problems caused by the Albanians' extended stay in the city caused exasperation amongst locals as the crisis persisted. Living in cramped and uncomfortable conditions for months on end with no knowledge of their future, the Albanians also became restless; the tent camps they habituated became the setting for several violent protests and internal fights – some of them deadly.⁴⁰⁰ Further displeasure emanated amongst Albanians in June when the Italian government announced that those without jobs by 15 July would be repatriated.⁴⁰¹ Popular anti-Albanian sentiments emerged elsewhere in Italy when the government eventually distributed the Albanians nationwide.⁴⁰²

The government exemplified its hesitant handling of the situation once again in mid June. The Minister for Immigration, Margherita Boniver – who the government appointed to the temporary ministerial position after the first large influx of Albanians

³⁹⁷ Sergio Andrei from the Italian Green Party and Francesco Baghino from the MSI also both referred to this factor when addressing the Italian parliament on 8 March 1991.

³⁹⁸ 'Vaticano : "Lo Stato è latitante', *La Repubblica*, 10 March 1991.

³⁹⁹ 'Da Brindisi SOS disperato. 'Intervengo l'esercito'. 9 March 1991.

⁴⁰⁰ For information on the protests and disputes that took place within the camp, see 'Guerra tra profughi. Un morto, 2 feriti' and 'Albanesi in rivolta', *La Repubblica*, 3-4 May 1991. For evidence of fear and anxiety amongst locals, see 'Brindisi, indagine sui ritardi di stato', *La Repubblica*, 13 March 1991, 'Albanesi, deportazione', *Corriere della sera*, 8 June 1991, 'Puglia in rivolta : via gli albanesi', *Corriere della sera*, 11 June 1991 and 'Brindisi presa in giro si ribella', *Corriere della sera*, 15 June 1991.

⁴⁰¹ 'Gli albanesi in rivolta. 'Italia non ci cacciare'', *La Repubblica*, 7 June 1991

⁴⁰² See, for examples of this, 'Non possiamo accogliere duemila profughi', *L'Unità*, 13 June 1991 and "'Tarquinia" non può vivere sommersa da 2600 profughi', *La Repubblica*, 14 June 1991.

arrived – stated that of all the Albanians who arrived in March and applied for asylum, less than 1,000 attained refugee status. For the thousands that failed, she went on to declare, they had approximately one month to show Italian authorities that they held jobs – even though most of them had resided in tent camps and other emergency accommodation in Puglia up until that very month.⁴⁰³ Furthermore, no subsequent Albanians that arrived in Italy would qualify for asylum status because, according to Italy's Foreign Minister:

The political conditions in Albania today are different. The country is run by a government in which also the opposition parties participate. We cannot make any more exceptions and consider those arriving in Italy as political refugees automatically. The immigration laws apply to everyone, including Albanians. Therefore, whoever arrives in our country without a visa has to be considered illegal and clandestine.⁴⁰⁴

The attitude towards immigration amongst the public slowly transformed from hospitality, symbolised by the post-Masslo murder atmosphere, into hostility. In Milan, tram drivers went on strike to protest against Moroccans living beside one of the tram depots; in Rome newspapers reported battles between police and Somalis; in Varese, certain parts of the city remained off-limits to North Africans.⁴⁰⁵ Opinion polls released in late July of that year seemed to reflect the growing enmity to immigration in the country, with one newspaper arguing that the “Albanian effect” had helped to increase public opposition to immigrants more generally compared to opinion polls from 1989 and 1987.⁴⁰⁶ In one survey, the percentage of Italians hostile to immigration increased from 43.1 per cent in 1989 to 61 per cent in 1991.⁴⁰⁷ Much of this opposition came from fear of newcomers. As one expert recorded, 55.4 per cent of Italians surveyed felt a clear correlation existed between increasing criminality and the rise in the numbers of immigrants.⁴⁰⁸ Interestingly, a slight majority of the 50.7 per cent questioned in 1991

⁴⁰³ ‘Gran consulto nel governo per fermare l’invasione’, *La Repubblica*, 13 June 1991.

⁴⁰⁴ This letter, sent from the Italian Foreign Minister to his Albanian counterpart, was reproduced partially in ‘Scotti, ‘via subito dall’Italia gli ultimi clandestini albanesi’, 15 June 1991.

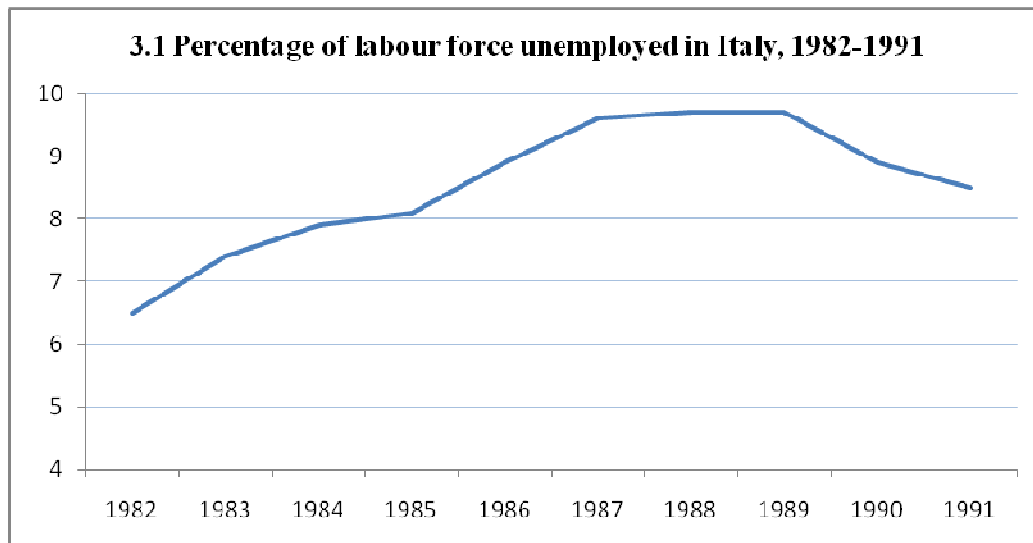
⁴⁰⁵ See “‘Via quegli immigrati’”, *La Repubblica*, 11 May 1991, ‘Roma, battaglia in centro tra somali e polizia’, *La Repubblica*, 16 May 1991 and ‘Varese “off-limits” per i nordafricani’, *La Repubblica*, 12 June 1991.

⁴⁰⁶ ‘Effetto albanesi’, *La Repubblica*, 26 July 1991.

⁴⁰⁷ This Doxa poll was quoted in Luca Einaudi, *Le politiche dell’immigrazione in Italia dall’Unità a oggi*, p. 181.

⁴⁰⁸ Corrado Bonifazi, *L’immigrazione straniera in Italia*, p. 225.

said that immigrants did not take jobs from Italians.⁴⁰⁹ Yet, the 46.5 per cent that believed foreigners threatened their employment still represented a worrying figure, particularly at a time when unemployment remained high.



Source: *OECD Factbook 2007: Economic, Environmental and Social Statistics*.

The Italian government adopted a markedly tougher stance on immigration, promising on several occasions to expel Albanians without work permits by mid July.⁴¹⁰ Nonetheless, the number of Albanians repatriated never matched the tough rhetoric used by the government to publicise its intentions. The failure to send back Albanians without work permits after the government's deadline expired epitomised this feature. The new Minister for Immigration, Margherita Boniver, demonstrated how Italy's asylum and immigration policy remained sporadic when defending this oversight several weeks later in an interview with *La Repubblica*:

Boniver: "We decided together (with the minister for the interior, Vincenzo Scotti) the deadline of 15 July for the distribution of the displaced persons [*profughi*], and that of the 31st for the immediate expulsion of the irregulars."

Repubblica: "And why didn't the expulsions take place?"

Boniver: "That should be put to the department of the interior, don't you think? And it turned out no one proposed to complete a round up to identify the irregulars. Amongst

⁴⁰⁹ *Ibid*, p. 221.

⁴¹⁰ See "'Albanesi, ora basta'", *La Repubblica*, 8 June 1991; 'Tra paura e dolore i profughi gridano', *La Repubblica*, 19 June 1991.

other things, I'm wondering whether the expulsions were really possible ..."

Repubblica: "Why?"

Boniver: "Because the same Scotti granted a permission of stay for one year last March to all those that embarked in Puglia. And it seems to me that these permits cannot be revoked. There is no doubt then that there were a lot of dispensations to the Martelli laws, justified because of the particular climate – elections had yet to take place in Tirana – predominating in Albania."⁴¹¹

Effects

The outcome of Italy's mixed reaction to Albanian asylum seekers demonstrated itself in the summer of 1991, when another large exodus of Albanians arrived en masse. In late July, the Albanian Foreign Minister had warned her Italian audience of the trouble that lay ahead:

This summer the drop has overflowed the vase. They [the Albanian people] don't have enough to eat, they don't have any prospects. Who will help them? We are helping them a bit, but only us! The situation has got out of hand; they ask us to repatriate the displaced people but we don't know where to put them; the ports are invaded by people, the airport is insecure.⁴¹²

In addition to the huge food shortages in the country and the major political instability caused by the gradual but chaotic transformation from a communist to a post-communist society, as portrayed so vividly in Gianni Amelio's film *Lamerica*, the Albanian GNP for 1990 measured half that of 1965, exports had diminished to 15 per cent of the previous year's total and prices rose by at least 300 per cent.⁴¹³

One week after the Albanian minister's statement, Durazzo, a main port in Albania, provided the scene for mayhem as thousands attempted to break through the erected barriers. Initially, troops fired shots at those trying to escape, killing several people in the process. Days later, however, shooting abated and thousands of Albanians, as well as several hundred policemen, managed to climb on board the *Vlora*, a large ship

⁴¹¹ 'Boniver: 'Non illudetevi, torneranno in cinquantamila'' *La Repubblica*, 11 Aug 1991.

⁴¹² Quoted in 'Linea dura del governo. 'Non possono restare'', *La Repubblica*, 9 Aug 1991.

⁴¹³ For more details about the state of Albania at this time, see Fabio Martelli, *Capire l'Albania*, Bologna: Il Mulino, 1998 and Russell King & Nicola Mai, 'Of myths and mirrors: interpretations of Albanian migration to Italy', *Studi Emigrazione/Migration Studies*, XXXIX, no. 145, 2002, pp. 161-199, p. 179-180.

stationed at Durazzo.⁴¹⁴ On 8 August – the middle of Italy’s traditional ‘ferragosto’ holiday season – approximately 20,000 sailed into Bari on the *Vlora*.

Analogous with the state’s inadequate reaction to events in Brindisi earlier that year, the Italian state’s inability to deal with the emergency nature of the situation quickly became apparent. One person died on the *Vlora*, thousands arrived dehydrated and hungry, dozens of women suffered miscarriages and many boat people had dysentery and scabies. Nonetheless, the only evidence of the state’s presence came in the form of military and police personnel. As one Red Cross worker recorded, the state remained absent from a critical situation:

We’ve been working here for seven hours ... do you see those ambulances? They are all private; you won’t find a single one with ‘Local sanitary unit’ written on its side! I would really like to know who and how anyone would have the courage to go to Cortina [the holiday resort where the prime minister was staying] or on a cruise boat That’s right, I was also like Andreotti this morning preparing to leave on holiday, but how can one leave children to die like this?⁴¹⁵

Part of the reason for the government’s failure to provide adequate emergency aid derived from its classification of the crisis as a military and police operation rather than a humanitarian one.⁴¹⁶ Police quickly horded the Albanians into Bari’s football stadium, leading one observer to comment that the operation bore a striking resemblance to Pinochet’s handling of dissidents in Chile.⁴¹⁷ The inability of the Italian state to provide adequate amounts of food and water led to harrowing scenes of Albanians fighting amongst themselves under the observances of Italian forces, who threw supplies into the crowd from cherry-pickers directed over the sides of the stadium’s walls.⁴¹⁸ Inevitably, with police providing the Albanians with little or no information concerning

⁴¹⁴ ‘La sfida impossibile. Dodici mori al porto’, *La Repubblica*, 8 Aug 1991.

⁴¹⁵ ‘La battaglia di Bari’, *La Repubblica*, 9 Aug 1991.

⁴¹⁶ ‘Per i ministri e’ “un problema di ordine pubblico”’, *Corriere della sera*, 9 Aug 1991.

⁴¹⁷ ‘... le autorità italiane hanno avuto un’idea alla cilena, copieranno Pinochet: che stavano per ammassarli nel vecchio stadio.’ Taken from Barbara Palombelli, ‘La battaglia di Bari’, *La Repubblica*, 9 Aug 1991.

⁴¹⁸ For a more vivid description, see Paul Ginsborg, *Italy and its Discontents 1980-2001*, London: Penguin, 2003 (1st published by Allen Lane, 2001), p. 63. See also Angelo Amoroso d’Aragona’s short documentary, *Lo Stadio della Victoria*, available at <http://it.youtube.com/watch?v=So3lxBTGfFw&feature=Playlist&p=890501EF1C827347&index=0> (last accessed on 18 Oct 2008).

their plight, a series of battles broke out.⁴¹⁹ The Italian Prime Minister, Giulio Andreotti, backed the tough stance taken by the state. So too did the Italian president, Francesco Cossiga, who termed the arrival an attack on Italian sovereignty.⁴²⁰ The incarceration of Albanians in the stadium, or what the Italian media fittingly dubbed the ‘concentration camp stadium’,⁴²¹ only ended when an operation began on 10 August to repatriate the migrants by airlift and boat.⁴²² Justifying this move, the Minister for Immigration, Margherita Boniver, said that if Italy failed to impose such measures, “50,000 would return.”⁴²³

Italy then took the precaution of placing its armed forces in Albanian waters – with the acquiescence of the Albanian government – to prevent any other “invasion” from taking place; a move that the Minister for Justice, Claudio Martelli, admitted was “at the limit of international law.”⁴²⁴ Additional measures included providing the Albanian state with funding to alleviate food shortages, followed by the explicit agreement of the Albanian government to prevent any more flights of its people to Italy.⁴²⁵ The international reaction to Italy’s handling of the situation remained low-key, with the United States praising the promptness of the country’s offer to financially aid the Albanian state.⁴²⁶ Although media establishments, important religious figures, NGOs, certain political parties and trade unions levelled criticism at the government’s management of the situation, the public appeared to support the tough stance taken.⁴²⁷

The reaction to the two Albanian influxes illustrated the haphazard nature of Italy’s asylum policy. The fluctuant nature of public and media responses to the arrival of large numbers of potential asylum seekers goes a long way to explaining the

⁴¹⁹ ‘Rivolta nello stadio lager’, *La Repubblica*, 9 Aug 1991.

⁴²⁰ See ‘Linea dura del governo. ‘Non possono restare’’, *La Repubblica*, 9 Aug 1991 and ‘E Scotti difende la ‘linea dura’’, *La Repubblica*, 10 Aug 1991.

⁴²¹ This is a rough translation of the term ‘stadio lager’. For an example of its use, see ‘Diecimila in rivolta nello stadio lager’, *Corriere della sera*, 9 Aug 1991.

⁴²² See Dorothy Louise Zinn, ‘Adriatic Brethren or Black Sheep? Migration in Italy and the Albanian Crisis, 1991’, *European Urban and Regional Studies*, 1996, 3 (3), pp. 241-9.

⁴²³ ‘Boniver : “Non illudetevi, torneranno in cinquantamila”’, *La Repubblica*, 11 Aug 1991.

⁴²⁴ See “‘Cordone sanitario’ in acque albanesi : le forze armate e un satellite per evitare altre “invasioni”, *L’Unità*, 11 Aug 1991 and ‘Scatta l’operazione: ‘blocco dei porti’’, *La Repubblica*, 11 Aug 1991.

⁴²⁵ ‘Per tre mesi sfameremo l’Albania’, *L’Unità*, 13 Aug 1991 and ‘Italia e Albania d’accordo per prevenire nuovi esodi’, *Il Sole 24 ore*, 14 Aug 1991.

⁴²⁶ ‘E gli USA elogiano l’Italia’, *La Repubblica*, 14 Aug 1991.

⁴²⁷ Examples of the press criticism include ‘Quest’Italia da dimenticare’, *L’Unità*, 11 Aug 1991, ‘L’Italia dalla faccia feroce’, *L’Ultima del lunedì*, 12 Aug 1991 and ‘Così Roma ha adottato l’Albania’, *La Repubblica*, 13 Aug 1991 ; for an example of the criticism aimed at the government from the largest opposition party, the Partito Democratico della Sinistra, see ‘Lettera del Pds alle Nazioni Unite: “Violate dignità e diritti umani”’, for an example of the criticism that came from certain church figures, see *L’Unità*, 11 Aug 1991, p. 5 and ‘Il vescovo : “Siamo stati disumani”’, *La Repubblica*, 11 Aug 1991. For the public reaction, see ‘L’Italia si assolve: governo alla gogna’, *La Repubblica*, 15 Aug 1991.

variances of the state's responses, which Barbara Palombelli's front page article in *La Repubblica* captured so dramatically:

Truncheons and water. Punches and bread. Kicks and Gatorade. What kind of a strange country is this? It is a country in which the government, personified by the President of the Council [Andreotti] first symbolically adopts three young Albanian displaced people and then locks 16,000 people in a concentration camp for three days without water and food. After the first invasion, an ad hoc ministry for immigration was invented. And the new department continued to postpone the repatriation date for the first wave of exiles, thus cruelly sustaining false hope. A two-faced government deceived a whole population. Nevertheless someone still has to find the courage to explain to Albanians, and to Italians, if this is really a country of fairytales in which three desperate people can become sons of the head of government or whether it is an inferno that should not be approached.⁴²⁸

The Italian treatment of the approximately 500 Albanian soldiers and officials that fled with their compatriots symbolised successive governments' failure to apply its laws to its policies. Despite the real threat that these people would be subject to persecution upon their return to Albania for deserting, the government also transported these people back, albeit some days after their fellow-nationals had returned. The UNHCR immediately communicated its disdain:

The displaced persons were made believe that they would have been able to start an application for asylum. ... We were not informed of the manner or of the details of the plan [to repatriate them without access to the proper asylum procedures], despite the Italian authorities assuring the UNHCR that it would be able to contribute to establishing who had the requisites for asylum and who did not.⁴²⁹

Several ministers doubted the veracity of Albanians' asylum claims but those escaping the contemporary civil war in Yugoslavia in the early 1990s clearly required protection. Nonetheless, what happened to the second wave of Albanians affected the claims of those coming from the former Yugoslavia. Of the 214 people who arrived in Ancona from the west coast of Yugoslavia at the end of August 1991, none claimed

⁴²⁸ Barbara Palombelli, 'Cosi' si e' spezzato il sogno italiano', *La Repubblica*, 11 Aug 1991.

⁴²⁹ 'L'Onu 'boccia' l'Italia. 'Albanesi cacciati a nostra insaputa'', *La Repubblica*, 20 Aug 1991.

asylum. Instead, they all declared themselves migrants in transit, returning to work elsewhere in Europe or joining loved ones dotted across the continent.⁴³⁰ By late 1992, approximately 10,000 people from the former Yugoslavia had come to Italy. Of these, however, only 1,700 applied for asylum because seeking asylum in Italy remained a precarious endeavour.⁴³¹

Apart from the fear that they would be sent back, many of those fleeing the war in Yugoslavia failed to apply for asylum because of the problems that came with it. Of the 2,216 asylum applications made in Italy in 1992, only 86 attained refugee status. Italy's asylum system remained, the US Committee for Refugees commented, "extremely restrictive."⁴³² In addition, the welcome centres where asylum seekers lived often contained inadequate services and the government provided no state aid to people prohibited from working after the first forty-five days. In late 1992, 300 Somalis attempted to highlight these unsuitable conditions by applying for asylum at the Vatican. One of the Somalis' main grievances related to the destruction, by an accidental fire, of the abandoned building many of them had lived in. Because the local province responsible failed to find alternative accommodation, many of the Somalis had taken to living on the streets. One Somali interviewed by *La Repubblica* commented:

We don't believe in Italy. We thought Italy was like our second home. We said: there we can restart to live, there they are our friends, our Italian brothers. But it is not like that. Here no one wants us. No work, no house, no money ...you humiliate us, you look at us crookedly and now you give us a fire [referring to the burning of their accommodation].⁴³³

The Somalis targeted the Vatican because of the Catholic Church's assistance to migrants in Italy through various religious NGOs. Amongst these, Caritas stood out. Though the Vatican refused to provide the Somalis with asylum, it did make various statements calling on the Italian government to aid and defend all migrants. Speaking on World Refugee Day in September 1993, the Pope asserted that Italy possessed a responsibility to defend refugees 'from every type of marginalization and racism,

⁴³⁰ 'Una grande fuga verso l'Italia? Ancona temi i nuovi profughi', *La Repubblica*, 30 Aug 1991.

⁴³¹ 'Migliaia di disperati in fuga dalla guerra e dalla povertà', *La Repubblica*, 19 March 1993.

⁴³² See 'Critiche USA: "legge troppo restrittiva"', *Corriere della sera*, 27 May 1993 and 'L' esercito di fantasmi della legge Martelli', *La Stampa*, 27 May 1993.

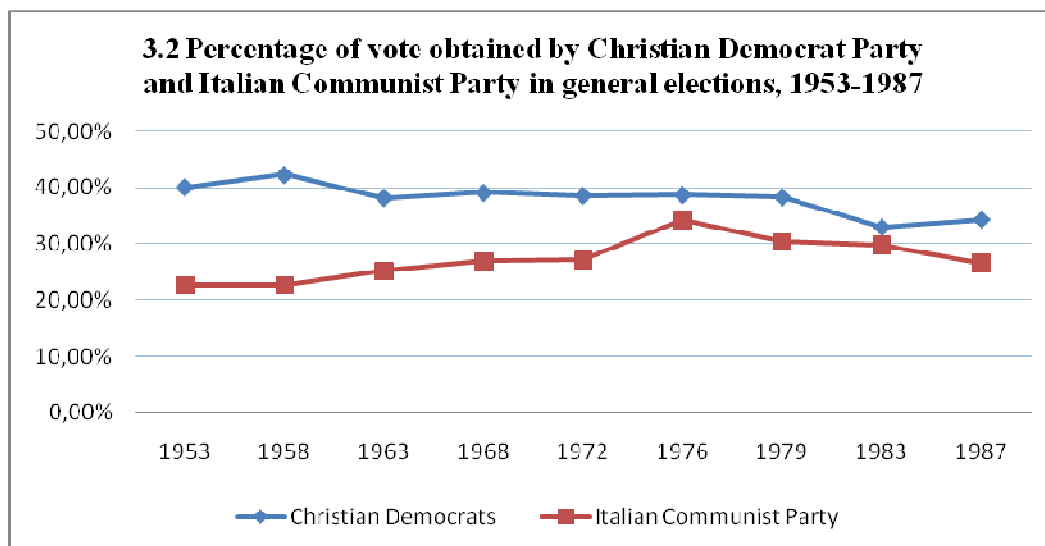
⁴³³ 'Ci arrendiamo questa Italia non ci è amica' *La Repubblica*, 12 Dec 1992.

promoting an industrious and convincing culture of solidarity'.⁴³⁴

3.3 Tangentopoli and the Politics of Immigration, 1992-1996

Between mid 1992 and 1995, the issue of immigration remained largely absent from political debate. Instead, attention centred on the fallout of the crisis caused by the corruption scandal identified as *Tangentopoli* (roughly translated as “Bribesville” in English), Italy’s largest political crisis since the birth of Italy’s post-war Republic. Nonetheless, *Tangentopoli* indirectly led to the rise of the *Lega Nord*, *Alleanza Nazionale* and *Forza Italia* and the dismemberment and disappearance of many of Italy’s most established parties. The break-up of Italy’s main parties and their replacement by new and renewed groups greatly affected future immigration politics.

In the wake of *Tangentopoli*, the popularity of the Christian Democrats – the most successful political party post-fascism – decreased enormously, leading to the party’s division into several smaller versions. Similar developments took place within the Socialist Party, the Italian Republican Party, the Italian Socialist Democratic Party and the Liberal Party, culminating in the Socialist Party’s leader, Bettino Craxi, seeking political asylum in Tunisia. Almost simultaneously, the Italian Communist Party, traditionally the country’s second largest political party, disintegrated. The fall of the Berlin Wall and the collapse of communism in Soviet Europe threw the party into ideological turbulence, eventually leading to the formation of two contrasting parties.



Source: 'Bistecche impotenti ed altri partiti politici', *La Repubblica (Il Venerdì)*, 11 April 2008, p. 28.

⁴³⁴ 'Lo stato italiano difenda gli immigrati', *La Repubblica*, 17 Sept 1993.

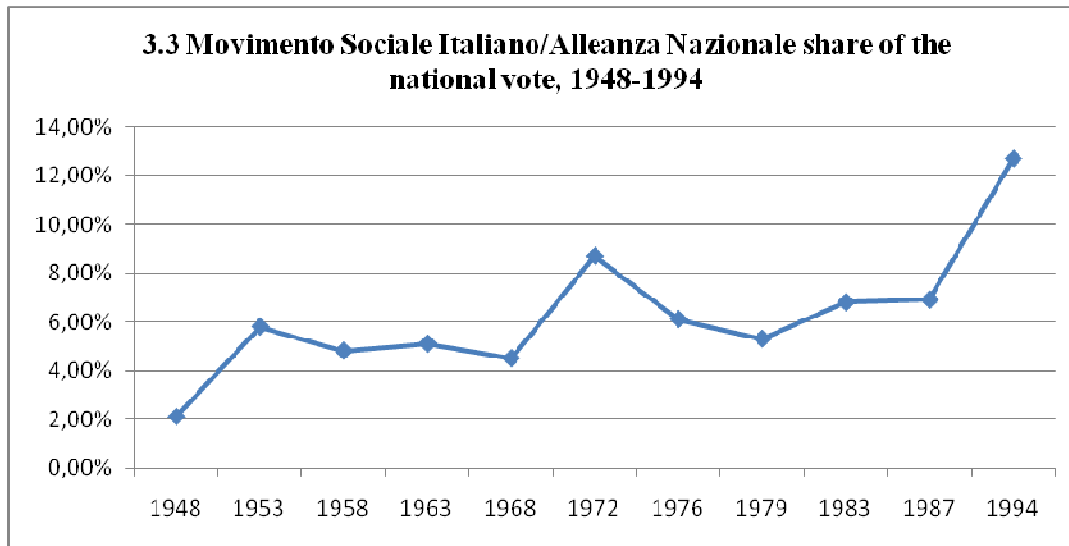
The *Partito Democratico della Sinistra* (PDS) and the Refounded Communist Party replaced the Italian Communist Party. The Refounded Communists' rhetoric closely resembled the Communist Party's inclusive approach to internal migrants in the 1950s and 1960s. Its support remained small, attaining just six per cent of the vote. The other branch of the former Communist Party, the PDS, also advocated an expansionist position on immigration although Davide Pero recently concluded that 'there seems to exist a remarkable discrepancy between the inclusionary and politically correct official rhetoric of the [PDS] Left and the often instrumental if not exclusionary character of its grassroots' on issues related to immigration.⁴³⁵

The Italian Communist Party had adopted, included and eventually integrated many of the southern Italian migrants who moved to northern Italy in the 1950s and 1960s under the rubric of class struggle and socioeconomic justice. But its inability to attain power in the 1970s and 1980s and its ultimate demise after the fall of communism in Eastern Europe meant this never occurred with foreign migrants in Italy in the 1990s and 2000s. The Christian Democrats reacted ambiguously to immigrants, as demonstrated by its contrasting reactions to the two waves of Albanian migration to Italy in the spring of 1991 and August 1991. Nevertheless, some empathy towards migrants still existed within the party because of its links to the Catholic Church, which consistently voiced its support for migrants. Yet, the Church's capacity to influence Italian politics diminished after the dissolution of the Christian Democrats in Italy's biggest political crisis post-fascism. The parties that stepped into the political vacuum that Tangentopoli created brought the issue of immigration to the fore of public debate from the mid 1990s onwards and especially in the run-up to the 2001 and 2008 general elections.

The extinction of the Italian Communist Party symbolised the end of the neo-fascist *Movimento Sociale Italiano* (MSI) as it existed up until the end of the Cold War. Before 1989, the MSI used its opposition to communism as its central platform, but the redundancy of this approach and the opportunities presented by *Tangentopoli* resulted in the creation of a new more centrist party focused on the promotion of family values, security and national identity. The MSI became the *Alleanza Nazionale* (AN) in January 1994. Previously a minor party, the AN established itself in succeeding years as a

⁴³⁵ Davide Pero, *Inclusionary Rhetoric Exclusionary Practices. Left-wing Politics and Migrants in Italy*, London: Bergahn Books, 2007, p. 66.

mainstream political party, more than doubling the support its predecessor attained.⁴³⁶



Source: 'Fini: "Senza di noi non si governa"', *La Stampa*, 27 March 1994.

The anti-establishment ideology of *Lega Nord* benefited enormously from *Tangentopoli*. Formed by the amalgamation of various “leagues” from northern Italy in early 1991, the *Lega* vowed to transform Italy into a federalist state in order to revoke the national administration’s control, which it felt squandered northern taxes on the underproductive South.

Forza Italia (FI), founded in 1994 by the media and financial tycoon Silvio Berlusconi, benefited most from the political scandals that rocked the country in the 1990s. Containing many ex-Christian Democrats, ex-Liberals and ex-Socialists, FI stepped into the political vacuum created by the fall of Italy’s established parties. Berlusconi’s party came to public attention on a wave of publicity, helped considerably by Berlusconi’s ownership of several television stations and other media outlets, to form a new Italian government in April 1994 along with AN and the *Lega*. Despite the coalition government’s remarkably short term of office – the government fell in December 1994 – all three parties, particularly the *Lega* and AN, would repeatedly bring the issue of immigration to public and political attention over the following years.

⁴³⁶ The *Alleanza Nazionale* (AN) replaced the *Movimento Sociale Italiano*. In doing so, the party’s vote increased from 5.9 per cent in 1987 to 12.7 in 1994. ‘Fini: "Senza di noi non si governa"', *La Stampa*, 27 March 1994

3.4 Emergency Measures and Absent Laws: Asylum in Italy, 1997-2000

In 1995 an outbreak of cholera occurred in Albania, followed one year later by a polio epidemic, demonstrating the lack of facilities and services then available to the Albanian people. Conditions in Albania degenerated further in early 1997, when the Albanian Prime Minister announced in parliament the collapse of the pyramid schemes in which so many Albanians had invested in, resulting in the disappearance of great swathes of the remittances sent home from Albanian immigrants in Italy and Greece. Half the country's GDP for 1996 vanished as a result.⁴³⁷ Violence and disorder overtook the country, particularly in the south. By March the President had removed the Prime Minister and placed the Chief of Staff of the Army under house arrest. Fire broke out at opposition press offices. Anarchy descended as gangs attacked and sacked police stations, army barracks, prisons, banks and public offices, leading to the widespread availability of firearms amongst the public.⁴³⁸ The enforcement of Emergency law gave police the right to shoot at stone-throwers on sight. In response, a new wave of Albanian migration began. Whether these new migrants deserved asylum status or not became the focus of substantial political debate over the ensuing weeks.

Approximately 16,000 Albanians arrived in Italy in spring 1997.⁴³⁹ The new left-wing coalition government, which came to power in May 1996, originally voiced its intentions to advance an asylum policy resembling its EU neighbours. Accordingly, the Interior Minister, Giorgio Napolitano, announced: "We don't believe that the situation is so complex as to justify the automatic concession of political asylum. But in every case, Italy will respect all Italian and international laws on the subject of political asylum; for that reason every request advanced will be examined with attention."⁴⁴⁰ One week later, the same government reacted to criticism of its handling of the Albanians by outlining a series of emergency measures that included assigning temporary permits of stay lasting between 60 to 90 days to all those Albanians already landed in Italy. It also declared that the Italian navy would return any boats bringing Albanians to Italy.⁴⁴¹ This new system, which one journalist compared to 'a game of cops and robbers',⁴⁴² ran into serious

⁴³⁷ Russell King & Nicola Mai, 'Of Myths and Mirrors: Interpretations of Albanian Migration to Italy', p. 167-8.

⁴³⁸ Luca Einaudi, *Le politiche dell'immigrazione in Italia dall'Unità a oggi*, p. 228.

⁴³⁹ 'Profugi', *La Stampa*, 20 May 1997.

⁴⁴⁰ "'Non cacciamo nessuno'", *La Stampa*, 10 March 1997.

⁴⁴¹ 'Il governo vara misure eccezionale', *La Repubblica*, 20 March 1997.

⁴⁴² Paolo Garimberti, 'Tragedia annunciata', *La Repubblica*, 29 March 1997.

problems days later when an Italian navy vessel struck a small boat containing Albanian migrants, leading to the deaths of dozens of boat people. The Greens promptly blamed the government for the tragedy and the Refounded Communists demanded a stop to the controls on all Albanian boats. *Forza Italia* claimed: “The tragedy is [...] an involuntary crime committed on the part of those that transformed a humanitarian emergency into a military emergency.”⁴⁴³

Italy had already presented a plan to its EU colleagues in mid March to lead a military intervention in Albania to stem the flow, but the EU had rejected the arrangement, preferring instead some kind of civil solution.⁴⁴⁴ Italy then pressed the United Nations for international backing. On the same day the naval tragedy occurred, in late March, the UN approved Italy’s repeated requests and the country accepted responsibility to lead an international military-humanitarian mission to Albania, which included policing the country’s coastline from potential migrants.⁴⁴⁵ The reason for the Italian government’s desire to lead such an intervention, according to Ted Perlmutter, related to two factors. First, the negative reaction of Italians to the first wave of Albanian boat people in 1991 meant that the public’s tolerance for more mass exoduses of Albanians remained minimal. Second, Italy attempted to display to its EU partners that it too had an effective and trustworthy foreign policy in the run-up to a decision concerning its European Monetary Union application.⁴⁴⁶

Though this policy initiative did succeed in alleviating the numbers of Albanians arriving in Italy, it failed to solve the issue of how to treat the approximately 13,000 Albanians that remained; of whom 1,685 applied for asylum.⁴⁴⁷ On 1 September 1997, one day after the expiration of the Albanian temporary stay permits, the Italian Prime Minister, Romani Prodi, announced an extension of the permits until 30 November. Those with valid work permits, those granted asylum and those with family already in Italy would be allowed to stay after this date. Those unable to meet any of these conditions would be repatriated. Maurizio Gasparri (AN) responded critically but tellingly: “The intention presupposes that these clandestines will be retraceable and identifiable in a few days. I am really curious to know if they will do it.”⁴⁴⁸ Two months

⁴⁴³ ‘Verdi e rifondazione ‘la colpa è’ del governo’, *La Repubblica*, 30 March 1997.

⁴⁴⁴ ‘Allarme profughi: 5 mila in arrivo’, *La Stampa*, 17 March 1997.

⁴⁴⁵ ‘L’ONU vota il via libera per la missione alla missione militare’, *La Repubblica*, 29 March 1997.

⁴⁴⁶ Ted Perlmutter, ‘The Politics of Proximity: The Italian Response to the Albanian Crisis’, *International Migration Review*, Vol. 32, No. 1 (Spring, 1998), pp. 203-222, p. 204 & 208.

⁴⁴⁷ ‘Prodi alza la voce, Fino cede sul voto’, *La Stampa*, 21 May 1997.

⁴⁴⁸ ‘Albanesi, arriva il piano’, *La Repubblica*, 1 Sept 1997.

later, only several hundred of the 4,789 earmarked for repatriation returned to Albania; most others remained untraceable.⁴⁴⁹ Many of these Albanians, as well as the Albanians from 1991 became regularised through the various amnesties that the Italian government sporadically announced in order to regularise some of the large undocumented migrant population that constantly grew throughout the 1990s. The various amnesties that took place in 1990, 1995 and 1998 regularised over seventy thousand Albanians.⁴⁵⁰

Formation

The relatively small number of asylum applications Italy received compared to its EU colleagues and the fallout from *Tangentopoli* meant the country remained one of the only EU members yet to implement any specific national law that legislated for the asylum process. From 1997 onwards, with the increase in applications caused by the Albanian episode and the arrival of thousands of Kurdish asylum seekers, the government reacted by proclaiming itself ready to address this legal oversight through the so-called Turco-Napolitano law.⁴⁵¹ The Turco-Napolitano law aimed to replace the emergency nature of previously proposed over Italian immigration and asylum policy with a regularised system. The law aimed to divide Italy's immigration policy into two distinctive channels: immigration and asylum. The first part aimed to create a quota worker system to match the country's labour needs, the number of foreign workers already available and unemployment rates, as well as proposing a residence permit for those that lived in Italy for over five years.

Debate between the government and the opposition coalition, the so-called Pole of Freedom that comprised Forza Italia and AN, over the Turco-Napolitano law remained relatively cordial, with Napolitano complementing sections of the opposition after the houses of parliaments passed the economic migrant segment of the law: "The contribution of some representatives of the Pole of dissension, but also of a constructive wording, was in part welcomed by the government."⁴⁵² Contrastingly, the *Lega Nord*'s strident opposition to the law even managed to surprise some of their past and future right-wing partners, with Gianfranco Fini, the leader of AN, commenting that Italian

⁴⁴⁹ See 'Prodi: il rimpatrio e' d'obbligo', *La Stampa*, 2 Dec 1997 and "'Non e' stata usata la forza contro gli albanesi'", *Corriere della sera*, 5 Dec 1997.

⁴⁵⁰ Claudia Finotelli, 'Accolti o sanati? L'asilo e la protezione umanitaria in paesi di "nuova" e "vecchia" immigrazione', p. 226.

⁴⁵¹ The Turco-Napolitano law was named after the Interior Minister, Giorgio Napolitano, and his former communist colleague as minister for social solidarity, Livia Turco

⁴⁵² "'Deve intervenire l'Europa'", *La Stampa*, 20 Nov 1997.

right-wing parties never calculated that immigration could be included so successfully in the anti-system rubric that made up a fundamental part of the *Lega*'s identity.

The second part of the Turco-Napolitano law, formulated in unison with numerous NGOs and the UNHCR, aimed to establish an asylum system on a par with its northern EU neighbours. To appease actors sympathetic to asylum seekers, the new asylum bill intended to extend asylum to minors and women facing persecution on account of their gender, as well as establishing norms for asylum seekers to access psychological and medical help during their application. The bill also included a number of EU agreements that affected national asylum law, such as the Dublin Convention. Significantly, asylum seekers would be provided for, according to the new law, by the local council for the duration of their asylum application rather than the forty-five days stipulated by the Martelli law, thereby bringing Italy into line with other EU countries.⁴⁵³

In the first major senate debate on the asylum law in July 1998, the *Lega* objected to the amount of costs the bill would create for the state if it became law. The *Alleanza Nazionale* believed that the state lacked the structures necessary to enact the law and hence called for further debate on the bill in the autumn. *Forza Italia* agreed, stating that people in need of economic asylum rather than political asylum might take advantage of the law if not amended further.⁴⁵⁴ Though the first part of the Turco-Napolitano law rapidly passed through the various official channels, the second part stalled in the senate because of various problems raised by the opposition.

The government made various changes to the asylum bill in early November 1998 to attain the necessary support from the Senate. Nevertheless, the *Lega* remained obstinate in its opposition because, in its opinion, "it will underhandedly open the doors to a country whose doors are already fairly open."⁴⁵⁵ Although AN and FI voiced their disapproval of judging asylum applications based on the 'socio-political' situation in the asylum seekers' country of origin,⁴⁵⁶ the law passed with almost bipartisan approval.

⁴⁵³ Article 9, 3 of *Disegno di legge 203: Riconoscimento dello status di rifugiato* states: 'I comuni sono tenuti a fornire accoglienza ai richiedenti asilo privi di ospitalità in Italia, per la durata del procedimento amministrativo e degli eventuali giudizi amministrativi'.

⁴⁵⁴ See the statements of Francesco Tabladini (*Lega*), Luciano Magnalbo` (AN) and Andrea Pastore (FI) in *Legislatura XXIII^o - Aula - Resoconto stenografico della seduta*, 28 July 1998 for more details.

⁴⁵⁵ Francesco Tabladini (*Lega*), *Legislatura XXIII^o - Aula - Resoconto stenografico della seduta*, 5 Nov 1998.

⁴⁵⁶ According to Emiddio Novi of FI, this changed the character of the law immeasurably because it meant certain traditional sender states around the world might also qualify because of certain socio-political problems. See Emiddio Novi (FI), *Legislatura XXIII^o - Aula - Resoconto stenografico della seduta*, 4 Nov

Nonetheless, the new coalition government that replaced the Prodi government in October 1998, led by the left-wing Massimo D'Alema, failed to enact the legislation thereafter. The law lingered in officialdom for the next eighteen months before Giorgio Napolitano, by then a member of the European parliament, attacked his own government's inability to properly legislate for asylum seekers three years after he presented his asylum bill to parliament.⁴⁵⁷ Some months later, in October 2000, the UNHCR led the battle-charge against the Italian state, denouncing Italy as overseeing one of the worst asylum policies in the EU, berating the tiny number of refugees present in the country compared to other EU countries, such as Germany, Austria and the Netherlands.⁴⁵⁸

The government reacted by rejuvenating the asylum law previously approved by both houses. Because of small changes made in the intervening period, the law was obliged, once again, to pass through both houses of parliament. This time, much of the opposition to the law focused on whether those entering "clandestinely" or "illegally" could apply for asylum.⁴⁵⁹ Because the law was debated several weeks before the spring 2001 general election, the positions taken by opposition parties betrayed their general overall stance to immigration. The AN called for further amendments to be made to the law because of the possibility that terrorists, "especially Islamic" terrorists, might enter Italy using asylum as an excuse.⁴⁶⁰ The *Lega* again called for a clear delineation between those entering clandestinely and those entering legally because of the probable criminal element of irregular entrants:

If a person is persecuted, they can claim [asylum] at the consulate, embassy and also at the border of the Italian state when entering legally, citing the recognition of the right to asylum. Vice-versa, we would have a lot of cases of people residing clandestinely in Italian territory and profiting from this law to stay in Italy without claim and continuing maybe to commit crimes against the state and against other persons.⁴⁶¹

FI agreed that "those that enter clandestinely in Italy damage the principal [of asylum] in

1998.

⁴⁵⁷ 'Diritto d'asilo Napolitano a Violante "Legge ferma da anni"', *La Stampa*, 15 July 2000.

⁴⁵⁸ 'Denuncia dell'Unhcr "Rifugiati Maglia nera all'Italia"', *La Stampa*, 26 Oct 2000.

⁴⁵⁹ See Giacomo Garra (FI), *Resoconto stenografico dell'Assemblea*, 27 Nov 2000, p. 12, for example.

⁴⁶⁰ Paolo Armaroli (AN), *Resoconto stenografico dell'Assemblea*, 6 March 2001, p. 84.

⁴⁶¹ Pietro Fontanini (*Lega*), *ibid*, p. 123.

a serious manner.”⁴⁶² Nonetheless, the various amendments made to the law in the final debates in the chamber of deputies caused the law to pass convincingly by 197 to 92 votes. One day later, the bill arrived in the senate. The opposition again voiced its opposition, with FI claiming that because of the serious changes made to the law in the chamber of deputies, the senate required more time to examine the modifications, “in particular those measures pertaining to that critical moment, amply discussed by the senate, relating to the conditions of the subject before claiming asylum ... [and] the persistent connection in some concrete cases with the phenomenon of clandestine immigration.”⁴⁶³ As a consequence, the president of the senate postponed the passing of the law and shelved it once again with elections approaching. Accordingly, Italy’s asylum policy still relied on one article of the 1990 Martelli law to deal with the large number of people seeking asylum in Italy from the late 1990s onwards.

Implementation

Notwithstanding the failure of Italian parliament to pass specific asylum legislation, the ‘immigration’ section of the Turco-Napolitano law did contain important provisions relating to all migrants arriving in Italy, including asylum seekers. The Turco-Napolitano law led to the establishment of reception centres for migrants intercepted by the Italian navy and police entering Italy.⁴⁶⁴ The law created two different categories of centres: welcome centres (CPAs) and centres for temporary stay (CPTs). The latter’s function involved establishing economic migrants’ identity while the former’s role related to the registration of asylum seekers. After their registration, the responsibility for housing asylum seekers during the processing of their applications fell to the country’s regions and cities.⁴⁶⁵

Crucially for the large influx of Kurdish boat people that began to arrive on Italy’s southern shores from mid 1997 onwards, one provision of the Turco-Napolitano

⁴⁶² Giacomo Garra (FI), *ibid*, p. 126.

⁴⁶³ Andrea Pastore (FI), *Legislatura XXIII^a - Aula - Resoconto stenografico della seduta*, 8 March 2001.

⁴⁶⁴ The 1995 *Legge Puglia* acted as precursors to the CPAs and CPTs. It set up institutions for people arriving to Puglian shores by boat at three centres in Puglia, located at Brindisi, Lecce and Otranto. In 1996 they began to host hundreds of people, with identifying migrants seen as their primary objective. See Consorzio Italiano di Solidarietà (ICS), *Rifugiati: La Protezione Negata*, Firenze: Feltrinelli, 2005. Online version accessible at <http://www.ristretti.it/areestudio/stranieri/ricerche/asilo.pdf>. See p. 66 for above reference.

⁴⁶⁵ Turco: “Se chiederanno l’asilo politico avranno tutte le garanzie che sono dovute a quella categoria. Non saranno ad esempio ospitati nei centri di permanenza, ma di accoglienza. Ci devono pensare i Comuni.”, ‘Livia Turco: “Ingannati dai mercanti di morte Devono capire che per i clandestini e’ finita”’, *Corriere della Sera*, 21 July 1998.

law undertook to provide temporary protection for people hailing from non-EU countries in ‘considerable humanitarian need, because of conflicts, natural disasters or other events of particular seriousness’.⁴⁶⁶ Though many Kurds would receive temporary protection visas, the government initially assured those Kurds landing in Italy that they would be eligible to obtain, with preferential treatment, political asylum.⁴⁶⁷

Italy’s treatment of Kurdish boat people perturbed the Turkish government. In a strongly worded letter, Ismail Cen, the Turkish Foreign Minister, spoke of his country’s disquiet at Italy’s stance. In his government’s opinion, the Kurds faced no human rights problem and hence remained ineligible from receiving political asylum. By accepting them, the letter outlined, the Italian government only promoted further migration by criminal traffickers.⁴⁶⁸ But Italy, according to the vice Prime Minister, Walter Veltroni, disagreed. Speaking after an EU meeting on the subject in Paris, Veltroni announced that “real conditions to grant political asylum existed” for the Kurds.⁴⁶⁹

Italy’s approach to Kurdish asylum seekers met with the rapturous approval of the UNHCR, who termed the Italian response: “absolutely exemplary.”⁴⁷⁰ Perhaps somewhat surprisingly, considering the hostility to Italy’s asylum law in the senate, many of Italy’s opposition parties fully supported the government’s stand on this issue. Gianfranco Fini, the leader of AN, commented: “There is no doubt that those Kurds are a people. And there is much evidence that they have been treated as an oppressed people. I therefore share the decision to grant the right of asylum to those that request it.”⁴⁷¹ More unexpectedly was the statement from the *Lega*. Wearing a t-shirt in parliament that read “Freedom for Kurdistan,” one *Lega* deputy compared the plight of Kurds to that of the Padanians in northern Italy, struggling to break free from the clutches of Italy.⁴⁷²

In mid November 1998, Italy faced another international dilemma over its asylum policy when Abdullah Öcalan, the leader of the Kurdish PKK movement (Kurdish Workers Party), applied for political asylum in Italy. Germany and Turkey immediately called for Öcalan’s extradition to their own countries to face prosecution

⁴⁶⁶ Article 20.1, *Testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero* (also known as the Turco-Napolitano law), 25 July 1998.

⁴⁶⁷ ‘Politico asilo per i profughi curdi’, *Corriere della sera*, 31 Dec 1997.

⁴⁶⁸ ‘Ankara contrattacca’, *La Stampa*, 5 Jan 1998.

⁴⁶⁹ ‘Veltroni: andiamo avanti per la nostra strada’, *La Repubblica*, 6 Jan 1998.

⁴⁷⁰ ‘Kohl fa pace con l’Italia’, *La Repubblica*, 7 Jan 1998.

⁴⁷¹ ‘Prodi: “I curdi sono perseguitati politici”’, *Corriere della Sera*, 8 Jan 1998.

⁴⁷² ‘Coinvolgere anche l’Onu il problema oramai e` di tutto’ *La Repubblica*, 9 Jan 1998.

for various attacks.⁴⁷³ Two days later, the United States advised Italy not to extend political asylum to the Kurdish leader.⁴⁷⁴ Contrastingly, the *Lega*, the Greens, the Refounded Communists (who subsequently revealed that one of its members brought Öcalan to Italy),⁴⁷⁵ and the Vatican all supported Öcalan's application for asylum.⁴⁷⁶ One week later, Turkey threatened Italy with an economic boycott and the discontinuation of all diplomatic ties with the country if Italy granted Öcalan political asylum.⁴⁷⁷

This placed Italy's new Prime Minister, Massimo D'Alema, who replaced Prodi as head of the coalition government in October 1998, in a difficult situation, as his majority consisted of a mix of communists in favour of granting political asylum to Öcalan and centrist politicians who considered Öcalan a terrorist. In addition, Turkey and other countries exerted considerable pressure on Italy. D'Alema refused to extradite Öcalan to Turkey or Germany on condition that he left Italy voluntarily. On 18 January 1999, eight million viewers tuned in to watch the departure of Öcalan from Italy.⁴⁷⁸

One month later, Turkish secret forces captured Öcalan in Kenya and returned him to Turkey to face trial. A Turkish court subsequently sentenced him to death, although the country's abolishment of the death penalty in 2002 meant his execution never took place. In October 1999, Rome judges granted Öcalan asylum in absentia (Öcalan's lawyer made an appeal to the court before he abandoned Italy) on the grounds that Turkey failed to guarantee fundamental liberties to the Kurdish leader.⁴⁷⁹

Nationals of various countries, not just Kurds, began to arrive by boat during the late 1990s in search of asylum. Of the almost 1,000 boat people to arrive in southern Italy in a forty-eight hour period in mid January 1999, Kosovars made up a majority and Kurds a minority.⁴⁸⁰ This pattern intensified further over the forthcoming months as thousands of fleeing Kosovars sought protection in Italy.

Italy accepted Kosovar asylum seekers with great hospitality following the new Interior Minister's trip to Kosovar refugee camps in March 1999. After witnessing for herself the Kosovars' situation, Rosa Russo Jervolino pleaded for Italians to empathise

⁴⁷³ 'Manette a Roma al capo di curdi', *Corriere della Sera*, 14 Nov 1998.

⁴⁷⁴ 'Washington: non date asilo a Ocalan', *La Stampa*, 17 Nov 1998.

⁴⁷⁵ 'E' vero, l'ho portato io in Italia', *Corriere della Sera*, 26 Nov 1998

⁴⁷⁶ 'La reazione', *La Stampa*, 16 Nov 1998 and 'Il Vaticano: si all'asilo per chi sostiene un'idea', *Corriere della Sera*, 21 Nov 1998.

⁴⁷⁷ 'Ankara, sanzioni da 300 milioni di dollari', *La Stampa*, 23 Nov 1998.

⁴⁷⁸ 'Otto milioni di telespettatori per il Tg1', *La Stampa*, 18 Jan 1999.

⁴⁷⁹ 'Il Presidente del tribunale "Una sentenza tecnica La politica non c'entra"', *La Stampa*, 5 Oct 1999.

⁴⁸⁰ 'In fuga verso l'Italia', *La Repubblica*, 19 Jan 1999.

with the Kosovars' plight: "I have witnessed terrible scenes of people who have lost their families; they must move the conscience of Italians."⁴⁸¹ One week later, Italy pledged large financial support to the UNHCR for the upkeep of refugee camps, with the head of the UNHCR terming the Italian donation "the most passionate and the largest compared to other countries."⁴⁸² Italy also undertook to temporarily house 10,000 Kosovar refugees in ex-air bases in the country as part of the international effort to help Kosovar refugees fleeing the NATO bombing of the region.⁴⁸³ The Italian government approved a special decree to provide Kosovars with temporary humanitarian protection visas entitling recipients to work and study until 31 December 1999.⁴⁸⁴

In addition to Italy's pledge to house thousands of Kosovars, boats continued to arrive with thousands of additional Kosovars applying for asylum in subsequent months.⁴⁸⁵ By the end of June 1999, the makeup of those fleeing from Kosovo changed somewhat, with Serbs and, in particular, Roma fleeing threats of retaliation from returning Kosovars. Italy declared on 21 July 1999 that all boat people hailing from Kosovo would be classified as 'clandestines' from then onwards rather than asylum seekers or refugees.⁴⁸⁶ This abrupt about-face turn demonstrated the subjective nature of Italy's asylum policy. The UNHCR responded by stating: "An automatic rejection of refugees would violate international rights and Italian law. It's necessary to guarantee the individual examination of the circumstances of each asylum seeker." Amnesty International, the Greens, the Refounded Communists and religious groups all joined in to criticise this new government stance.⁴⁸⁷ One Roma asylum seeker wondered whether this change was as a result of discrimination towards Roma:

According to you the war is finished there? We escaped because we wanted to? We are second- or third-class refugees, while Kosovars were first category [refugees]? Why can't we claim political asylum? Why doesn't NATO intervene for us and for all the other ethnic minorities that the Albanians are expelling from Kosovo?⁴⁸⁸

⁴⁸¹ 'Le lacrime di Jervolino', *La Repubblica*, 31 March 1999.

⁴⁸² "'Tutti i profughi devono tornare nel Kosovo'", *La Stampa*, 8 April 1999.

⁴⁸³ *Ibid.*

⁴⁸⁴ Decreto del presidente del consiglio dei ministri 12 maggio 1999. Misure di protezione temporanea, a fini umanitari, da assicurarsi nel territorio dello Stato a favore delle persone provenienti dalle zone di guerra dell'area balcanica. Published in *Gazzetta Ufficiale*, No. 121, 26 May 1999.

⁴⁸⁵ 'Puglia, allarme profughi: 5 mila arrivi', *La Stampa*, 31 May 1999.

⁴⁸⁶ 'Giro di vite sui profughi, l'Onu contro l'Italia', *Corriere della Sera*, 22 July 1999.

⁴⁸⁷ *Ibid.*

⁴⁸⁸ *Ibid.*

Italy originally offered hospitality, assistance and support to Kosovars arriving in Italy, who it denoted as deserving refugees. Several months later, Italy labelled Kosovars arriving by boat “clandestines” undeserving of Italian help. This turnaround exemplified the contradictory nature of an Italian asylum policy dictated by whims rather than by specific norms; a trend symbolised by the country’s failure to insert proper asylum legislation.

Effects

The amount of welfare aid asylum seekers received remained minimal because of the failure of the Italian government to enact asylum legislation assuring provisions for asylum seekers for the duration of their application. Consequently, asylum seekers received a state contribution for only forty-five days, despite asylum applications frequently taking over one year to process. Accordingly, Italy remained a country of transit for many asylum seekers rather than a country of protection. As one UNHCR representative explained:

It’s a comprehensible phenomenon. In Italy a person that makes a request for asylum must wait 13-14 months before they are recognised as refugees. In the meantime, according to the law, they don’t have the right to work and the state gives them an allowance of 34 million lira [EUR 17.56] a day, but only for a maximum of 45 days.⁴⁸⁹

Kurds and Kosovars remained most prominent amongst those asylum seekers in transit. Italy’s enactment of the Schengen accords in Italy in late 1997 greatly facilitated their onward voyage north.

Governing and opposition German political parties lined up to criticise Italy’s failure to stem the flow of Kurds moving further north, with the opposition SDP complaining in early January 1998:

Italy behaves like no other country in the western world: it tolerates organised gangs exploiting the destiny of unfortunate people to make money, and the political, social and financial consequences of this traffic fall back on the populations of other countries. In other words: the norms of Schengen entered into force too early maybe, for a country

⁴⁸⁹ ‘Denuncia dell’Unhcr “Rifugiati Maglia nera all’Italia”’, *La Stampa*, 26 Oct 2000.

that is not able to respect them.⁴⁹⁰

The German Foreign Minister, Klaus Kinkel, also made it clear that Italy had to “stop the activity of traffickers” and operate “tight controls over the EU’s external borders.”⁴⁹¹ Germany’s contrite remarks over Italy’s inability to control its borders appeared comprehensible, considering the failure of large sections of Kurds and Kosovars to attend asylum hearings because of their presumed onward migration further north.⁴⁹² Of the 8,330 asylum seekers from 1999 called to interview by the national commission in charge of processing asylum applications, 6,000 failed to appear.⁴⁹³ This trend continued into the 2000s, exemplified by the discovery of large groups of Kurdish asylum seekers in trucks bound for Germany and at the French border.⁴⁹⁴

Calvita notes that many of the intentions of the Turco-Napolitano law appeared genuinely understanding of immigrants’ plight. Nevertheless, its enforcement remained highly problematic.⁴⁹⁵ The treatment of hundreds of asylum seekers forced to live on Italy’s streets or in self-made shanty structures exemplified this. The state maintained that the responsibility for providing appropriate provisions for asylum seekers rested with the regions; yet the state provided no funds for such a requirement, demonstrating the local-national dichotomy. National intransigence often led to local problems that Italy’s regional and city councils floundered to resolve.

By mid 2000 in Rome, for example, approximately 100 Iraqi Kurdish asylum seekers lived in a self-made shack in Colle Oppio Park, next to the Coliseum, because of a lack of sufficient accommodation for asylum seekers. Most of the Iraqi Kurds slept on a communal carpet in the park and washed themselves in a nearby fountain. Religious organisations, unable to house them, brought them food every day.⁴⁹⁶ A similar story emerged in December 2000 when an African journalist fleeing his home country had to live on the streets of Bologna because the city only had limited numbers of places for

⁴⁹⁰ This statement came from Karsten Voigts, the opposition SDP party spokesman on foreign affairs.

⁴⁹¹ ‘Piano anti-clandestini’, *La Stampa*, 3 Jan 1998.

⁴⁹² ‘Controlli ai confini d’Europa’, *La Stampa*, 5 Jan 1998.

⁴⁹³ Claudia Finotelli, ‘Accolti o sanati? L’asilo e la protezione umanitaria in paesi di “nuova” e “vecchia” immigrazione’, p. 231-2.

⁴⁹⁴ ‘Denuncia dell’Unhcr “Rifugiati Maglia nera all’Italia”’, *La Stampa*, 26 Oct 2000.

⁴⁹⁵ See ‘Il treno del sole porta cento curdi a Torino Sbarcati in Calabria vogliono raggiungere il Nord Europa’, *La Stampa*, 31 July 2000, ‘Arrestati i tre autisti tedeschi’, *La Repubblica*, 2 Aug 2000 and ‘Bloccati a Ventimiglia’, *La Stampa*, 4 Aug 2000.

⁴⁹⁶ See Kitty Calavita, ‘Italy: Economic Realities, Political Fictions, and Policy Failures’, p. 371.

⁴⁹⁶ ‘Rinasce a Colle Oppio l’accampamento curdo’, *La Repubblica*, 23 Aug 2000.

those seeking protection.⁴⁹⁷

In an attempt to address this problem the interior ministry, the UNHCR and Italy's regions launched a National Programme for Asylum (*Programma Nazionale Asilo*) in March 2001. This followed an initiative set up by a group of Italian NGOs and other non-state groups in mid 1999 called Communal Action (*Azione Comune*). It aimed to alleviate the plight facing the large numbers of Kosovars who arrived in the country towards the end of the decade and succeeded in gaining funding from the European Commission for its work with Kosovars. The following year, it extended its brief to include all asylum seekers, and not just those from Kosovo. The *Consiglio Italiano per i Rifugiati* headed the group, with the religious NGO Caritas and the secular NGO *Consorzio Italiano di Solidarieta`* (ICS) to the fore – the latter of which was set up in 1993 to help refugees escaping the war in the former Yugoslavia. Other important members included workers groups, such as the *Associazioni Cristiane Lavoratori Italiano* (ACLI), trade unions, such as the *Confederazione Italiana Sindacati Lavoratori* (CISL), various branches of the leftist NGO, *Associazione Ricreativa e Culturale Italiana* (ARCI) and the religious NGO, the *Federazione delle chiese evangeliche in Italia* (FCEI).⁴⁹⁸

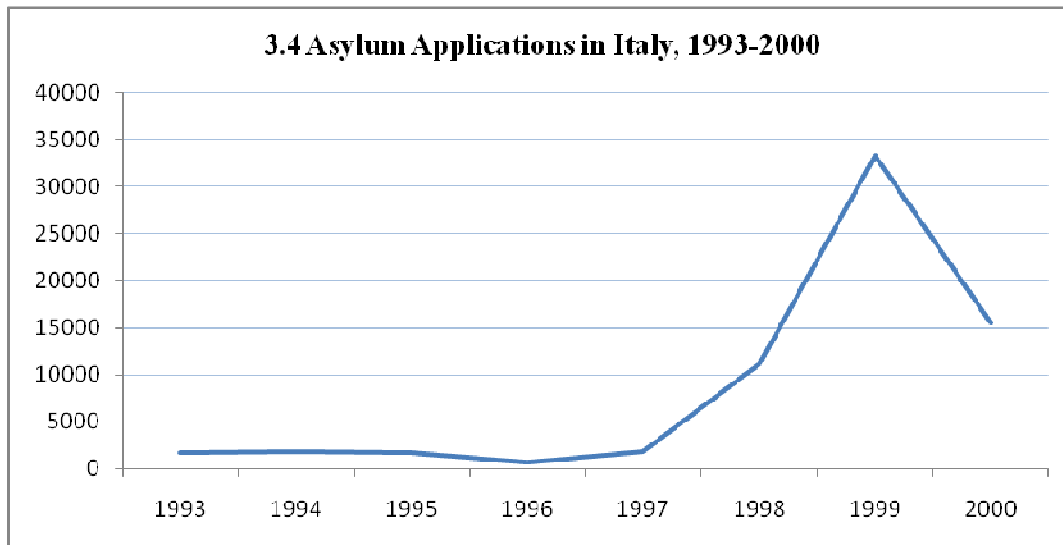
The National Programme for Asylum endeavoured to establish sufficient accommodation to shelter asylum seekers in certain regions and cities. In Milan the council opened a refurbished centre to look after migrants who received temporary humanitarian visas. Puglia also launched a new centre to house 30 asylum seekers and Rome dedicated a new centre to housing 120 asylum seekers.⁴⁹⁹ But because asylum applications increased enormously in 1999, these centres only managed to accommodate a small fraction of those arriving.⁵⁰⁰

⁴⁹⁷ 'Per ospite un esule in fuga dall'Africa', *La Repubblica*, 23 Dec 2000.

⁴⁹⁸ ICS, *Rifugiati: La Protezione Negata*, p. 68 (online version).

⁴⁹⁹ See 'Una nuova casa per i profughi', *La Repubblica*, 5 Sept 2001, 'Noi curdi, 45 giorni per sognare', *La Repubblica*, 16 Sept 2001 and 'Apre sulla Salaria una casa-albergo per cento rifugiati', *Corriere della Sera*, 26 Oct 2001.

⁵⁰⁰ ICS estimated that National Commune, the National Programme for Asylum and its successor, the Protection System (*Il Sistema di Protezione*) only managed to help, on average, 6.76 per cent of all asylum seekers between 1999 and 2003. See ICS, *Rifugiati: La Protezione Negata*, p. 75 (online version).



Source: Commissione Centrale per il riconoscimento dello status di rifugiato (Commissione nazionale per il diritto d'asilo)⁵⁰¹

In 1998, for example, over 11,000 applied for asylum. Compared with only two years before, when just 675 applied, this represented a remarkable increase. Numbers rose again the following year as 1999 saw applications peak to a level of over 33,000 in the wake of the Nato bombing of Kosovo. Although this number declined in 2000, approximately 15,000 still made applications.

3.5 Anti-Immigrant Politics, 2001-2008

In the run-up to the 2001 general election, the *Lega* and AN frequently focused on immigrants' apparent criminality. Both parties called for a rethink of the Turco-Napolitano law to address and tackle this problem. Nevertheless, a considerable difference in the language used by both parties became apparent. Because AN's electoral base sat in the south and centre of the country, where the *Lega* had little or no support, AN rarely competed for votes with FI on the issue.⁵⁰² Nevertheless, AN's focus on security issues often led to loaded comments regarding the physical threat posed to citizens by foreigners.

In addition to focusing on immigrants' supposed criminality, the *Lega* also highlighted the perceived misappropriation of local resources by immigrants at the

⁵⁰¹ Cited on the Italian UNHCR website at

http://www.unhcr.it/index.php?option=com_content&task=view&id=74&Itemid=110 (17 May 2008)

⁵⁰² Jessica ter Wal, 'Extreme right-wing Discourse and its Ideological Implications: Alleanza Nazionale on Immigration', *Patterns of Prejudice*, Vol. 34, No. 4, 2000, pp. 37-51, p. 37.

expense of natives. Nothing highlighted the twin-pronged approach, emphasising the economic and physical threat immigrants represented, more than the Lega's mouthpiece, the *Padania* newspaper. Headlines frequently depicted immigrants as a danger from which northern Italians needed protection: 'State of siege, and now to defend ourselves'; 'Houses, first nomads'; and, 'Curfews for immigrants' all coming from one page of the newspaper.⁵⁰³

Formation

The *Lega* regularly made anti-immigrant comments before the late 1990s. Nonetheless, its relatively conciliatory involvement in negotiations over immigration with the predominantly centre-left technocrat Dini administration in the mid 1990s meant that the party's later stance on immigration came as a shock to other parties. The *Lega*'s decision to exclude itself from all other alliances from 1996 to 2000 – when they unsuccessfully pressed for secession – saw their views on immigration harden. Throughout the early and mid 1990s, the *Lega*'s hostility to immigrants had been based on the belief that they, in a similar manner to southern Italians, received state benefits that came out of hard-working northerners' pockets, without paying their dues to society in return.⁵⁰⁴ When the *Lega* returned to national Italian politics in 1999 following their self-imposed exile and secessionist attempts, their antagonism towards immigrants took on another dimension. In Thomas Gold's opinion, anti-immigrant rhetoric actually came to replace the ultimately futile previous efforts at secession in the *Lega*'s lexicology.⁵⁰⁵ The *Lega* characterised immigrants as physically dangerous criminals intent on disrupting the social order. Umberto Bossi, the *Lega*'s authoritarian leader, claimed that immigrants had taken over northern Italy, bringing with them crime, prostitution and incompatible religions.⁵⁰⁶

The criminalisation of immigrants in Italy became the subject of serious political debate from the mid 1990s onwards. The presence of rising numbers of foreigners in the Italian prison system – 16 per cent of the total prison population in 1991 and 28 per cent of the total by 1996 – meant that emphasising the criminality of immigrants was

⁵⁰³ Quoted in Livia Turco, *I Nuovi Italiani. L'immigrazione, i pregiudizi, la convivenza*, Milan: Mondadori, 2005, p. 71.

⁵⁰⁴ Anna Cento Bull & Mark Gilbert, *The Lega Nord and the Northern Question in Italian Politics*, Basingstoke: Palgrave, 2001, p. 130.

⁵⁰⁵ Thomas Gold, *The Lega Nord and Contemporary Politics in Italy*, New York: Palgrave Macmillan, 2003, p. 126.

⁵⁰⁶ Geoff Andrews, *Not a Normal Country: Italy After Berlusconi*, Michigan: Pluto Press, 2005, p. 63.

frequently met with a receptive audience.⁵⁰⁷ The media often confirmed political parties' attempts to cement the link between a perceived rise in crime and a noticeable increase in immigration rather than negate or explain it. Indeed, newspapers regularly reported crimes involving immigrants by highlighting the protagonists' foreignness and emphasising their nationality or their broad geographical origin (sometimes mistakenly as it so happened, such as wrongly terming Albanians as Slavs). The supposition that the increase in immigration resulted in more crime appeared to have much sustenance in public debate and opinion. Of those polled at the end of 1999, for instance, 73.5 per cent believed that the presence of immigrants had increased general delinquency.⁵⁰⁸ This seemed to mirror what Diamanti and Bordignon concluded: people saw immigration in the late 1990s as a negative development and frequently linked it with criminality at a time when personal safety became a particularly relevant issue for Italians.⁵⁰⁹ Asylum seekers failed to escape the perceived link between immigrants and criminality, especially those coming by boat. By contrast, the involvement of various mafias – Italian and non-Italian – in bringing boat people to Italy helped to emphasise this link. Moreover, because of the failure of the Italian state to adequately differentiate between asylum seekers, refugees and irregular migrants, commentators consistently termed boat people “clandestines,” which carried a connotation of illegality.⁵¹⁰ One noted

⁵⁰⁷ The numbers are taken from Marzio Barbagli, *Immigrazione e criminalità in Italia*, Bologna: Il Mulino, 1998, p. 49. In attempting to explain such a phenomenon, various experts have argued that immigrants were more likely to be punished with detention than Italians and that they were less frequently placed under house arrest or let out on bail because of the threat of absconding. Similarly, Gatti, Malfatti and Verde showed out that while 21 per cent of Italy's prison population in 1993 were foreigners, only 5.6 per cent of those charged and 8.27 per cent of those convicted were non-Italians. Their explanation for this divergence relates to the sub-standard legal representation of foreigners' under the Italian system. Using one survey to reify this conclusion, which showed that only 62.3 per cent of the foreigners in jail in 1993 had a personal lawyer, they unequivocally stated that 'in general the defendants had real difficulties in the relationship with their lawyers and communication problems with the judges who tried them'. This is not to deny that there is a problem with immigrant crime, however. It is true, for example, that certain immigrants were heavily involved in certain crime sectors, with drug dealing and prostitution (two particularly visible activities) being particularly prominent. However, it is also true that Italy's foreign prison population was mostly irregular and undocumented at the time of prosecution. Interestingly, the percentage of regular immigrants in jail was only very slightly higher than that of Italians at 0.1 per cent (the Italian rate was as 0.07 per cent). Unfortunately all immigrants were frequently stereotyped as illegal, despite the clear delineation between regular and irregular migrants. See Livia Turco, *I Nuovi Italiani. L'immigrazione, i pregiudizi, la convivenza*, p. 19. Umberto Gatti, Daniela Malfatti & Alfredo Verde, 'Minorities, crime and criminal justice in Italy', Ineke Haen Marshall (ed.), *Minorities, Migrants, and Crime*, California: Sage, 1997, pp. 110-129, p. 118, Marzio Barbagli, *Immigrazione e criminalità in Italia*, p. 56 and Luca Einaudi, *Le politiche dell'immigrazione in Italia dall'Unità a oggi*, p. 240 for more details.

⁵⁰⁸ Luca Einaudi, *Le politiche dell'immigrazione in Italia dall'Unità a oggi*, p. 240.

⁵⁰⁹ Ilvo Diamanti & Fabio Bordignon, 'Sicurezza e opinione pubblica in Italia', *Rassegna Italiana di Sociologica*, XLII, no. 1, 2001, pp. 115-135, p. 124-5.

⁵¹⁰ The threatening nature of this illegality was especially apparent following the 9-11 attacks in the United States and Italy's implementation of tighter security measures. See 'Sicurezza, il governo aumenta

commentator, Miriam Mafai, explained Italians' fear of immigrants when she wrote:

On the theme of security and immigration (the two problems frequently seem to overlap) we all suffer from a singular distorted view of reality. We are convinced that we live in an insecure country, in a sort of Bronx ... The official numbers state that it is not like that ... [But] [t]he official figures don't reassure us, not even the increase of police on the streets assures us. We feel in danger. ... Our schizophrenia is unfortunately being fermented by the schizophrenic analogies communicated by our ruling classes.⁵¹¹

Silvio Berlusconi's *Forza Italia* party retained its rather aloof position on the subject of immigration in the run up to the 2001 election;⁵¹² although its focus on security did contribute to further negative stereotyping of immigrants by constantly linking them with criminality. Furthermore, *Forza Italia* rarely if ever criticised the opinions put forward on immigrants by its coalition partners in the self-proclaimed *Casa della Liberta*, made up of FI, AN, the *Lega*, the last remnants of the Christian Democrats and various smaller parties. Indeed, the perceived failings of the Turco-Napolitano law became a central issue in the run up to the 2001 election, with all three main opposition parties promising to replace it with more effective anti-immigrant legislation if elected. Although the *Lega* only received approximately four per cent of the national vote – down from ten per cent in 1996 – it experienced a considerable rise in its political influence on account of a pre-election pact done between Berlusconi and Bossi that attributed a certain number of ministerial positions to the *Lega*. The aforementioned coalition went on to become Italy's longest-serving post Second World War government, remaining in power from mid 2001 to mid 2006.

Most of the asylum seekers who came to Italy in the 1990s originated primarily from the former communist European states, and particularly the Balkans, but by the early 2000s a shift occurred in the origin of boat people, with many coming from Africa – in particular, Somalia, Eritrea, Ethiopia, Sudan and Liberia – and Middle Eastern and Asian countries, such as Kurdish Iraq, Afghanistan, Pakistan and Sri Lanka. Though the nationality of the boat people's changed, Italy's asylum policy remained remarkably

i controlli sugli arabi', *Corriere della Sera*, 10 Oct 2001.

⁵¹¹ Miriam Mafai, 'Le armi e la ragione', *La Repubblica*, 9 Aug 2000.

⁵¹² Andrew Geddes, 'Il rombo dei cannoni? Immigration and the centre-right in Italy', *Journal of European Public Policy*, Vol. 15:3, pp 349-366, 2008, p. 352.

static with the government consistently dedicating emergency measures to temporarily stemming the flow of migrants in place of a structured asylum system symbolised by a definitive asylum law. The most vocal opposition to these moves came not from the opposition Left but from NGOs.

In 1959, the UNHCR noted that most of the NGOs dealing with those in need of asylum in Italy represented international organisations, such as the World Council of Churches, the American Joint Distribution Committee and the International Rescue Organisation. By the early 1990s, the number of NGOs – Italian and international – dealing with asylum seekers and migrants in Italy had risen considerably. A study by OECD, published in 1993, found that Italy had forty-six NGOs that concentrated on issues related to human rights, refugees, migration and development.⁵¹³ In 2008, the association of NGOs in Italy recorded that it had over 160 member NGOs, of whom many dealt with issues relating to asylum. These sympathetic actors, of which secular and religious NGOs, international organisations and the Catholic Church were most prominent, referenced humanitarian ideals, national commitments to human rights and the rule of law to promote a more generous understanding of the plight facing asylum seekers. They faced overwhelming odds, however.

Implementation

When over 900 Iraqi Kurds arrived on Italy's southern shores in March 2002, the new *Forza Italia* Minister of the Interior, Giuseppe Pisanu, responded by immediately declaring a state of emergency against what he termed "clandestine migration," thereby conflating the issue of asylum with illegality.⁵¹⁴ The Italian government's appeals to its fellow EU members to reduce the amount of boats because of their supposed criminal links compounded this further. Claudio Scajola, the Italian Minister for the Interior, amply demonstrated this correlation of boat people with criminality when seeking EU help in fighting boat people:

We are the country most exposed to maritime immigration that, along with bringing a large number of desperate people to our shores, also brings with it criminal elements, human and even organ trafficking. The sea borders can't be left only to Italy. The

⁵¹³ See UNHCR and OECD, *Human Rights, Refugees, Migrants and Development: Directory of NGOs in OECD countries*, OECD: Paris, 1993, pp. 396-398.

⁵¹⁴ 'Scajola: stato d'emergenza contro i clandestini', *Corriere della Sera*, 19 March 2002.

government has put into action various counteractions. But these are very weak if they are not divided amongst other members of the [European] Union [...].⁵¹⁵

Over the next year, the government attributed primary responsibility for guarding the Italian coast to the Italian navy rather than the police, as before. The government stepped up spending on coastal surveillance considerably, from EUR63 million in 2002 to EUR164 million in 2003.⁵¹⁶

The *Lega* opposed all boat people regardless of whether they escaped from a war or arrived in search of work. In response to the prospect of refugees fleeing the impending war in Iraq, the leader of the *Lega*, Umberto Bossi, made his stance clear: “We do not want refugees. They should stay in their own homeland.”⁵¹⁷ In June 2003, Bossi denounced his own government’s slow response to halting the flow of boat people by calling for the use of force: “At the second or third warning, boom, fire the canon. Without beating around the bush. The canon will stop anybody. Otherwise we’ll never finish with them.”⁵¹⁸

In that same summer, various EU talks focused on the possibility of externalising asylum policy to outside the EU, with Tony Blair suggesting the introduction of transit camps in the Ukraine, Albania and Morocco to process asylum claims.⁵¹⁹ Although several EU countries’ opposition scuppered the proposal, Italy had already made the first steps to initiating an agreement with a neighbouring non-EU country in relation to migrants. In late June 2003, Italy’s Interior Minister, Giuseppe Pisanu, flew to Tripoli to meet the Libyan President, Muḥammad Gheddafi, for talks on the initiation of a policy designed to decrease the number of boats coming from Libya to Italy. Such an initiative appeared to receive backing from Europe, with the President of the European Commission, Romano Prodi, ringing Gheddafi personally to speak about the proposed agreement.⁵²⁰ Nonetheless, it took one year for Italy and Libya to finalise a deal on migration. In the interim, Italy also struck up bilateral agreements with Tunisia, Turkey and Egypt to enable it to repatriate irregular migrants coming from these countries. The agreement with Libya, in exchange for Italian help ending the EU blockade of Libya –

⁵¹⁵ ‘Più controlli sulle coste, l’Europa dice sì’, *Corriere della Sera*, 26 April 2002.

⁵¹⁶ Luca Einaudi, *Le politiche dell’immigrazione in Italia dall’Unità a oggi*, p. 319.

⁵¹⁷ ‘Sui profughi scontro tra Lega e Udc Buttiglione : misure d’emergenza. Bossi: stiano a casa loro’, *La Stampa*, 23 March 2003.

⁵¹⁸ ‘«Basta rinvii, cacciare i clandestini con la forza»’, *Corriere della Sera*, 16 June 2003.

⁵¹⁹ ‘L’Europa studia “centri di transito” per chi chiede asilo’, *La Stampa*, 20 June 2003.

⁵²⁰ ‘Pisanu vola a Tripoli, Prodi chiama Gheddafi’, *Corriere della Sera*, 29 June 2003.

in place since the 1986 Lockerbie disaster – and other unspecified rewards proved the most controversial, however. As part of the deal, Libya agreed to accept all migrants that disembarked from Libya, from where they would be repatriated home.⁵²¹

The head of Caritas Italia, Monsignor Franco Anfossi, had stridently opposed moves by the centre-right coalition to bring forward measures to stop all boat people as early as January 2003, stating they “did not distinguish between those that entered Italy clandestinely from those that entered to request asylum. They are driving out all of them. And that, for a victim of persecution, can also mean the death sentence. A prospect that a civil country could not allow.”⁵²² The initiation of the Italy-Libya deal took place in late September-early October 2004, when Italian authorities transported over 1,400 recently-arrived boat people from Lampedusa to Libya only days after their disembarkation,⁵²³ exacerbated sympathisers further, causing consternation amongst NGOs, international organisations and opposition political parties.

Much of the sympathisers’ resistance centred on Libya’s continuing failure to sign the Geneva Convention and Italy’s repatriation of migrants without clear access to proper asylum procedures. The Italian representation of *Medicins sans Frontieres* summarised much of the hostility to new developments:

We run the risk of sending men and women back to countries where they were fleeing persecution and massacres. For that reasons, the procedure used by the government is serious, especially from a humanitarian point of view, even more than a judicial one. ... Flying migrants to Libya before identifying them is unacceptable.⁵²⁴

The main opposition party, *Democratici di Sinistra* – PDS’s successor – also voiced its concerns: “We are worried for the right to political asylum contained in the Geneva Convention. We don’t know if the people arriving in these last days at Lampedusa had the possibility to at least present a request for asylum, having seen the short amount of time taken to repatriate them.”⁵²⁵ The UNHCR vehemently criticised the measure, citing the Libyan state’s treatment of 75 Eritrean asylum seekers repatriated from the country

⁵²¹ For a critical account of how this works, see Human Rights Watch, *Stemming the flow: Abuses Against Migrants, Asylum Seekers and Refugees*, *Human Rights Watch*, Vol. 18, No. 5, 2006, pp. 106-118.

⁵²² ‘Bossi-Fini indegna di un paese civile’, *La Repubblica*, 28 Jan 2003.

⁵²³ Figure taken from ‘L’ Onu contro i rimpatri lampo. Ma il centro si svuota’, *Corriere della Sera*, 8 Oct 2004

⁵²⁴ ‘Rimpatri forzati in Libia, ma gli sbarchi continuano’, *Corriere della Sera*, 3 Oct 2004.

⁵²⁵ *Ibid.*

at the end of August 2004:

An airplane with 75 Eritreans onboard was sent back to its native land, violating the principle of never sending refugees in danger back to their country of origin. Fifteen of these diverted the airplane so that it landed at Khartoum where they asked for our intervention. We listened to them separately, all of whom recounted to us that they were held for long periods in detention in Libya, without any charge [*senza alcun capo di imputazione*], and were subject to violence, had appealed for the right to asylum and had requested to talk to us [UNHCR], without any results. This leaves us to understand that there is an alarming situation in the country, confirmed by the claims [*segnalazioni*] of Amnesty International and by the fact Libya has still not signed the Geneva Convention.⁵²⁶

The Italian government countered these criticisms by maintaining its actions corresponded to all national and international norms.⁵²⁷ Crucially, the EU mutely supported the Italian government's measures.⁵²⁸ Brussels only changed its attitude six months later after sustained and renewed appeals from Amnesty International and the UNHCR relating to Italy's policies of mass expulsions. The EU commissioner for Justice, Freedom and Security, Franco Frattini, warned that Italy must "guarantee to all the right to present an asylum application and cannot expel these people if a decision has not yet been taken."⁵²⁹ Though Italy's Interior Minister, Pisanu, promised Frattini a full report detailing the treatment of recently repatriated boat people, one week earlier he had responded less sympathetically to further criticism of Italy's agreement with Libya by Amnesty and UNHCR by warning: "Who washes their own mouth by declaiming problems should respect those who try to resolve them. Defining the individual rejection of clandestine immigrants at the border as deportations is an insult to the truth."⁵³⁰

Several weeks after this episode, Italy came in for further criticism following a resolution from the European Parliament that called on Italy to 'refrain from collective expulsions of asylum seekers and 'irregular migrants' to Libya as well as to other

⁵²⁶ "Salvaguardare il diritto d'asilo" Boldrini: va rispettata la convenzione di Ginevra Gran parte dei Paesi nordafricani non lo fanno', *La Stampa*, 19 Oct 2004.

⁵²⁷ 'L' Onu contro i rimpatri lampo. Ma il centro si svuota', *Corriere della Sera*, 8 Oct 2004.

⁵²⁸ 'A Bruxelles un documento sui flussi migratori. Il commissario Ue: l'Italia ha fatto sforzi eroici "Si' ai centri d'accoglienza nei Paesi del Nord Africa, serve una strategia comune"', *La Stampa*, 5 Oct 2004.

⁵²⁹ 'Clandestini espulsi, interviene l' Ue Frattini richiama all' ordine Pisanu', *La Repubblica*, 23 March 2005.

⁵³⁰ 'Clandestini espulsi, interviene l' Ue Frattini richiama all' ordine Pisanu', *La Repubblica*, 23 March 2005.

countries and to guarantee that requests for asylum are examined individually and the principle of *non refoulement* adhered to'. It also chided Italy for violating the principle of *non refoulement* by declaring they had 'failed to meet their international obligations by not ensuring that the lives of the people expelled by them are not threatened in their countries of origin'.⁵³¹ One month later, the European Court of Human Rights (ECtHR) ruled that Italy suspend the repatriation of several individuals because of the inadequate response of Italian authorities to its queries regarding the identification, treatment and grounds under which Italy repatriated these migrants to Libya.⁵³² Several weeks later, the Council of Europe visited Italy to monitor its repatriation procedures. It found Italy's actions lacking on several fronts, especially that of asylum:

By failing to give aliens practical access to asylum procedures, Italy is indirectly violating the principle of non-return, and leaving a state, which is non-democratic and also unwilling to commit itself to respecting international refugee law, to determine the fate of people who may qualify for asylum or face violation of their most fundamental rights.⁵³³

In addition to receiving criticism directed at Italy's decision to return thousands of immigrants to Libya, Italian policies on the treatment of asylum seekers already in Italy began to gain domestic and international attention. As part of the proposed Bossi-Fini law, which sought to amend the Turco-Napolitano law, asylum seekers were to remain in centres (CPTAs) during the processing of their applications.⁵³⁴ Furthermore, rejected asylum seekers could be deported even if their claim was subject to court appeal. This provoked considerable unrest amongst sympathetic actors, who appealed to the Italian Constitutional Court. Up until then, the Italian Constitutional Court remained largely aloof from intervening in immigration-related policy issues. On this occasion, however, it ruled that the government's policy was unconstitutional, prompting a significant setback for the Bossi-Fini law in the process.⁵³⁵ The treatment of migrants –

⁵³¹ European Parliament, Resolution by the European Parliament on Lampedusa, 14 April 2005. Online. UNHCR Refworld, available at: <http://www.unhcr.org/refworld/docid/42bc1e134.html> [accessed 28 November 2008]

⁵³² 'No alle espulsioni verso la Libia', *La Repubblica*, 12 May 2005.

⁵³³ Le rapport du Commissaire aux droits de l'homme du Conseil de l'Europe (CommDH (2005)9, du 14 décembre 2005). Quoted in ECHR 11593/05 présentée par Mohamed SALEM et soixante-dix-huit autres requérants contre l'Italie, final decision: 11 May 2006.

⁵³⁴ 'Via 30 mila immigrati con le nuove norme', *Corriere della Sera*, 16 Sept 2001.

⁵³⁵ See n° 222 and n° 223, 15 July 2004, Corte costituzionale.

both asylum seekers and economic migrants – in these centres became the source of much scrutiny over subsequent years.

Effects

In July 2002, a visit by various Refounded Communist members to Lampedusa revealed the terrible conditions migrants often had to endure. Previously, the Italian Red Cross had run the centre, with 24 volunteers and an interpreter. Each migrant received a hygiene kit, two packs of cigarettes a week and a telephone card. But by the summer of 2002, most of these benefits disappeared when duties became entrusted to forty Italian police officers that the government deployed to the centre. Though the capacity of the centre numbered 86, the Refounded Communist members encountered 197 migrants. Conditions, according to the visiting deputies, resembled that of a “real concentration camp”:

Conditions in the camp are absolutely unacceptable for a civilised country. It’s missing everything. But the worst thing is the absence of an interpreter, which deprives immigrants of adequate assistance and knowledge of their rights. A lot of them, fleeing from countries devastated by war, for example, cannot avail themselves of the possibility to request political asylum.⁵³⁶

Little over one week later, the head of a prominent religious NGO, Pax Christi, outlined similar problems when describing the centres as prisons, where “any glimmer of humanity is banished” and migrants “are not considered persons.”⁵³⁷ After one visit to Agrigento’s CPT, one Refounded Communist member of the Sicily regional council called for all similar centres to be closed down. In his words, “it is embarrassing; this industrial shed, in its current state, is not suitable for human beings.”⁵³⁸ Caritas also announced its opposition to the holding centres in early January 2003.⁵³⁹ In the summer of that same year, forty police officers presented medical certificates demonstrating their inability to work at the centre situated in Palese, Bari. A representative from the police officers’ union explained: “The welcome centres are concentration camps where the

⁵³⁶ *Ibid.*

⁵³⁷ ‘Parla il coordinatore nazionale Tonio dell’Olio. L’accusa di Pax Christi «Quei campi sono prigionieri»’, *La Stampa*, 12 Aug 2002.

⁵³⁸ ‘C’è un lager dietro quel cancello’, *La Repubblica*, 3 Dec 2002.

⁵³⁹ The head of Caritas, Monsignor, Franco Anfossi, remarked, “La Caritas ha scelto di non avere nulla a che fare con la gestione di questi campi.” Taken from ‘Bossi-Fini indegna di un paese civile’, *La Repubblica*, 28 Jan 2003.

police work in inhuman, slave-like conditions.”⁵⁴⁰ But at least the police officers got to go home – unlike the migrants.

One year later, in the summer of 2004, one Italian journalist succeeded in passing himself off as a Kurdish asylum seeker washed up on the Lampedusa shore. During his eight days in the migration centre on the island, he recorded the physical and psychological abuse of immigrants by certain guards (including having to line up for what he describes as a “Fascist parade”), the unsanitary conditions migrants encountered during their stay (such as the presence of raw sewage in the camp) and the lack of space available for sleep and rest.⁵⁴¹ He also illuminated the uncertain nature of the asylum system when officers transported him to the Sicilian mainland after one week in Lampedusa, where he received a free train ticket along with a number of others before being told that he had five days to leave the country.⁵⁴²

The continuous arrival of boat people to Italy resulted in the release of many asylum seekers from these centres after several days or weeks before the termination of their asylum application. Many of these encountered serious accommodation problems when awaiting the outcome of their asylum applications, especially after the reduction in funding for the National Asylum Programme (from then on known as the Protection System for asylum seekers and refugees) in the autumn of 2002. Similarly, Berlusconi’s government discontinued the work of the National Commission for the Politics of Integration of Immigrants (*Commissione nazionale per le politiche di integrazione degli immigrati*), a study group set up in the late 1990s to produce annual reports on migrant integration. In the absence of national integration plans, it was left to the regional and city councils to create positive relations between migrants and locals on already stretched budgets.⁵⁴³

Despite various changes in Italy’s asylum policy, many asylum seekers eventually received some form of protection, especially from 2003 onwards when a large increase occurred in the amount of humanitarian protection visas distributed.

3.5 Decisions on Asylum Applications in Italy, 2001-2005

⁵⁴⁰ ‘Sindrome da campo profughi quaranta poliziotti in malattia’, *La Repubblica*, 4 July 2003.

⁵⁴¹ Fabrizio Gatti, ‘Io, clandestine a Lampedusa’, *L’Espresso*, 7 Oct 2005. This can be accessed at <http://espresso.repubblica.it/dettaglio-archivio/1129502&m2s=a> (18 May 2008).

⁵⁴² *Ibid.*

⁵⁴³ Varso Errani, ‘La Solitudine delle Regioni’, Giulio Calvisi and Aly Baba Faye (eds.), *Libro Bianco sulla Bossi Fini. Rapporto sulla Politica delle Destre in Materia di Immigrazione*, Rome: L’Unità, 2006, pp. 45–49, p. 47.

Year	Asylum applications	Applications examined	Decisions		
			Refugee Status	Negative but with Humanitarian protection visa	Negative without protection visa
2001	9.620	13.219	2.102	564	10.553
2002	16.015	14.713	1.121	704	12.888
2003	13.455	13.428	726	2.181	10.501
2004	9.722	8.701	780	2.352	5.569 (2627 were untraceable)
2005	9.346	14.439	907	4.375	9.157 (3587 were untraceable)

Source: Central Commission for the recognition of refugee status (known as the National Commission for the Right of Asylum since 2004)⁵⁴⁴

But Italy offered little else to these people in terms of welfare or sustenance, thereby forcing many to live in squalid conditions and eke out an irregular existence.

One newspaper report similarly told of 36 Congolese, Sierra Leone and Liberian asylum seekers who lived on the Rome streets because of a lack of suitable accommodation.⁵⁴⁵ Moreover, a lack of accommodation meant that many asylum seekers ran the risk of becoming untraceable in the event of the communication of a decision regarding their refugee status, illustrated by the account of one Somali asylum seeker, Hassan Nagi, living in Puglia. Nagi arrived in Otranto, southern Italy, on board a boat with Pakistanis, Kurds, Sudanese and Liberians. Placed in a local CPA, authorities reassured him that his asylum application would be evaluated in a few weeks. After one month inside the ‘Lorizzonte’ CPA, however, he had heard no news. Yet, he was given a temporary permission visa and, in his own words, “left on the street.” Though the law barred asylum seekers from working or studying, the lack of any available accommodation centre for Nagi meant he had to find a viable alternative. For EUR8 a day, Nagi found work as a farm hand. He lived beside the stables along with two men, one from Sudan and another from Palestine. In addition to his petty pay packet, the

⁵⁴⁴ Statistics for before 2003 are remarkably inadequate because they divulge little about how many asylum seekers were untraceable, how many were given some kind of temporary protection for humanitarian reasons and what happened to those asylum seekers whose applications were deemed negative outright.

⁵⁴⁵ ‘Fuggono da guerra e torture abbandonati da giorni in strada’, *La Repubblica*, 22 Nov 2002

farmer and his family provided clothes, food and cigarettes.⁵⁴⁶

To reduce the pressure on the country's asylum system, the Italian government instigated new measures to accelerate the asylum process. Regional committees replaced the national committee that dealt with asylum applications and the government proposed that asylum applications would only take 20 days to process rather than the long periods that had exasperated the system.⁵⁴⁷ After the approval of these changes in the summer of 2004, the UNHCR appeared supportive but sceptical and highlighted once more the lack of any tangible asylum law in Italy.⁵⁴⁸ The UNHCR's scepticism proved warranted; several months later, asylum requests still took much longer than twenty days to process. In October 2004 one Milan NGO lamented the long delays in processing applications and outlined the problems this led to, recounting the amount of asylum seekers forced to sleep in abandoned buildings and on the streets because of a lack of viable alternatives. Perhaps the most infamous example of such problems became known as 'Hotel Africa', located in a disused shed with no electricity or running water, which previously belonged to the national train network, situated near Rome's Tiburtina train station. Occupied from 1999 onwards, the settlement originally housed three to four hundred asylum seekers from various countries, especially Albania, Kosovo and Sudan, according to one newspaper article in October 2002.⁵⁴⁹ By early 2004, most of the people inhabiting the building were asylum seekers and refugees from Ethiopia, Eritrea and Sudan, generating the misleading name 'Hotel Africa' that many of the inhabitants took issue with. As one Sudanese asylum seeker explained, "Everyone knows Tiburtina as Hotel Africa but we who live here don't like the name. We don't like it because you can't call a place a hotel where there's no light, no water, no good air. Tiburtina is not a hotel and it's not Africa either, it's Italy."⁵⁵⁰ Nonetheless, the same asylum seeker explained that Tiburtina filled a vital role by providing shelter for "[t]hose just after arriving, for those who can't find a place in the welcome centres and for those living on the streets."⁵⁵¹ There appeared to be a vital sense of community in the settlement, with one asylum seeker explaining to an Italian researcher:

When I arrive here I find people, they say hello to me, you are Sudanese, only this

⁵⁴⁶ '«Mi dichiarai rifugiato, da allora sono un fantasma senza nome»', *Corriere della Sera*, 19 June 2003.

⁵⁴⁷ 'Immigrati, sanatoria chiusa: 650 mila in regola', *Corriere della Sera*, 14 Dec 2003.

⁵⁴⁸ 'I regolamenti della Bossi-Fini. Tempi piu' stretti per l'asilo politico', *La Stampa*, 14 July 2004.

⁵⁴⁹ 'Una casbah alla stazione Tiburtina sgomberati centinaia di stranieri', *La Repubblica*, 10 Oct 2002.

⁵⁵⁰ 'Nell'ex capannone delle ferrovie il Comune incontra la nostra Africa', *La Repubblica*, 24 April 2004.

⁵⁵¹ *Ibid.*

counts. All come and bring me things reserved for guests, eat, drink, they ask me how I feel, how I came, where I came from, what problems I met, they allow me into their circle so that I do not feel that I am an outsider, as if I had known them for a long time. I ask information to know whether I should stay or go to another country. I ask how the situation is here. They give me all the information: police, school, the public mess, the reception centre, work possibilities. If I want to leave they give me information about how to go away.⁵⁵²

In August 2004, the Rome council transferred all of the settlement's inhabitants to a number of welcome centres around the city in what Alessandro Triulz has termed a reaction to the increase of newspaper interest in the settlement.⁵⁵³ But two months later, reiterating the difficulty Italy continued to incur when housing asylum seekers, 150 Eritreans occupied a disused schoolhouse to protest at conditions in their welcome centre, which they deemed worse than 'Hotel Africa': "There are six of us living in one room, we can't cook and we only have two toilets for twenty people. We came to Italy in search of liberty and instead we have finished in prison."⁵⁵⁴

The return of a centre-left coalition to government in April 2006 led to a slight softening of Italy's approach to asylum seekers for a short period of time. In September 2006, for example, the government ruled that asylum seekers had permission to stay in Italy until they had exhausted all appeal avenues, thereby bringing the country into line with existing EU norms.⁵⁵⁵ Nonetheless, the government failed to tackle the appalling conditions asylum seekers faced when seeking accommodation during their asylum applications. Instead, the Left remained intent on showing voters that it, too, had the potential to clamp down on migrants and asylum seekers if necessary.

In a sign of the focus perceived immigrant crime would play in the 2008 general election debate, the centre-left government issued an emergency decree to remove EU citizens perceived to represent a public threat after the violent rape and murder of an Italian woman by a Romanian Roma on the outskirts of Rome in October 2007.⁵⁵⁶ In the

⁵⁵² Field notes collected by Marco Carsetti. Quoted in Alessandro Triulz, 'Africa, Youth and the Memory of Migration: Listening to African Migrant Voices', Africa-Europe Group for Interdisciplinary Studies Cortona summer school, 22 Sept 2006, p. 9.

⁵⁵³ *Ibid.*, p. 11.

⁵⁵⁴ 'Immigrati bloccano la Casilina', *La Repubblica*, 5 Oct 2004.

⁵⁵⁵ 'Diritto d' asilo, si resta anche dopo il primo no', *Corriere della Sera*, 22 Sept 2006.

⁵⁵⁶ Nando Sigona (ed.), The 'latest' public enemy: The Romanian Roma in Italy. Report commissioned by OSCE/ODHIR, 2008, p. 3, http://www.osservazione.org/documenti/OSCE_publicenemy.pdf (Accessed on 30 Sept 2009).

2008 general elections, the right-wing coalition returned to power on a wave of anti-immigrant sentiment aimed especially at Roma and their small camps dotted around the country. In many cases, these camps housed Roma asylum seekers and refugees who received little or no state support. The Catholic Church condemned the xenophobic nature of the *Lega* and AN's pre- and post-election rhetoric towards Roma but its influence had shrunk somewhat because the descendant party of the Christian Democrats, the UDC, remained outside of the right-wing coalition; unlike between 2001 and 2006. Symbolising the increase in Italy's anti-immigrant measures, the country's navy began to intercept and return boat people to Libya in May 2009 without screening them first for asylum, in a move that provoked the wrath of several human rights NGOs and the UNHCR.⁵⁵⁷ Although the European Commission later questioned Italy's tactics,⁵⁵⁸ the exercise served to give the Italian public the impression that the government remained strong in the face of immigration; even though the reality was that boat people only represented a small fraction of irregular migrants staying in Italy.⁵⁵⁹

Conclusion

Contradicting government rhetoric has symbolised the official reaction to asylum seekers since 1989. In twenty years, the country failed to adapt a proper asylum system on a par with most of their fellow EU member states. Instead, successive Italian governments from the Right and the Left have reacted to asylum seekers by announcing a series of emergencies. Because of the maligned treatment of asylum seekers in Italy, many potential asylum seekers deferred from applying for asylum on reaching Italy and instead emerged in the large amnesties that periodically took place in the country since 1986. Others migrated further north to search for a more regular lifestyle or to join loved ones. The story of Italy's asylum system is thus linked with Italy's inability to cope with its recent migrant influx. Due to the absence of a fixed asylum system, asylum represented less of an issue in Italy than many other western countries. Consequently,

⁵⁵⁷ See, for example, Human Rights Watch, *Pushed Back, Pushed Around. Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers*, New York: HRW, 2009.

⁵⁵⁸ 'Migranti: clandestini richiedenti asilo? La Ue vuole notizie sul respingimento', *La Repubblica*, 31 Aug 2009.

⁵⁵⁹ Paoletti notes that boat people made up only between 13 and 14 per cent of irregular entrants to Italy in 2005 and the first half of 2006. Emanuela Paoletti, 'A Critical Analysis of Migration Policies in the Mediterranean-The Case of Italy, Libya and the EU', Ramses Working Paper 12/09, European Studies Centre, University of Oxford, April 2009, p. 11, <http://www.sant.ox.ac.uk/esc/ramses/ramsespaperPaoletti.pdf> (Accessed on 30 Sept 2009).

many of the problems associated with asylum in other countries appeared in more general debates concerning immigration in Italy.

Sceptics, including many of Italy's political parties from the Left and the Right but most especially the *Lega* and AN, often cited economic factors, state sovereignty and public security in order to justify treating migrants and asylum seekers with disdain, intolerance and callousness. This met with much resonance from large sections of the public and the media. Despite their size and power, however, these sceptical actors frequently failed to successively apply restrictive measures to asylum seekers. The country's geographic location, its porous borders (spanning over 7000kms of coastline), and the influence of powerful sympathetic actors, such as the Catholic Church and well-organised NGOs, contributed to the sizeable difference that remained between the rhetoric of sceptics and their success at implementing restrictive migration policies. Until the mid 2000s, most migrants who entered Italy managed to migrate further north, out of Italy. But Italy's northerly neighbours, in the meantime, managed to slow the flow of migrants travelling from the EU's entry countries, such as Italy and Greece, to more northerly destinations. This led to a sustained rise to the number of people seeking asylum in Italy (see p. 231), at a time when asylum figures continued to drop in fellow EU member states.

Chapter 4

Asylum in Ireland: From Empathy to Enmity?

“Céad míle fáilte”

“A hundred thousand welcomes” (traditional Irish phrase)

In the mid-nineteenth century the black abolitionist Frederick Douglass marvelled at the reception he received when he travelled around Ireland attempting to garner support for the abolition of slavery in the United States. He wrote home to a friend that ‘I find myself not treated as a colour, but as a man – not as a thing, but as a child of the common Father of us all’.⁵⁶⁰ A mixture of poverty, political persecution and the general desire ‘to better themselves in material respects’⁵⁶¹ had caused millions of Irish people to emigrate over the centuries. For this reason, the Irish felt that they could relate to the oppressed and the hungry everywhere because of their own history, as Douglass experienced. By the 1980s, this trait was still conspicuous, with Bob Geldof asserting that the Irish donated the most, per capita, to his 1985 Live Aid project to raise funds to help victims of the Ethiopian famine, notwithstanding the country’s considerable economic difficulties at the time. In the words of one character from Roddy Doyle’s 1987 novel, *The Commitments*, it was simple: The Irish were the Blacks of Europe.⁵⁶²

Yet, despite the manifest benevolence noted by Douglass in nineteenth century Ireland, he also alluded to the racist attitudes of the Irish living in America in the nineteenth century: ‘The Irish, who at home, readily sympathise with the oppressed everywhere, are instantly taught when they step upon our soil to hate and despise the Negro.’⁵⁶³ During the nineteenth century, the turn towards a nationalism that promoted Catholic ‘Irish-Ireland’ also led to the discrimination of people that happened to be in any way different, be they Protestant, Jewish or Traveller.⁵⁶⁴

⁵⁶⁰ Quoted in Bill Rolston and Michael Shannon, *Encounters: How Racism came to Ireland*, Belfast: Beyond the Pale, 2002, p. 80.

⁵⁶¹ E. G. Ravenstein, ‘The Laws of Migration’, *Journal of the Royal Statistical Society*, LII, 1889, pp. 241-301, p. 286.

⁵⁶² Roddy Doyle, *The Commitments*, Dublin: King Farouk, 1987.

⁵⁶³ Quoted in Noel Ignatiev, *How the Irish Became White*, New York and London: Routledge, 1995, inside cover page.

⁵⁶⁴ Bryan Fanning, *Racism and Social Change in the Republic of Ireland*, Manchester: Manchester University Press, 2002, pp. 30-1. For more general information about the treatment of minorities in Irish history, see Ronit Lentin and Robbie McVeigh (eds.), *Racism and Anti-racism in Ireland*, Belfast: Beyond

This chapter seeks to examine whether Douglass' observations of the Irish in the nineteenth century provide a fitting platform with which to discuss the arrival of thousands of asylum seekers in Ireland after 1989. Was the Irish response one of enmity or empathy? To achieve such a goal, this chapter will be divided into a number of sections. First, Ireland's migration history will be surveyed including the country's well known emigrant past, but also the virtually unknown history of immigration. Both of these sections will evaluate the two tendencies that are commonly found among Irish responses to asylum seekers: on the one hand, understanding and compassion due to their emigrant past and, on the other hand, intolerance and narrow-mindedness on account of Ireland's perceived homogeneity. Following on from this, different sections, organised chronologically, investigate Ireland's reaction to the large increase in people seeking asylum in the country after 1989. In line with the other case studies, elections and legal changes will provide the backdrop for many of the debates on the subject of asylum seekers analysed in the present chapter.

4.1 Asylum in Ireland before 1989

Most countries send out oil, iron, steel or gold, some other crops, but Ireland has only one export and that is people.⁵⁶⁵

John F. Kennedy (June 1963)

Actors sympathetic to asylum seekers after 1989 have regularly framed their appeals in the context of Ireland's emigration history by asking the public and politicians to look kindly on the large number of asylum seekers that came to the country because of the resonance it retained in a society where everyone had friends or family members living abroad. Given that Ireland produced a considerable number of political refugees in its pre-independence past, it was often claimed that the country possessed a duty to welcome people escaping persecution. To give an indication of why references to the past retained such prominence in Irish society, the following section will briefly describe the huge number of people that left the island.

Kerby Miller has estimated that from the early seventeenth century to the establishment of the Irish Free State in 1922, as many as 7 million people emigrated

the Pale, 2002.

⁵⁶⁵ John F. Kennedy, quoted in Fintan O'Toole, *The Lie of the Land: Irish Identities*, New York: Verso, 1997, p. 52.

from Ireland to North America.⁵⁶⁶ Annual departures by Catholics only began to exceed those of Dissenters and Anglicans combined from the early 1830s onwards.⁵⁶⁷ Of the 1.8 million who arrived in the United States in 1845-55, many came from much poorer backgrounds than previously; almost one third of the new arrivals originated from the poorer Irish speaking areas.⁵⁶⁸ For many Irish people, the Famine represented the final ultimatum before deciding to leave Ireland.⁵⁶⁹ Yet the outward flows continued in the second half of the nineteenth century. Most of these emigrants departed for the simple reason that they wanted to improve their standard of living.⁵⁷⁰ Declining demand for agricultural labour and the fall of Irish wages in comparison with the United States thereby persuaded millions to follow the Famine exodus.⁵⁷¹ Vast emigration meant that Ireland's population dropped substantially from middle of the nineteenth century to the beginning of the First World War, with 4.5 million leaving between 1850 and 1913.⁵⁷²

Even though the Irish Free State was established in 1922, people of all persuasions continued to leave the country. Catholics left to find greener fields; Protestants emigrated for a combination of political and economic reasons. Between 1926 and 1946, the number of Protestants residing in what became known as Free State Ireland decreased by one-quarter; a trend preceded by a one-third decrease between 1911 and 1926.⁵⁷³

From the 1920s onwards, a major shift in the destination of Irish emigrants took place as the United States began to implement restrictions on immigration from Europe. Consequently, many Irish people chose instead to move to the UK. Decisively, no restrictions existed between the two countries after the foundation of the Free State. From 1945 onwards, post-war Britain offered another pull factor unheard of in Ireland. In addition to widespread employment opportunities, the UK began to insert a generous and comprehensive welfare system under Attlee's Labour government. In 1951, the Irish Prime Minister at the time, Éamon De Valera, in an attempt at slowing the exodus,

⁵⁶⁶ Kerby Miller, *Emigrants and Exiles: Ireland and the Irish Exodus to North America*, New York: Oxford University Press, 1985, p. 3.

⁵⁶⁷ *Ibid.*, pp. 193-8.

⁵⁶⁸ Noel Ignatiev, *How the Irish Became White*, pp. 38-9.

⁵⁶⁹ Kerby Miller, *Emigrants and Exiles*, p. 6.

⁵⁷⁰ Timothy Guinnane, *The Vanishing Irish*, New York: Princeton University Press, 1997, p. 17.

⁵⁷¹ David D. Doyle, 'The Remaking of Irish America, 1845-1880', J.J. Lee and Marion Casey, (eds.), *Making the Irish American: History and Heritage of the Irish in the United States*, New York: New York University Press, 2006, pp. 213-252, p. 213.

⁵⁷² Timothy Hatton and Jeffrey Williamson, 'After the Famine: Emigration from Ireland, 1850-1913', *The Journal of Economic History*, Vol. 53, No. 3, 1993, pp. 575-600, p. 575..

⁵⁷³ Kerby Miller, *Emigrants and Exiles*, p. 11.

declared:

There is no doubt that many of those who emigrated could find employment at home at as good, or better wages – and with living conditions far better – than they find in Britain. Moreover, not only did they fail to improve their own circumstances by going abroad, but they leave enterprises for the development of our national resources without sufficient labour to enable progress to be made as rapidly as we would desire.⁵⁷⁴

Although De Valera's rhetoric appeared stern, his and other Irish governments' reactions to emigration remained cursory as the state remained fearful to act even though some contemporary commentators predicted that if emigration continued, the 'Irish will virtually disappear as a nation and will be found only as an enervated remnant in a land occupied by foreigners'.⁵⁷⁵ As Mary Daly asserts, successive Irish governments wanted to reverse population decline but feared that economic development might herald the break-up of an agrarian-based national identity. Instead, they fashioned statistical evidence to support ultimately futile pro-natalist policies that encouraged large, rural farm families.⁵⁷⁶ Amazingly, at age 30-34, 29.6 per cent of Irish women in 1961 remained single. This compared to New Zealand's 8.1 per cent, the country which, along with the United States, had the most similar total fertility rate patterns to Ireland's amongst developed nations over the second half of the twentieth century.⁵⁷⁷ In Robert Kennedy's opinion, Irish men and women decided to postpone marriage for economic and social reasons: a decision made possible by the strong moral code that the Catholic Church invoked at the time.⁵⁷⁸ As Rutledge, the central character of John McGahern's novel set in rural Ireland, *That They May Face the Rising Sun*, said when commenting on his old, single uncle, "He wanted to be on his own. He didn't want to be married. ... The priest, the single man, was the ideal of society, and with all the children we saw

⁵⁷⁴ Report of speech given by De Valera on emigration, 29 August 1951, NAI, DT S 11582C. Quoted in Brian Gavin, *From Union to Union: Nationalism, Democracy and Religion in Ireland*, Dublin: Gill & Macmillan, 2002, p. 157.

⁵⁷⁵ John O'Brien (ed.), *The Vanishing Irish: The Enigma of the Modern World*, London: W.H. Allen, 1954. Quoted in Enda Delaney, 'State, politics and demography: The Case of Irish Emigration, 1921-71', *Irish Political Studies*, Vol. 13, No. 1, 1998, pp. 25-49, p. 42.

⁵⁷⁶ Mary Daly, *Slow Failure: Population Decline and Independent Ireland, 1920-1973*, Wisconsin: Wisconsin Press, 2006 (backcover).

⁵⁷⁷ Tony Fahey, 'Trends in Irish Fertility Rates in Comparative Perspective', *The Economic and Social Review*, Vol. 2, No. 32, 2001, pp. 153-180, p. 159-160.

⁵⁷⁸ Robert Kennedy, *The Irish: Emigration, Marriage and Fertility*, Berkeley and London: University of California Press, 1973, pp. 14-15.

looking up at us from the floors of those bungalows, who can blame him?”⁵⁷⁹ Paradoxically, those who did get married usually produced large families. For one third of Irish women who gave birth in 1960, for example, it was for the fifth time or more.⁵⁸⁰ Fortunately for the families concerned, emigration provided a safety net for assuring the survival of these large families if financial circumstances became intolerable. Again, the continuous cycle of emigration resulted in huge decreases in Ireland’s population as between 1945 and 1960 nearly half a million people had emigrated from Ireland; the vast majority of whom went to the UK.⁵⁸¹

Despite population growth throughout the 1960s, emigration continued. Ireland only experienced significant in-migration in the 1970s after relative modernisation of the Irish economy following decades of isolationist policies and the country’s entry into the European Economic Community.⁵⁸² Yet, this trend came to a halt in the 1980s; a decade of mass unemployment and mass emigration, which also sparked disproportionate departure rates of third level graduates.⁵⁸³ One decade later, however, Ireland began to experience the start of the economic boom that would come to be known as the “Celtic Tiger,” which resulted in many former emigrants returning to Ireland along with, for the first time in the history of independent Ireland, large numbers of non-Irish migrants. The majority of these people came to the country with work permits. Nevertheless, a sizeable minority applied for asylum. As the next section will demonstrate, however, this did not represent the first time that Ireland received pleas for asylum from migrants.

Most people associate Ireland’s migration history with emigration but this section’s goal is to recount Ireland’s infrequently referenced but rich immigration history, particularly that relating to asylum. Ireland’s riposte to Jews fleeing the attempted Nazi genocide symbolised the country’s exclusionary history of dealing with migrants in need of shelter before 1989. Moreover, the Irish authorities’ treatment of those who did manage to enter, such as the Hungarian, Chilean and Vietnamese refugees from the 1950s, 1970s and 1980s, demonstrated the ill-informed, ill-equipped and often illogical reaction of the state. Much of this antipathy and confusion stemmed from the

⁵⁷⁹ John McGahern, *That They May Face the Rising Sun*, Paperview Group: London, 2005, p. 46 (1st published in 2002 by Faber and Faber).

⁵⁸⁰ Tony Fahey, ‘Trends in Irish Fertility Rates in Comparative Perspective’, p.164.

⁵⁸¹ Brian Gavin, *From Union to Union*, p. 163.

⁵⁸² Roy Foster, *Luck and the Irish: A Brief History of Change from 1970*, London: Allen Lane, 2007, pp. 7-36.

⁵⁸³ Alan Barrett, ‘Irish Migration: Characteristics, Causes, and Consequences’, in Klaus Zimmerman (ed.), *European Migration*, Oxford: Oxford University Press, 2005, pp. 89-112, p. 94

country's sheltered status and search for homogeneity.

Ronit Lentin writes that the revised Irish Constitution of 1937 appeared 'religiously non-inclusive' and ignored 'ethnic minorities'.⁵⁸⁴ Irish official attitudes to Jewish migration in the 1930s and 1940s confirmed this view. Immediately preceding the outbreak of the Second World War, the Irish government turned down a Vatican request to give temporary refuge to a number of Jewish doctors.⁵⁸⁵ Significantly, the 1935 *Aliens Act*, which allowed the Irish government to control and prevent any influx of aliens, coincided with the rise of refugees fleeing Nazism. At the Evian Conference in 1938, the Irish representative explained that the country's economy lacked the capability to absorb any population increase.⁵⁸⁶ The rise of anti-Semitism in Ireland throughout the late 1930s and early 1940s gave the Irish government further justification to refuse the entry of Jewish refugees into the country.⁵⁸⁷ Instead, the government attempted to help Jewish families in France and Lithuania during the latter stages of the war. Dermot Keogh's summation that the Irish government's policy towards Jews during the Second World War remained 'reactive rather than proactive' appeared overly generous considering that as little as sixty people may have gained entry during the war period.⁵⁸⁸

Between the end of the Second World War and February 1953, approximately 1,000 'aliens' – excluding UK citizens – found a permanent home in Ireland.⁵⁸⁹ This included various Breton, Flemish and Basque 'European ethnic minority nationalists, many of whom were wanted for war crimes, collaboration with Axis powers, or attacks upon the 'territorial integrity' of Allied states'.⁵⁹⁰ Ireland felt its contribution to the repatriation of refugees and displaced persons not 'inconsiderable' in view of the country's 'small size, limited resources and problems of unemployment and

⁵⁸⁴ Ronit Lentin, 'Irishness', the 1937 Constitution, and Citizenship: a gender and ethnicity view', *Irish Journal of Sociology*, Vol. 8, 1998, pp. 5-24, p. 9.

⁵⁸⁵ Robert Fisk, *In Time of War: Ireland, Ulster and the price of neutrality 1939-45*, London: Deutsch, 1983, p. 372.

⁵⁸⁶ Official Report of Plenary Session of Evian Conference, July 1938, Myron Taylor Papers, US National Archives and Records Administration, Franklin D. Roosevelt Library, New York. Quoted in Dermot Keogh, *Jews in Twentieth-Century Ireland*, Cork: Cork University Press, 1998, p. 119.

⁵⁸⁷ See Robert Fisk, *In Time of War*, p. 372 and Dermot Keogh, *Jews in Twentieth-Century Ireland*, pp. 147-152.

⁵⁸⁸ Keogh gives this minimal number, while acknowledging that it is very hard to give an accurate estimate, p. 192.

⁵⁸⁹ Memorandum for Government by the Department of Justice, entitled 'Question of admission of Jewish refugees', 28 February 1953, National Archives of Ireland (abbreviated in the rest of the chapter to NAI), Department of Foreign Affairs (DFA in the rest of the chapter) 2003/17/201.

⁵⁹⁰ Daniel Leach, *Fugitive Ireland: European Minority Nationalists and Irish Political Asylum, 1937-2008*, Dublin: Four Courts Press, 2009, p. 15.

emigration'.⁵⁹¹ Accompanying this argument the government maintained that it had 'never been the practice to act on racial or religious grounds' when dealing with the admission of foreigners. By contrast, the same department of justice memo stated that 'the question of the admission of aliens of Jewish blood presents a special problem and the alien law has been administered less liberally in their case.'⁵⁹² The case of the Hungarian refugees in 1956, however, showed that Ireland had a problem coping with all foreigners and not just those of 'Jewish blood'.

In November 1956, Ireland ratified the 1951 UN Refugee Convention. An enthusiastic pledge by the government to accommodate hundreds of Hungarian refugees stranded on the Austrian border after the Hungarian uprising soon followed. Irish authorities housed the Hungarian refugees in a former army camp in Limerick from late 1956, with some remaining there until the end of 1958. Owing to a breakdown in communication, the Hungarian refugees originally believed their stay in Ireland a temporary one. By contrast, the Irish government understood that the 539 refugees would remain permanently in Ireland. This led to increased friction and precipitated the launch of a hunger strike by the Hungarians at the end of April 1957, because of 'what they considered to be inadequate efforts by the Irish authorities to assist them in their desire to secure admission to other countries'.⁵⁹³ In an attempt to get out of the predicament that it found itself in, the Irish government sent a letter to the UN High Commissioner for Refugees requesting that Ireland be reclassified as 'a country of first asylum, in which the refugees should not remain for an unduly long period'.⁵⁹⁴ This misguided attempt to withdraw Ireland from the conditions it signed up to only six months previously displayed Ireland's unwillingness and incapacity to deal satisfactorily with refugees. As Eillis Ward highlighted, Ireland accepted the refugees to attain prestige abroad rather than because of their genuine concern for the welfare of the Hungarians.⁵⁹⁵ The Irish government clearly desired to rid itself of the problem it unwittingly created for itself.

Fortuitously for the Irish government, the Hungarian refugees also wanted to

⁵⁹¹ NAI DFA 2003/17/201.

⁵⁹² *Ibid.*

⁵⁹³ Letter from Sean Murphy, Secretary of External Affairs, to August Lindt, UN High Commissioner for Refugees, 17 May 1957. Taken from NAI, Department of the Taoiseach (DT in the rest of the chapter) S 11007D.

⁵⁹⁴ *Ibid.*

⁵⁹⁵ Eillis Ward, 'A big show-off to show what we could do' – Ireland and the Hungarian Refugee Crisis of 1956', *Irish Studies in International Affairs*, Vol. 8, 1996, pp. 131-141, p. 140.

leave the country. In a strongly worded letter written to the United States Congress, the refugees complained that they were 'being kept in unheatable wooden huts, on unhealthy food, without the possibility of schooling'. They begged the US government to help them: '[Y]ou have promised us life, not concentration camps, depriving us of work and the hope of life.'⁵⁹⁶ By late 1958, only 61 refugees remained. Many left for various destinations, including the UK, the US and Canada, while some even returned to Hungary rather than remain in Ireland.⁵⁹⁷

In the aftermath of Ireland's forgettable experience with the Hungarians, the country returned to its tried and trusted policy of exclusivity. Ireland's entry into the European Economic Community (EEC) in the early 1970s, however, forced the government to deal with the issue of refugees once again. In the mid 1970s, the EEC pressured Ireland to accept a number of refugees fleeing Pinochet's regime in Chile. This caused serious difficulties for the government and especially for the historically xenophobic Department of Justice, who warned the Department of Foreign Affairs of its hazardous ramifications:

Acceptance of refugees from distant countries with a cultural background very different from an Irish one poses difficulties for this country over and above what would be posed for many other countries, including EEC ones. Our society is less cosmopolitan than that of Western European countries generally and, in consequence, the absorption of even a limited number of foreigners of this kind could prove extremely difficult.⁵⁹⁸

Additionally, the department of justice considered Chilean refugees as 'Marxists and probably Communists' who remained 'liable sooner or later to engage in political agitation' in a country that already had 'a relatively large and well organised subversive group towards whom such persons could be expected to gravitate'.⁵⁹⁹

Reluctantly, Ireland eventually accepted a small number of Chilean refugees.⁶⁰⁰

⁵⁹⁶ Letter on behalf of the 370 Hungarian refugees remaining in Knockalisheen Refugee Camp to the Congress of the United States, 13 June 1957. Taken from NAI, DT S 11007D.

⁵⁹⁷ See Eillis Ward, 'A big show-off to show what we could do' – Ireland and the Hungarian Refugee Crisis of 1956', pp. 138-9.

⁵⁹⁸ Letter from the Department of Justice to the Department of Foreign Affairs regarding the prospect of accepting Chilean refugees, 14 February 1974. Taken from NAI, DT 2005/7/445.

⁵⁹⁹ *Ibid.*

⁶⁰⁰ See Memorandum from the Department of Foreign Affairs to the Government entitled 'Resettlement in Ireland of refugees from Chile', 12 February 1974. Taken from NAI, DT 2005/7/445. 120 Chilean refugees were eventually accepted. Bryan Fanning, *Racism and social change in the Republic of Ireland*, p. 96.

Nevertheless, it took three years to provide these refugees with English classes. Unsurprisingly, Chilean refugees found it hard to find employment, experiencing many of the difficulties that the 212 Vietnamese refugees, who arrived in Ireland in 1979, subsequently encountered.⁶⁰¹ In the early 1990s, Ireland accepted more refugees, this time from Bosnia. A 1998 report found that Vietnamese and Bosnian refugees suffered high unemployment, poor English-language skills and isolation with up to half of them commenting that they only spoke with people outside of their communities at most once or twice a month.⁶⁰²

Before turning to the reception of asylum seekers in Ireland after 1989, it is first necessary to provide a concise overview of Irish politics from 1989 to 2008. Fianna Fáil, a conservative centrist republican party, has dominated Irish politics since 1989. It held power, along with small coalition partners, between 1989 and 1994 and from 1997 onwards. For the majority of Fianna Fáil's seventeen years in office since 1989, the Progressive Democrats (PDs) joined them as coalition partners. Founded in 1985 as a result of a split from the aforementioned Fianna Fáil party, the PDs developed into a free market liberal party. It received a small percentage of the national vote but gained an influential role in Irish politics until its relative demise in 2007. The Greens replaced the PDs as Fianna Fáil's coalition partners in government from mid-2007 onwards. The second largest party in the country, Fine Gael, spent only three years in power (1994-1997) during the period under investigation. Bearing remarkable similarities to Fianna Fáil, it too is a centrist, conservative party. Its coalition partners in the 'rainbow government' of 1994-1997 included a variety of small left-wing parties and the centre-left Labour Party, Ireland's third largest political organisation.

4.2 Surprise Guests, 1989-1997

The fact that a significant number of people applied for asylum in Ireland from the mid 1990s onwards surprised many in Irish society. While the country only had to contend with thirty-six asylum applications in 1989, by 1997 Ireland received nearly four thousand requests. This represented a remarkable turnaround in Irish history and caused

⁶⁰¹ Bryan Fanning, *Racism and Social Change in the Republic of Ireland*, p. 97.

⁶⁰² 'Survey finds refugees lack jobs, English and are isolated', *Irish Times*, 23 June 1998.

bemusement amongst Irish politicians, voters and media outlets. Some of the theories put forward to explain the arrival of these newcomers included Ireland's growing international profile caused by their successful football campaigns at successive World Cups, Mary Robinson's performance as President, the spread of Irish aid workers globally, the internet, the IRA ceasefire and the global diffusion of Irish pubs.⁶⁰³

The strict entry conditions put in place throughout the twentieth century assured the growth of a relatively homogenous society free of foreigners. Contrastingly, increasing pressure on successive Irish governments in the 1990s by opposition politicians, domestic and international NGOs, as well as by the UNHCR, restricted the Irish government from using such harsh measures to limit the upsurge that took place in the 1990s. Indeed, since most asylum seekers submitted their applications once inside the country and not at its entry points, the country had arguably lost its capacity to stop all kinds of immigrants from arriving in the first place.⁶⁰⁴

Formation

In the late 1980s and early 1990s, Ireland dealt with less than one hundred asylum applications a year. The incoherent and inexperienced manner in which Irish authorities treated these asylum seekers suggested a continuation of past malpractices. Just as Ireland proved ill prepared to receive Hungarian and Vietnamese refugees in the 1950s and late 1970s, the country struggled to come to terms with handling asylum seekers in the mid 1990s. Some asylum seekers spent time in prison awaiting the outcome of their applications and NGOs, such as the Red Cross and the Irish Refugee Council, cared for others.⁶⁰⁵ As if to confirm this general incompetence, the Irish police forced twenty-seven potential Kurdish asylum seekers from Turkey back on board their flight at Shannon airport in November 1992 after they refused to return to their plane.⁶⁰⁶ In addition to receiving sustained attacks from Amnesty International and the Irish Refugee Council over these and other actions displaying the country's invisible policy towards

⁶⁰³ See 'Sharp rise in the number of refugees seeking asylum', *Irish Times*, 24 May 1996 'Only surprise is how long refugee influx has taken to happen here', *Irish Times*, 17 May 1997 and 'Dublin now main target for gangs trafficking in people', *Irish Times*, 26 May 1997.

⁶⁰⁴ A senior official of the Department of Justice, Brian Ingoldsby, told a conference that ninety-eight per cent of asylum seekers did not apply at their first point of entry. See 'Number of asylum-seekers doubles', *Irish Times*, 17 Jan 1998. Although this went down in later years, the vast majority of asylums seekers still made their claims from inside the country rather than at its border points.

⁶⁰⁵ See the Minister of Justice's (Ray Burke) comments to the Dail, *Dail Eireann*, Vol. 414, 17 Dec 1991 and a letter from Amnesty International Ireland to the *Irish Times*, 22 Oct 1992 for more details.

⁶⁰⁶ 'Gardai in Shannon stand-off with Kurds', *Irish Times*, 17 Nov 1992. The report suggests that confusion reigned as to whether or these people asked for asylum or not.

those seeking asylum, Alan Shatter, a spokesman for the opposition Fine Gael party, proposed the enactment of legislation to comprise the UNHCR definition of a refugee into Irish law in 1993.⁶⁰⁷ Irish judicial procedures on refugees relied heretofore on a letter sent in 1985 to the Irish and British representative of the UNHCR for guidance, which detailed Ireland's refugee practices in ten key points.⁶⁰⁸ Irish delegates signed the UN Convention on Refugees in 1956 but successive Irish governments believed that the small number of asylum seekers coming to the country failed to warrant the enactment of the necessary legislation to encompass the Convention into Irish law, hence the use of the so-called "Von Armin letter."⁶⁰⁹

By mid-1994, following sustained pressure from NGOs and opposition politicians, the Fianna Fáil government agreed to introduce a bill to fill this gap. The Fine Gael-led coalition that came to power in December 1994 developed this provisional bill further because, in the words of the minister in charge of drawing up new asylum legislation, Joan Burton, "concerns were voiced on all sides of this House that it did not go far enough in seeking to safeguard the interests of applicants for asylum."⁶¹⁰ Accordingly, she presented to parliament an amended version of the so-called *Refugee Act* in the autumn of 1995. Bearing significant influence from NGOs and receiving all-party support, the legislation was generous and liberal. It borrowed the Geneva Convention's definition of a refugee, while also allowing asylum seekers fleeing gender-persecution to attain refugee status. It also incorporated the Dublin Convention.

During parliamentary debates over the new legislation, politicians sympathetic to the plight of asylum seekers used the memory of past Irish emigrants to evoke empathy for the new arrivals. By implying asylum seekers and Irish emigrants shared a common experience, actors sympathetic to those in search of protection claimed that Ireland had a moral debt or responsibility to help these people.⁶¹¹ This rhetoric initially met with much resonance amongst the public, politicians and the media because of the Irish state's

⁶⁰⁷ 'Shatter asks for co-operation on asylum bill', *Irish Times*, 18 March 1993.

⁶⁰⁸ Ursula Fraser, 'The Asylum Procedure', in Ursula Fraser & Colin Harvey (eds.), *Sanctuary in Ireland: Perspectives on Asylum Law and Policy*, Dublin: IPA, 2003, pp. 81-114, p. 81. The Irish Supreme Court considered the status of this letter to be legally binding in the course of *Fakih v. The Minister for Justice* and *Gutrani v The Minister for Justice*, which took place in 1985.

⁶⁰⁹ Dug Cubie and Fergus Ryan, *Immigration, Refugee and Citizenship Law in Ireland: Cases and Materials*, Dublin: Thomson, Roundhall, 2004, p. 205-6.

⁶¹⁰ Joan Burton, Minister for State (Democratic Left), *Dáil Éireann*, Volume 457, 19 Oct 1995.

⁶¹¹ Breda Gray, 'Remembering a 'multicultural' future through a history of emigration: Towards a feminist politics of solidarity', University of Limerick, Department of Sociology Working Paper Series, 2004, p. 9. Later published in *Women's Studies International Forum*, Vol. 27, No. 4, 2004, pp. 413-29.

historic tendency to represent, through constant commemoration, Irish emigrants as exiles escaping colonialism and its legacy.

Irish secular and religious leaders throughout the nineteenth and early twentieth century regularly blamed continuous emigration on British rule. This association tallied well with the traditional interpretation that long existed in Irish lore linking emigration with exile. Although the majority of post-Famine emigrants left voluntarily, the image of forced migration “remained prevalent, still colouring the letters and memoirs of ordinary Catholic emigrants as well as songs and ballads, political speeches, and clerical sermons”.⁶¹² As Breda Gray illustrated, the Famine migrants, through constant state commemoration, became the “‘authentic’ Irish migrants, the traumatic, but genuine origin of ‘Irish emigration.’”⁶¹³

In the decades after the Free State gained its independence in 1922, this myth became questionable as emigration continued. To adapt to this reality, emigration became associated with both colonial and economic hardship. Popular culture also focused on the poverty and destitution that prompted many Irish migrants to leave and compared it to the arduous experiences of others elsewhere, especially Africans and African-Americans. In the 1990s, the Irish President, Mary Robinson, gave leverage to this view when speaking at a commemoration to Famine migrants in Canada in 1994. She told listeners that “as a people who suffered and survived ... our history does not entitle us to a merely private catalogue of memories.”⁶¹⁴ The Irish, because of their own traumatic experiences, had to relate their own memories of past injustices with contemporary ones around the world.

Remarkably, in Ireland’s first meaningful asylum debate in 1995, every political party represented in parliament voiced its support for the formation of an expansive asylum policy.⁶¹⁵ Liz O’Donnell of the PDs, for instance, highlighted the significance of forming generous asylum legislation in the same year the country celebrated the 150th anniversary of the Famine because “For generations our people have sought refuge in other countries from political and economic conditions which to them were intolerable.”⁶¹⁶ John O’Donoghue of Fianna Fáil went further by commenting: “The

⁶¹² Kerby Miller, ‘Emigration, Capitalism and Ideology in Post-Famine Ireland’, Richard Kearney (ed.) *Migrations: The Irish at Home and Abroad*, Dublin: Wolfhound, 1990, pp. 91-108, p. 93.

⁶¹³ Breda Gray, ‘The Irish Diaspora: Globalised Belonging(s)’, *Journal of Irish Sociology*, Vol. 11, No. 2, 2002, pp. 123-144, p. 131.

⁶¹⁴ Mary Robinson, cited by Breda Gray, ‘The Irish Diaspora: Globalised Belonging(s)’, p. 131.

⁶¹⁵ See *Dáil Éireann*, Volume 457, 19 Oct 1995.

⁶¹⁶ Liz O’Donnell (PDs), *ibid.*

status of refugees is an issue which should strike a chord with every man, woman and child here who has any grasp of Irish history, our history books being littered with the names and deeds of those driven from our country out of fear of persecution.”⁶¹⁷

The only objections during the political debate surrounding the proposed legislation came from those who thought further improvements would help protect asylum seekers further. These related principally to the section dealing with “manifestly unfounded applications.” Politicians from Fianna Fáil, the PDs and Labour referenced certain NGOs’ misgivings, particularly those from Amnesty International, the Red Cross and the Irish Refugee Council, when pressing for more lenient interpretations of certain sections of the legislation.⁶¹⁸

Implementation

Successive Irish governments’ responses to the rise in asylum seekers continued to be reactive rather than proactive as it unsuccessfully grappled with the problem. The Fine Gael-led coalition government in power between December 1994 and June 1997 successfully brought the so-called 1996 *Refugee Act* through the various parliamentary requirements by June 1996.⁶¹⁹ Several months later, however, the act remained static. The Minister for Justice, Nora Owen, told the parliament that the *Refugee Act* “will be implemented as soon as all the necessary implementing regulations are in place,” admitting that “I do not envisage that the new system will be in operation before April 1997.”⁶²⁰ In-government bickering over where responsibility for the implementation of the act rested delayed developments further as did problems regarding state-funded legal aid for asylum seekers. Furthermore, an injunction from a former minister for justice, passed over for the new position of refugee applications’ commissioner, meant that the act remained dormant by the time Irish general election took place in June 1997.⁶²¹

Effects

The massive increase in asylum applications represented what one journalist termed the

⁶¹⁷ *Ibid.* Also cited in Jason King, ‘Ireland Abroad/broadening Ireland: From Famine Migrants to Asylum-Applicants and Refugees’, in Oonagh Walsh (ed.), *Ireland Abroad. Politics and Professions in the Nineteenth Century*, Dublin: Four Courts Press, 2002, pp. 202-214, p. 202.

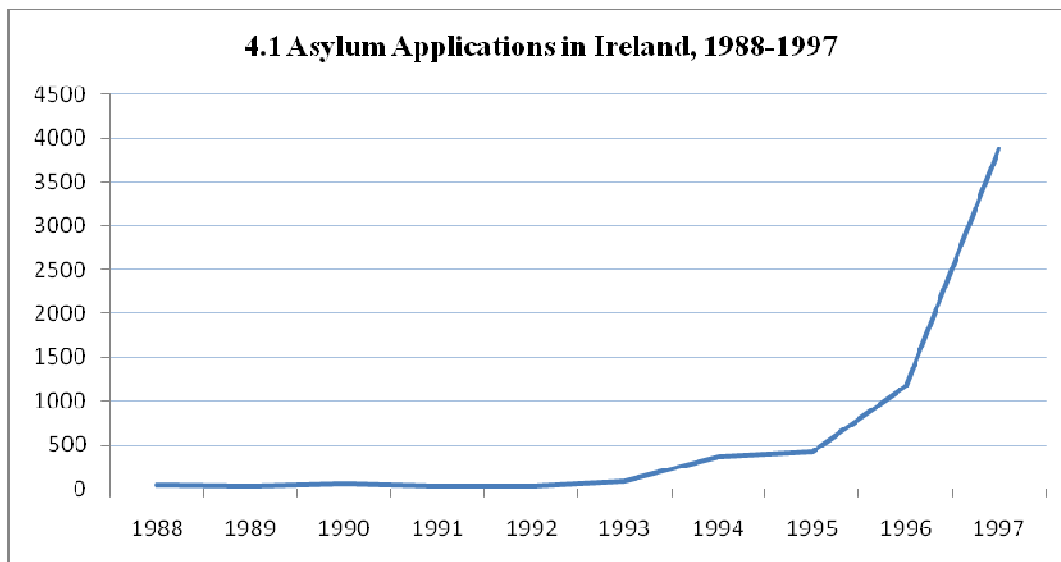
⁶¹⁸ See John O’Donoghue (Fianna Fáil), Joe Costello and Kathleen Lynch (both Labour) and Liz O’Donnell’s remarks for more details, *Dáil Éireann*, Volume 457, 19 Oct 1995.

⁶¹⁹ See Nora Owen (Fine Gael), Minister for Justice, *Dáil Éireann*, Volume 469, 25 Sept 1996.

⁶²⁰ Nora Owen (Fine Gael), Minister for Justice, *Dáil Éireann*, Volume 470, 30 Oct 1996.

⁶²¹ ‘O’Donoghue signals intention to amend unimplemented Refugee Act’, *Irish Times*, 12 Aug 1997.

largest influx of those seeking shelter in the country since ‘the Celts were driven west by the Romans’.⁶²² Ireland never had to deal with such large numbers of non-Irish people entering its territory in its post-independence history.



Source: Figures for 1988-1991 are taken from the Minister for Justice's (Ray Burke, FF) statement to Dáil Éireann on 4 February 1992. Figures from 1992 onwards come from the Office of the Refugee Applications Commissioner.

In the early-1990s the Red Cross accommodated asylum seekers and the Irish Refugee Council provided them with legal help. But as numbers escalated, Irish NGOs struggled to cope with increased demands placed on their limited services. Accordingly, responsibility passed to the state. Incompetence was initially rife. In May 1997, workers for the Eastern Health Board who were charged with dealing with asylum seekers' welfare closed their offices because of staff shortages.⁶²³ Because it took an average of two years to deal with every asylum case, a huge backlog in applications amassed. In February 1997, the government announced that only 66 asylum applicants gained refugee status since January 1994. Approximately 1700 remained unprocessed.⁶²⁴ Increasing asylum claims expounded this further. Since it fell to the state (which frequently abdicated responsibility to the health boards) to house, feed and provide for these people – the rules barred asylum seekers from working during their applications – the crisis facing the state grew exponentially. Simultaneously, so did the public focus on the new arrivals. While sympathetic actors, such as NGOs and politicians, found

⁶²² 'Only surprise is how long refugee influx has taken to happen here', *Irish Times*, 17 May 1997.

⁶²³ *Ibid.*

⁶²⁴ Nora Owen (Fine Gael), Minister for Justice, *Dáil Éireann*, Volume 475, 27 Feb 1997.

widespread support for their compassionate attitude to asylum seekers in the early and mid-1990s, this began to change as public, media and political hostility towards asylum seekers increased from 1997 onwards. Sceptics argued that the increasingly harsh measures taken by Britain to restrict asylum applications encouraged traffickers to send people to Ireland, as did the country's impressive economic growth and relatively generous welfare system. The collapse of communism, the civil war in the ex-Yugoslavia, ongoing conflicts in the developing world and declining opportunities for labour migration in Europe rarely entered debates explaining the rise in numbers.

4.3 Struggling to Restrict Asylum, 1997-2002

In contrast to debates in the first half of the decade, discussions about asylum after the 1997 general election became notably more critical of asylum seekers. Enmity replaced much of the empathy expressed in the 1995 parliamentary debate. Nonetheless, a number of sympathetic actors continued to promote generous asylum policies, with religious leaders, NGOs and left-wing opposition parties to the fore. They made frequent references to Ireland's moral responsibility, its past history, and its human rights obligations to aide asylum seekers. By contrast, centrist political parties, large sections of the media, and an increasing majority of public opinion voiced their dismay at the increase in asylum applications. Accordingly, they advocated more restrictionist measures to reduce the number of those applying for asylum in Ireland and in effect reduce the burden that they felt asylum seekers had placed on the state's finances. The media performed a manifest role in this change, with both tabloids and broadsheets painting asylum seekers in an overwhelmingly negative light. Accordingly, the new Fianna Fáil-led government halted the expansive initiatives undertaken by its rainbow coalition predecessors and instead sought to bring Ireland into line with its EU neighbours, particularly the UK. To demonstrate its uncompromising new stance, the Irish government began deporting rejected asylum seekers. But actors sympathetic to asylum seekers – most notably lawyers representing asylum seekers, NGOs, religious leaders, left-wing opposition political parties and certain broadsheet media outlets – challenged this new departure, meeting with most success in the domestic courts.

Formation

The nature of the asylum debate in Ireland changed substantially in the run-up to the

1997 general election. For the first time ever in the history of the state, immigration – in the form of a debate centred on asylum seekers – became an election issue. In April 1997, the PDs accused the rainbow coalition government of presiding over “an unregulated flow of economic migrants into Ireland.”⁶²⁵ One PD deputy warned of the danger of “professional beggars” overwhelming the country.⁶²⁶ Liam Lawlor, of Fianna Fáil, made reference to the “floods” of immigrants arriving in the country.⁶²⁷ Aine Ní Chonaill also came onto the political scene for the first time. An independent election candidate in Cork, she ran on an anti-immigration platform and voiced her opposition to the entry of asylum seekers in Ireland.⁶²⁸

The media amplified this newfound focus upon asylum seekers. Before 1997, empathy marked the media discourse on asylum seekers in Ireland. Throughout 1997, as numbers increased substantially, the media began to focus on the amount of money spent housing and supporting asylum seekers. Sensationalist headlines began to appear regularly, as the *Sunday World*’s May 1997 offering demonstrated; ‘Floodgates open as a new army of poor swamp the country’.⁶²⁹ Not all newspapers contributed to this development, but it became increasingly common especially among regional papers and tabloids. The media communicated several scare stories about biblical “floods,” “flows,” “invasions,” and “deluges” of “swampers,” “daytrip refugees,” and “sponger refugees” in the weeks approaching the election, with one regional story about “refugee rapists on the rampage” standing out.⁶³⁰

⁶²⁵ ‘PDs accuse Coalition on “flood of economic migrants”’, *Irish Times*, 19 April 1997.

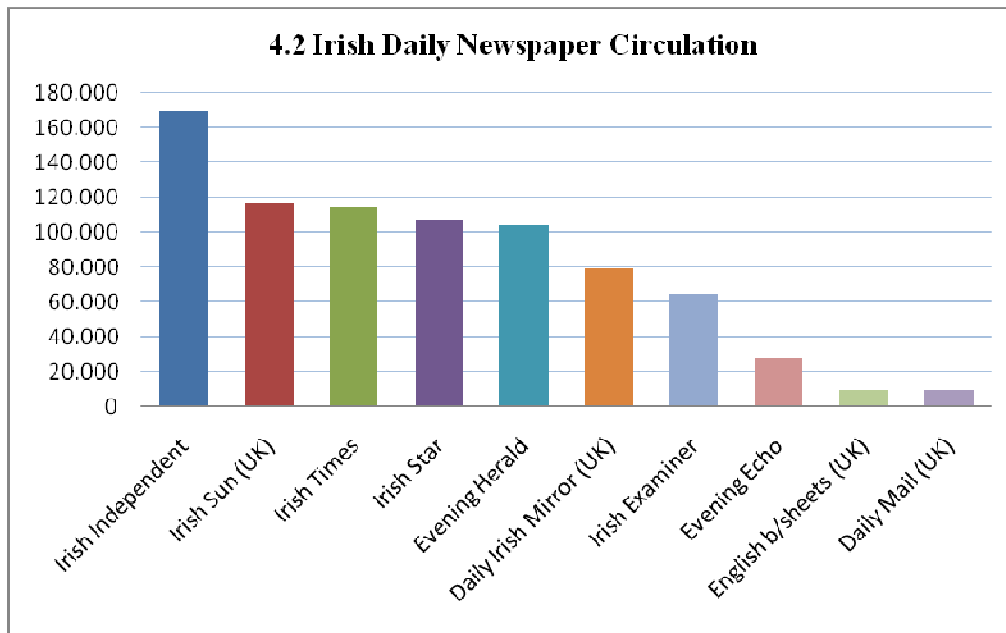
⁶²⁶ ‘Candidate warns on effect of migrant influx’, *Irish Times*, 27 May 1997.

⁶²⁷ ‘Refugees “appalled” by growing public criticism’, *Irish Times*, 6 June 1997.

⁶²⁸ She also opposed the arrival of too many British and German nationals buying holiday-homes in Ireland. See ‘Candidate warns on effect of migrant influx’, *Irish Times*, 27 May 1997 for more details.

⁶²⁹ Quoted in Harry McGee, ‘Media Responses to Asylum’, Ursula Fraser & Colin Harvey (eds), *Sanctuary in Ireland: Perspectives on Asylum Law and Policy*, Dublin: IPA, 2003, pp. 187-202, p. 193.

⁶³⁰ These terms were taken from a variety of Irish newspaper articles between May and June in 1997: ‘Garda move on dole fraud by daytrip refugees’, *Irish Independent*, 5 May, 1997; ‘Services face overload as refugee flood continues’, *Sunday Business Post*, 18 May; ‘Why Irish eyes aren’t smiling on the great Romanian invasion’, *Irish Independent*, 23 May; ‘Floodgates open as a new army of poor swamp the country’, *Sunday World*, 25 May; ‘Crackdown on 2,000 ‘sponger’ refugees’, *Irish Independent*, 7 June, 1997; and ‘Refugee rapists on the rampage’, *The Star*, 13 June 2007. Titles taken from Paul Cullen, ‘Media’, in Thomas R. Whelan (ed.), *The Stranger in our Midst: Refugees in Ireland: Causes, Experiences, Responses*, Dublin: Kimmage Mission Institute of Theology and Cultures, 2001, pp. 81- 86, p. 81 and Paul Cullen, ‘Refugees and Racism’, *Irish Times*, 25 Feb 1998.



Figures: National Consultative Committee on Racism and Interculturalism (NCCRI), *Media coverage of refugees and asylum seekers in Ireland*, Dublin: NCCRI/UNHCR, April 2003, p. 10⁶³¹

According to a later report by the National Consultative Committee on Racism and Interculturalism (NCCRI) in conjunction with the UNHCR, the period 1997-1998 represented the height of media irresponsibility regarding asylum issues. It concluded: ‘There was a lot of sensationalised newspaper coverage related to the increase of asylum seekers coming to Ireland, including extreme comment that sometimes bordered on hysteria.’⁶³² In November 1997 the Fine Fáil deputy, Ivor Callely stated publicly that “rogue” asylum seekers should be “kicked out” of Ireland. He added that these people were “carrying on in a culture that is not akin to Irish culture”, by doing such things as the “bleeding of lambs in the back garden”.⁶³³ Leaders of the Fine Gael, Labour, Democratic Left and even the governing Fianna Fáil party, unequivocally condemned Callely’s remarks.⁶³⁴ Nonetheless, obligations of political correctness did not apply to the media. As well as informing the public that asylum seekers competed for accommodation with homeless people, the Irish media reported a series of welfare frauds involving asylum seekers, which caused government officials to voice concerns that trafficking gangs had targeted the country.⁶³⁵

⁶³¹ All newspapers marked with an asterisk are tabloids. These figures are taken from 2002. See NCCRI, *Media Coverage of Refugees and Asylum Seekers in Ireland*, Dublin: NCCRI/UNHCR, April 2003, p. 10.

⁶³² *Ibid*, p. 14.

⁶³³ ‘Callely targets ‘rogue’ asylum seekers’, *Irish Times*, 26 Nov 1996.

⁶³⁴ See ‘Asylum seekers remarks ‘racist’’, *Irish Times*, 27 Nov 1997 and ‘Race relations debate agreed after dispute over Callely’, *Irish Times*, 28 Nov 1997.

⁶³⁵ ‘Asylum seekers and homeless vie for shelter, agency says’, *Irish Times*, 9 May 1997.; ‘Gardaí look

One journalist for the *Irish Times*, Andy Pollack, claimed that much of the negative press surrounding asylum seekers failed to deal with the issue properly and instead used ‘sensational headlines, misleading statistics, unsourced claims and often plain demonising of asylum seekers’ when tackling the subject.⁶³⁶ He levelled most of his criticisms at the Independent Group, which owned three of Ireland’s most popular dailies, the broadsheet *Irish Independent*, the tabloid *Evening Herald* and the tabloid *Star*, as well as possessing the lion’s share of the Sunday newspapers.

Nonetheless, the traffic of opinion varied. Mary Robinson, the Irish President at the time and subsequently the United Nations Human Rights Commissioner, warned of the danger of racism “rearing its ugly head” unless people learned to deal with the issues surrounding immigration and refugees.⁶³⁷ The *Irish Times*, one of the leading Irish newspapers, regularly advocated for more compassionate reactions to the plight of those seeking asylum. A 1997 editorial defending asylum seekers drew readers’ attention to the fact that ‘it [wa]s not so long ago that the Irish themselves were seeking succour and support at ports and airports in America, Australia and in Britain.’⁶³⁸ Yet, perhaps most refreshingly of all, asylum seekers and refugees themselves tried to safeguard their rights by forming their own NGO, the Association of Refugees and Asylum-seekers in Ireland (ARASI). One outspoken founding member surmised: “Irish people complain about refugees coming in, but they forget that as an EU member and a signatory of the 1951 UN Convention on Refugees they have to accept refugees. They behave as though their international role consisted only of accepting benefits.”⁶³⁹

Yet voicing anti-asylum sentiments in 1997 failed to produce more votes: Aine Ní Chonaill received less than three hundred votes and Helen Keogh, the PD deputy who linked asylum seekers to professional beggars, lost her seat. Joan Burton, the outgoing junior minister with responsibility for asylum seekers, summed up future challenges, however, when she commented on how asylum had become a political issue: “[it]’s a genie, which, when let out of the bottle, is very hard to put back in”.⁶⁴⁰

The Fianna Fáil-PD government that assumed office in the summer of 1997 immediately refrained from implementing the previous ascendancy’s *Refugee Act*.

into asylum welfare frauds’, *Irish Times*, 29 Aug 1997; ‘Growing bill for asylum seekers tops £1/2 m a week’, *Irish Independent*, 25 Nov 1997.

⁶³⁶ ‘Conference told how refugee reporting can ignite racism’, *Irish Times*, 23 Feb 1998.

⁶³⁷ ‘President warns of dangers of racism over refugee issue’, 14 June 1997.

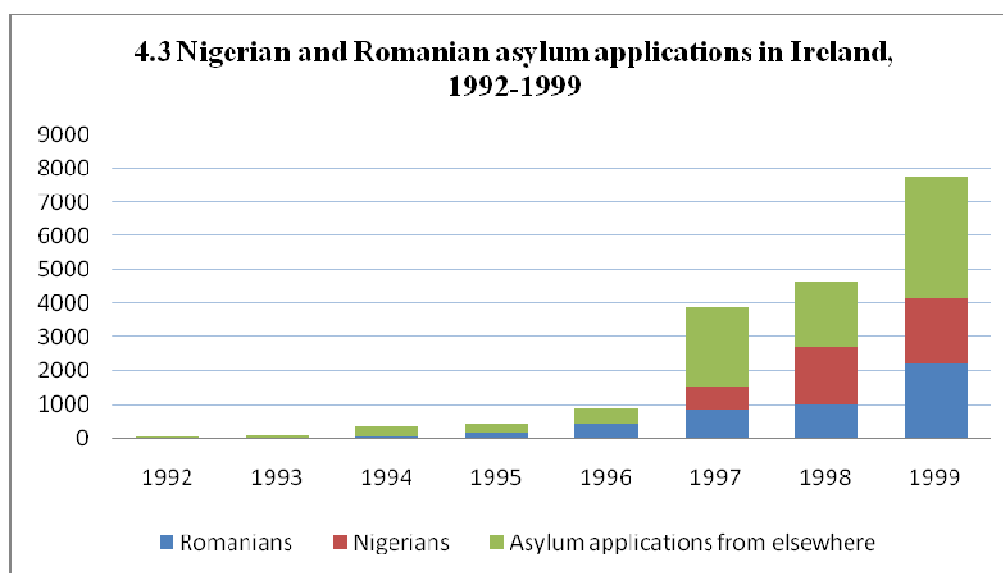
⁶³⁸ ‘The Asylum Seekers’, Editorial, *Irish Times*, 19 April 1997.

⁶³⁹ ‘Refugees “appalled” by growing public criticism’, *Irish Times*, 6 June 1997.

⁶⁴⁰ ‘President warns of dangers of racism over refugee issue’, 14 June 1997.

Instead, the new government promised to review the country's asylum policy because of the impact rising numbers of applicants had on state services such as welfare, housing and healthcare.⁶⁴¹

For some, asylum seekers had clearly come for economic reasons rather than political ones.⁶⁴² An important justification for this resource-based opposition derived from the large applications submitted from nationals of countries not at war. In 1999, for example, the largest group of asylum seekers came from Romania, the second largest Nigeria and the third largest Poland.⁶⁴³ Official comments from the Nigerian embassy in Dublin added to this perception, by branding Nigerian asylum seekers as 'economic migrants' with 'the illusion of greener pastures outside the country', who concocted 'tales of torture, harassment and humiliation'.⁶⁴⁴ Similarly, the Romanian embassy claimed that asylum seekers from its own country arrived in Ireland with the intention of milking the system.⁶⁴⁵



Figures: *Dáil Éireann*, Vol. 513, 1 Feb 2000 and Vol. 520, 1 June 2000⁶⁴⁶

In response to increased criticism of the asylum system, the Fianna Fáil-led

⁶⁴¹ See John O'Donoghue (Fianna Fáil), Minister for Justice, *Dáil Éireann*, Volume 480, 9 July 1997.

⁶⁴² See 'Majority of Romanians flee for 'economic reasons'', *Irish Independent*, 6 Aug 1998 and 'From Cherbourg to El Dorado', *Irish Independent*, 8 Aug 1998.

⁶⁴³ John O'Donoghue, *Dáil Éireann*, Vol. 520, 1 June 2000.

⁶⁴⁴ Letter from Edwin Edobar (Nigerian Chargé d' Affaires) to the *Irish Times*, 4 June 1997.

⁶⁴⁵ Romanian diplomat Dragon Nikita, paraphrased in 'Saying what we were too polite to say aloud', *Irish Independent*, 6 Aug 1998.

⁶⁴⁶ Data taken from John O'Donoghue, *Dáil Éireann*, Vol. 520, 1 June 2000 and John O'Donoghue, *Dáil Éireann*, Vol. 513, 1 Feb 2000.

coalition decided to reform the 1996 *Refugee Act*. In December 1997, the government implemented various parts of the 1996 *Refugee Act* in the form of another letter sent to the Irish representative of the UNHCR, Hope Hanlon. The letter sent to the UNHCR in December 1997 (and a further one sent in March 1998) outlined Ireland's new stance on asylum applications. This included the adoption of the Dublin Convention preventing people from applying for asylum in more than one EU state and the foundation of the Independent Appeals Authority to examine the appeals of those whose applications the department of justice rejected. More controversially, the letter laid down twelve conditions under which the department of justice could interpret an application as "manifestly unfounded" in order to fast-track requests. Some of these grounds included:

- (a) [if] it does not show on its [the application] face any grounds for the contention that the applicant is a refugee,
- (b) the applicant gave clearly insufficient details or evidence to substantiate the application,
- (c) the applicant's reason for leaving or not returning to his or her country of nationality does not relate to a fear of persecution,
- (d) the applicant did not reveal, following the making of the application, that he or she was travelling under a false identity or was in possession of false or forged identity documents and did not have reasonable cause for not so revealing,
- (e) the applicant, without reasonable cause, made deliberately false or misleading representations of a material or substantial nature in relation to the application,
- (f) the applicant, without reasonable cause and in bad faith, destroyed identity documents, withheld relevant information or otherwise deliberately obstructed the investigation of the application ...⁶⁴⁷

In addition to criticism of the new rules from NGOs, religious figures voiced their first major concerns with the government's asylum policy in late 1997. While two prominent Catholic Bishops, John Kirby and Laurence Ryan, criticised the asylum rules that the new government wanted to bring in, the Protestant Archbishop of Dublin, Walton Empey, went further by asking 'what reception would the Holy Family get if they came to Ireland in 1997', emphasizing that 'Jesus was a refugee'.⁶⁴⁸ Opposition politicians also went out of their way to condemn the government moves.

⁶⁴⁷ For the other conditions, see Minister for Justice, John O'Donoghue, *Dáil Éireann*, Volume 492, 16 June, 1998.

⁶⁴⁸ 'Bishops critical of asylum rules', *Irish Times*, 18 Dec 1997 and '2000 years later, the life of a refugee family is still a very harrowing one', *Irish Times*, 23 Dec 1997.

In March 1998 the Democratic Left's Liz McManus brought a Private Members' Bill forward to parliament to oppose the government reversal on asylum policy and, in particular, the specific measures proposed relating to "manifestly unfounded" asylum claims. She began by describing how that month's Saint Patrick's Day celebrations became global due to "generations of Irish asylum-seekers who were driven out to seek refuge among strangers." For that reason, Ireland's "history requires us to be generous and just." She reminded the new Minister for Justice, John O'Donoghue, of his own declaration on how the plight of asylum seekers in Ireland in the 1990s related to the country's history of emigration.⁶⁴⁹ McManus then informed the house that O'Donoghue had instead implemented a fast-track procedure that had the "potential for serious abuse and grave injustices."⁶⁵⁰ Alternatively, she and the other opposition parties proposed to fully implement the 1996 *Refugee Act* drawn up by the rainbow coalition one year previously.

O'Donoghue responded that the rainbow party's *Refugee Act* represented a policy "which is independent from and substantially different from that of our European neighbours, is not sustainable in the short or long-term as the number of asylum seekers affected by, for example, changes in policy regarding arrangements, etc., by other European countries could encourage large scale movement to Ireland of such persons." For that reason "a comparative study of Irish legislation and that of EU partners" would "align Irish policy more closely with that of EU partners."⁶⁵¹

Subsequently, O'Donoghue cast doubt on the veracity of asylum applications when he claimed:

It is a source of puzzlement to many people that at a time when there are no conflicts taking place near our borders of the kind that usually generate refugee movement, when we have no colonial links with countries in which political turmoil is taking place and when the number of claims for refugee status is declining in other European states, the Irish rate shows a major increase. ... [T]here are significant issues, such as cost considerations, which are rightly the concern of Government.⁶⁵²

The Minister's comments met with significant opposition; none more biting than the

⁶⁴⁹ Liz McManus (Democratic Left), *Dail Eireann*, Vol. 488, 10 March 1998.

⁶⁵⁰ *Ibid.*

⁶⁵¹ John O'Donoghue (Fianna Fáil), Minister for Justice, *Dail Eireann*, Vol. 488, 10 March 1998.

⁶⁵² *Ibid.*

Labour Party's Michael D. Higgins's riposte:

Does this mean Ireland should have been a colonising power in order for us to now accept refugees? Does it mean there should be conflicts taking place outside our borders before we adopt a responsible policy? The Minister's statement is so morally bankrupt that it is appalling. ... We are showing a version of ourselves that is depressing and mean. I imagine there is more decency in ordinary Irish people who, as already stated, have the ethic of memory. Most families in Ireland have relatives who went abroad ... and they want to see the emergence of a kind of dignity and solidarity.⁶⁵³

According to O'Donoghue and to his government, who voted seventy to forty-five against the motion, the rainbow coalition's *Refugee Act* failed to differentiate effectively between refugees and "illegal immigrants" and in effect slowed the process of deporting those ineligible for asylum considerably.

Other pressure on the government's asylum policy came from NGOs. A UNHCR file from the 1960s on voluntary agencies in Ireland only listed one NGO: The Irish Red Cross.⁶⁵⁴ A 1993 OECD study done in conjunction with the UNHCR listed only ten Irish NGOs involved with human rights, refugees, migrants and development.⁶⁵⁵ By the late 1990s, however, a group calling itself the Asylum Rights Alliance consisted of fifty-two NGOs from around the country. The alliance drafted a new charter on asylum rights which it encouraged the government to introduce. Support for the charter came from most of the opposition political parties, including Fine Gael and the Labour Party. Perhaps most controversially, it stated that 'If an asylum case has not been decided within six months, he/she must be permitted to take up work and to study, with the same rights as an Irish citizen'.⁶⁵⁶ The subject of whether or not to allow asylum seekers to work would be put forward continuously to the government over the next two years by, amongst others, trade unions, politicians, the media, the public and NGOs.

In July 1998, a survey indicated that the majority of asylum seekers came from highly educated backgrounds, leading two of the most popular national newspapers, the *Irish Times* and the *Irish Independent*, to demand the right to work for asylum seekers.

⁶⁵³ Michael D. Higgins, *Dáil Éireann*, Vol. 488, 11 March 1998.

⁶⁵⁴ Voluntary Agencies Ireland, Series 4, Fonds 4.0, Records of the Central Registry; Archives of the UNHCR.

⁶⁵⁵ UNHCR and OECD, *Human Rights, Refugees, Migrants and Development: Directory of NGOs in OECD countries*, OECD: Paris, 1993, pp. 395-6.

⁶⁵⁶ See 'New charter on asylum rights has wide support' and 'The 12 principles in the Charter of Asylum Rights in Ireland', *Irish Times*, 20 March 1998.

In the words of an *Irish Independent* editorial, the ban on asylum seekers working was ‘both anomalous and harmful. Anomalous, because many asylum seekers are highly educated people whose skills we could use. Harmful, because it encourages the false perception that their only object is to “sponge off the State”.’⁶⁵⁷ A junior minister in the government, Liz O’Donnell of the smaller PD coalition party, took up this call, referring to the ban as “counter-productive.”⁶⁵⁸ O’Donnell’s controversial move to criticise her own government came with the support of a large majority of Irish people as eighty per cent of those polled in a nationwide survey carried out by a Catholic lay organisation agreed that asylum seekers should work.⁶⁵⁹ Nonetheless, the Minister for Justice, John O’Donoghue, remained adamantly opposed to such a proposal since it would, in the words of his spokesman: “simply create another ‘pull’ factor which would put further pressure on the asylum-processing system and continue to delay recognition for genuine refugees in need of protection.”⁶⁶⁰

When another study, published in April 1999, asserted that 80 per cent of those asylum seekers surveyed had some form of third-level qualification, the pressure mounted once again, with the Labour leader calling the treatment of asylum seekers “a disgrace”: “we make them dependent on state supports because we won’t allow them to make a living for themselves.”⁶⁶¹ In June 1999, the Labour Party went further by introducing a motion to allow asylum seekers apply for work permits whilst awaiting the outcome of their applications during the committee stage of the Immigration Bill. The vote on the motion ended in parity (opposition motions needed an absolute majority to pass), with some Fianna Fáil deputies actually backing the Labour stance. O’Donoghue reacted by stating that his job remained “to look after the interests of the Irish people”.⁶⁶²

Opposition from inside and outside the government supporting the idea of allowing asylum seekers to work, however, finally caused the government to act in late July 1999, when it announced that between 2,000 and 3,000 work permits would be

⁶⁵⁷ ‘Treatment of Asylum Seekers’ (Editorial), *Irish Times*, 8 July 1998; ‘Refugees’ (Editorial), *Irish Independent*, 10 July 1998.

⁶⁵⁸ ‘Right of refugees to work backed’, *Irish Times*, 14 July 1998.

⁶⁵⁹ See ‘Refugees should be able to work – survey’, *Irish Times*, 17 July 1998.

⁶⁶⁰ ‘O’Donoghue rejects O’Donnell’s call to allow asylum-seekers here to work’, *Irish Times*, 14 July 1998.

⁶⁶¹ ‘80% of asylum-seekers graduates – study’, *Irish Times*, 27 April 1999. See also the comments of Ruari Quinn, the Labour leader, at the Labour Ard Fhéis (AGM), ‘Quinn calls for a new politics for a new era’, *Irish Times*, 3 May 1999 and John Gormley (Greens) questioning of the Minister for Justice in relation to the survey, *Dáil Éireann*, 5 May 1999.

⁶⁶² ‘Refugee work permit plan suffers defeat’, *Irish Times*, 25 June 1999.

available to those awaiting decisions on their applications for more than twelve months before 26 July 1999.⁶⁶³

The bestowal of work rights on certain asylum seekers actually added to the government's difficulties in administering asylum because of the policy's muddled implementation. The scheme prohibited asylum seekers, many of whom had language difficulties – a factor not alleviated by their disentanglement to language classes – from entering government sponsored training schemes. Furthermore, the policy obliged them to find an employer willing to seek out work permits on their behalf, which the employers would have to pay for on a monthly or yearly basis, rather than provide all asylum seekers under the scheme with individual work permits.⁶⁶⁴ The Irish Refugee Council commented that the scheme would “act as a deterrent to potential employers, who will be less likely to tackle the red tape around this overly restrictive scheme.”⁶⁶⁵

When, in November 1999, an opposition deputy asked the Minister for Enterprise, Trade and Employment the number of work permits issued to asylum seekers since the previous July, the Minister answered that to date “a total of 15 permits have been issued.” By May 2000, nearly one year after the government announced the granting of work permits to eligible asylum seekers, only a third of eligible candidates had received permits.⁶⁶⁶

The growing resources needed to accommodate and support asylum seekers began to take a toll on those charged with responsibility in the second half of 1999. The Eastern Health Board (EHB), had to deal almost exclusively with the problem of finding emergency accommodation for those who had just applied for asylum. Rising numbers in late 1999 inevitably led to some asylum seekers being housed in hotels for short periods, accompanied by the usual tabloid fanfare, as well as some asylum seekers having to sleep rough until the EHB found suitable accommodation.⁶⁶⁷ The UNHCR criticised the government for the “unsatisfactory situation” that presented itself. The pressure to find a solution mounted once again when the Junior Minister for Justice, Liz O'Donnell from the PDs, controversially branded the handling of the asylum issue “a disgrace”. She stated: “I am part of this Government but as a PD I will not preside over

⁶⁶³ ‘Asylum seekers to be granted work permits’, *Irish Independent*, 28 July 1999.

⁶⁶⁴ ‘Confusion over asylum-seekers’ working rights’, *Irish Times*, 29 July 1999.

⁶⁶⁵ *Ibid.*

⁶⁶⁶ ‘A third of those allowed to work have jobs’, *Irish Times*, 5 June 2000.

⁶⁶⁷ ‘Refugees housed on emergency basis now tops 2,500’, *Irish Independent*, 19 Oct 1999.

the chaos surrounding the treatment of asylum seekers.”⁶⁶⁸ The Opposition responded by tabling a motion of no confidence in the Justice Minister. Although the Government won out by 78 votes to 74, it became clear that the government needed to act quickly to stem growing discontent.⁶⁶⁹

Scepticism surrounding the government’s management of asylum seekers increased further in December 1999 when Peter Finlay, the longest-serving member of the Independent Appeals Authority, outspokenly criticised the system established in late 1997. He denounced the lack of free and independent legal advice provided for asylum seekers at the outset of the asylum procedure:

I believe it’s a total and complete travesty to have a system of the type I have described ... All of this in my view rings hollow as a humanitarian response to peoples’ needs. Not just for people coming here, but our needs as a society. They bear all the hallmarks of a narrow and prejudiced state of mind.⁶⁷⁰

When Finlay resigned from his post one month later, he further denounced the state’s policies on asylum seekers as “so fundamentally flawed, from bottom to top, that they represent institutionalised racism”.⁶⁷¹

Further heavy-handed criticism followed the announcement by the Minister for Justice of new plans to establish a system of direct provision, which would “represent a cashless system with the State assuming responsibility for funding suitable accommodation, for providing health and education services and other essential needs.” O’Donoghue explained that the introduction would “simply bring us in line with other member states”. Significantly, the UK had announced its plans to initiate a system of direct provision several months earlier. O’Donoghue felt that the new system would stop undeserving applicants applying:

Unscrupulous persons who use the umbrella of asylum to defraud the State naturally prefer a cash based system. Th[is] system will not alone provide for the basic needs of asylum seekers in a fair and effective manner but will send out a message to those engaged in fraudulent activity that the States responsibility is to the genuine asylum seeker and not to those who circumvent immigration controls simply to cash in on what

⁶⁶⁸ ‘New row over refugees deepens Cabinet rift’, *Irish Independent*, 15 Nov 1999.

⁶⁶⁹ ‘Private Members’ Business. - Confidence in Minister’, *Dáil Éireann*, Volume 511, 24 Nov 1999.

⁶⁷⁰ ‘State’s hollow response to the needs of asylum-seekers’, *Irish Times*, 4 Dec 1999.

⁶⁷¹ ‘Government’s refugee policies are ‘racist’’, *Irish Independent*, 23 Jan 2000.

may be viewed as a generous welfare system.⁶⁷²

The move met with considerable opposition from trade unions and NGOs representing asylum seekers. One NGO, the National Federation of Campaigns against Racism considered the system akin to “sticking a yellow star on asylum-seekers to set them apart from Irish citizens. ... It [wa]s discriminatory, unconstitutional and demeaning in that it would mark them out in a very public way. It will effectively introduce a form of apartheid in Irish society.”⁶⁷³ The President of the Irish Congress of Trade Unions considered the new strategy to be “a defensive denial of rights”; while one union leader claimed that it symbolised the beginnings of institutional racism.⁶⁷⁴

Almost simultaneously, the government founded the Directorate for Asylum Support Services (DASS) to coordinate the sourcing of suitable accommodation for asylum seekers all around the country. Previously, asylum seekers had access to social welfare assistance and rent allowance. Defending this move, O'Donoghue explained: “There is no other option: quite simply, the supply of accommodation for asylum seekers in the Dublin area has been exhausted.”⁶⁷⁵ The new plan envisaged the provision of short-term accommodation to asylum seekers in various locations around the country on a full-board basis, supplemented by a grant of £15 (EUR19.50) a week for each adult and £7.50 (EUR9.10) for each child.⁶⁷⁶ Forty NGOs met with the DASS in January 2000 to reject the new policy and many of the NGOs represented later reaffirmed their resistance to a policy they termed “discriminatory” and “unnecessary”.⁶⁷⁷

These new policies began to come into force from late March 2000 onwards, with an increasingly desperate government moving to approve “the provision of 4,000 places in prefabricated accommodation, 1,000 places in mobile homes, and 1,000 places in flotels”.⁶⁷⁸

⁶⁷² John O'Donoghue, *Dáil Éireann*, 14 Dec 1999.

⁶⁷³ ‘Vouchers for asylum seekers ‘apartheid’’, *Irish Times*, 17 Dec 1999.

⁶⁷⁴ ‘Union leader denounces state refugee plan as ‘racist’’, *Irish Independent*, 17 April 2000.

⁶⁷⁵ John O'Donoghue, ‘Private Members' Business. - Confidence in Minister’, *Dáil Éireann*, Vol. 511, 24 Nov 1999.

⁶⁷⁶ Minister for Social, Community and Family Affairs, Dermot Ahern, *Dáil Éireann*, Vol. 517, 11 April 2000.

⁶⁷⁷ ‘NGOs meet to oppose ‘direct provision’ to asylum-seekers’, *Irish Times*, 11 April 2000.

⁶⁷⁸ John O'Donoghue, *Dáil Éireann*, Vol. 518, 13 April, 2000. Ireland never subsequently employed the use of flotels.

Implementation

Expediting the asylum process, aligning Irish asylum policy more closely with other EU states and putting in place measures to deport rejected asylum seekers made up three of the most salient terms of the letter containing Ireland's new asylum measures.⁶⁷⁹ Nonetheless, the government failed to execute two out of three of these strategies as deportations stalled and applications continued to take several years to fully process.

All individuals that applied for asylum in Ireland had the option of attaining free legal aid if they fulfilled the financial conditions.⁶⁸⁰ One reason for this related to a critical court case in January 1998 in which Justice Shanley delivered a verdict preventing the department of justice from deporting the parents, brother and sisters of Tara Suarez, a one-week-old Irish baby girl whose Chilean parents had unsuccessfully applied for asylum in Ireland. According to Justice Shanley, the deportation of Suarez's family would have infringed upon her constitutional rights to the "company, care and parentage of her parents within a family unit."⁶⁸¹ This case used the Supreme Court ruling of December 1989, in *Fajujonu v Minister for Justice*, as justification for such a decision. Although the plaintiffs in the Fajujonu case never applied for asylum (and they technically lost their case), the judgement greatly influenced future asylum policy because of the assertion relating to the constitutional significance of the family. The ruling stated:

While the parents in this case cannot claim (on foot of their being the parents of minor Irish citizens) any *personal* constitutional right to remain in the State, they are entitled, on their children's behalf, to choose the place of residence of their minor children. As the children themselves are entitled to remain in the country of their nationality, so too may the parents lawfully choose such residence on the children's behalf.

As a result, the Minister for Justice, having regard to these constitutional considerations, could only deport the family or any of its members where the interests of the children were outbalanced by the exigencies of the common good and/or considerations of State security and/or collective wellbeing. In other words, deportation could only occur in

⁶⁷⁹ For the conditions of the letter, see John O'Donoghue (Fianna Fáil), Minister for Justice, *Dáil Éireann*, Volume 492, 16 June, 1998.

⁶⁸⁰ After a long campaign by the NGO Free Legal Advice Centres (FLAC), which started in 1969, the government provided publicly-funded legal aid from 1979. In 1995, following the enactment of the *Civil Legal Aid Act*, the government created a statutory legal aid body, the Legal Aid Board. In 1999, the Legal Aid Board established the Refugee Legal Service under its auspices to 'to provide confidential and independent legal services to persons applying for asylum in Ireland' (http://www.legalaidboard.ie/lab/publishing.nsf/Content/Refugee_Legal_Service).

⁶⁸¹ 'Court bars deportation of Chile family after birth of child here', *Irish Times*, 24 Jan 1998.

contravention of the children's family rights and/or right of residence, where the Minister could show, after full consideration of all relevant matters, that the common good necessitated such a step.⁶⁸²

The right to citizenship through birth on Irish soil (*ius soli*) had a long history in Ireland, going back to the very foundations of the state. Indeed, the Treaty signed in London in December 1921 to recognise the Irish Free State had stated:

Every person ... who was born in Ireland or either of whose parents was born in Ireland ... is a citizen of the Irish Free State (Saorstát Eireann) and shall within the limits of the jurisdiction of the Irish Free State (Saorstát Eireann) enjoy the privileges and be subject to the obligations of such citizenship.⁶⁸³

The 1935 *Irish Nationality and Citizenship Act* reiterated that all persons born in the territory of the Irish Free State were 'natural-born citizens of Saorstát Eireann'.⁶⁸⁴ The state extended the right to people born in Northern Ireland in 1956 and again in 1998, as a result of the public referendum's decision to amend articles 2 and 3 of the Irish Constitution (1937) after the signing of the 1998 Belfast Peace Agreement. The amended version stated: 'It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish nation.'⁶⁸⁵ Just as Ireland opened up its automatic citizenship rights further to *ius soli*, most of its European counterparts were closing theirs and instead installing more restrictive national policies based on *ius sanguinis*. Ireland represented the only EU country that granted automatic *ius soli* citizenship at birth without any further condition. In no other European state – or Australia for that matter – would children of asylum seekers become citizens at birth, let alone enable the parents of these children to remain in the country just because of their child's birth there.⁶⁸⁶

Between 1996 and October 1997, 472 asylum seekers sought and received permission to stay in Ireland because of their parentage of Irish-born children. By April

⁶⁸² *Fajujoni v Minister for Justice*, Supreme Court, 8 Dec 1989. Taken from Dug Cubie and Fergus Ryan, *Immigration, Refugee and Citizenship Law in Ireland: Cases and Materials*, p. 255-6.

⁶⁸³ Article 3, *Constitution of the Irish Free State (Saorstát Eireann) Act*, 1922.

⁶⁸⁴ Article 2 (1), *Irish Nationality and Citizenship Act*, 1935.

⁶⁸⁵ Article 2, *Constitution of Ireland 1937* (as amended by the *Nineteenth Amendment to the Constitutions Act 1998*).

⁶⁸⁶ Australia reformed its citizenship laws in 1986 so that people born in the country did not automatically qualify for citizenship (*ius soli*).

2000, that number climbed to 1,873.⁶⁸⁷ In 2001 alone, 5,924 asylum seekers applied to remain in Ireland on such a basis.⁶⁸⁸ Consequently, by the end of 2001 approximately 20 per cent of all people that sought asylum in Ireland since the early 1990s remained in the country because of the birth of an Irish born child.

Another reason for the government's inability to deport rejected asylum seekers related to a High Court case in January 1999 that brought all deportations of asylum seekers to a halt. Deeming the deportation of a Romanian asylum seeker as unconstitutional, the judge concluded in *Laurentiu v Minister for Justice* that because of the 1935 *Aliens Act's* failure to properly set out deportation policy or the principles under which it must take place, all deportations had to cease:

Section 5 (1) (e) of the Act of 1935 unconstitutionally delegated the power to the Minister to determine what was essentially a legislative matter. In determining the basis upon which aliens might be deported from the State, the Minister was not following principles and policies laid down by the Legislature, as the Legislature had failed to establish any guidelines that the Minister might follow. It had simply abdicated its power to make this decision to the Minister, without any indication as to how that power might properly be exercised. The Act thus (unconstitutionally) permitted the Minister to legislate for deportation.⁶⁸⁹

The Supreme Court, by a majority of three to two, subsequently reinforced this High Court decision. As a consequence, no deportations took place for the next six months until the 1999 *Immigration Act* legislated for deportations in July 1999. Despite the new legislation, the numbers thereafter actually deported remained tiny when compared to the overall total of asylum seekers rejected. By June 2000, approximately one year after the passing of the *Immigration Act*, the government managed to deport only 30 people from the 396 orders signed.⁶⁹⁰

In a renewed attempt to speed up applications, the government introduced a number of amendments to the 1999 *Illegal Immigrants (Trafficking) Bill*, which it

⁶⁸⁷ John O'Donoghue, *Dáil Éireann*, Vol. 517, 6 April 2000

⁶⁸⁸ John O'Donoghue, *Dáil Éireann*, Vol. 549, 21 Feb 2002.

⁶⁸⁹ *Laurentiu v Minister for Justice, Equality and Law Reform, Ireland and the Attorney General*, High Court, 22 Jan 1999. Taken from Dug Cubie & Fergus Ryan, *Immigration, Refugee and Citizenship Law in Ireland: Cases and Materials*, p. 262.

⁶⁹⁰ The Minister for Justice explained that 91 evaded deportation orders, 117 were not at their last known address and 60 were granted judicial reviews by the courts. Arrangements had been put in place in 77 other cases, while 14 cases had been revoked on the advice of the Attorney General. See John O'Donoghue, *Dáil Éireann*, Vol. 520, 1 June 2000. John O'Donoghue failed to account for the six people that these figures seem to ignore.

formed to legislate for and criminalise human trafficking. Instead of giving asylum seekers six months to seek a judicial review in the case of a failed application, the new legislation gave the rejected asylum seeker only two weeks. Furthermore, and more critically in relation to deportations, amendments enabled police to detain asylum seekers after presenting a deportation order.⁶⁹¹ Previously, the asylum seeker received fourteen days notice – hence the high rate of avoidance of deportation orders – before the police carried out the order. Realising the necessity of maintaining hospitable relations with sender states, the government established a number of bilateral agreements with Romania, Poland, Nigeria and Bulgaria for the readmission of all rejected asylum seekers.⁶⁹² Nonetheless, the number of those deported still remained remarkably low compared to the number of rejected asylum seekers allowed to remain in Ireland.

The government suffered another setback when the Irish President, Mary McAleese, referred the 1999 *Illegal Immigrants (Trafficking) Bill* to the Supreme Court to rule on its constitutionality. This represented only the second occasion since McAleese's inauguration in late 1997 that the former law professor referred government legislation to the courts.⁶⁹³ Ultimately, the Supreme Court in August 2000 found the bill constitutional, but the case further delayed policy initiatives as a result.⁶⁹⁴ Later in 2000, the government finally implemented the 1996 *Refugee Act* with amendments from the 1999 *Immigration Act* and the 1999 *Illegal Immigrants (Trafficking) Bill*. By then, the processing time for dealing with an asylum application from the initial stage to the determination of an appeal took between four months (for manifestly unfounded cases) and two years. Furthermore, if an asylum seeker appealed to the courts against a deportation order, this extended the process by a further twelve to fourteen months.⁶⁹⁵ In an attempt to ease the build up of cases in the High Court, the *Refugee Act* created the Office of the Refugee Applications Commissioner (ORAC) to assess asylum applications and the Refugee Appeals Tribunal to consider appeals for rejected applications. This followed the trend in industrialised countries of moving asylum appeals to administrative courts in an attempt to ease the pressure on cluttered courts.

⁶⁹¹ 'Amended refugee Bill causes concern on constitutionality', *Irish Times*, 19 June 2000.

⁶⁹² The Irish government signed a readmission agreement with Romania in May 2001, with Poland in August 2001 and with Nigeria and Bulgaria in January 2002

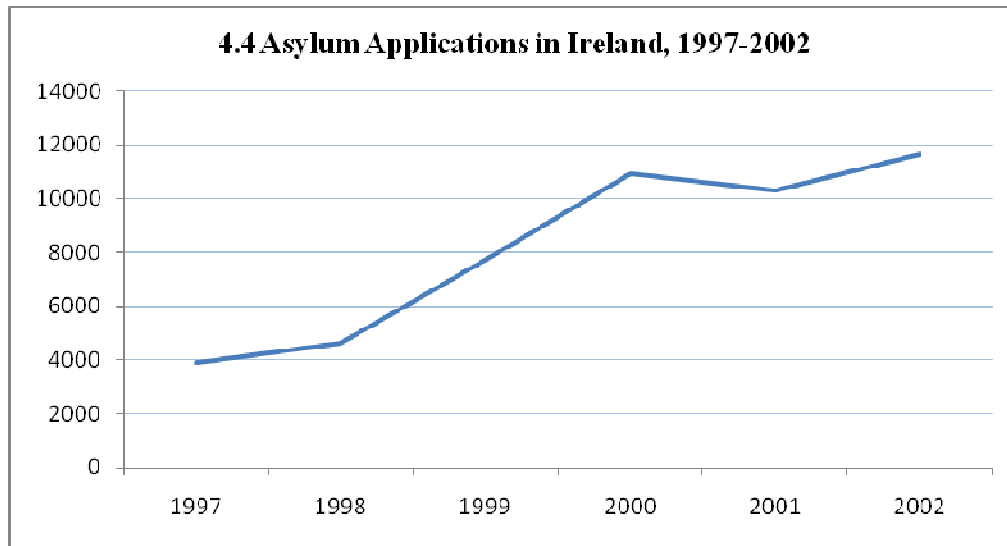
⁶⁹³ 'New blow to Government as Bills sent to be tested', *Irish Independent*, 1 July 2000.

⁶⁹⁴ 'Illegal Immigrants Bill is Constitutional', *Irish Times*, 29 Aug 2000.

⁶⁹⁵ John O'Donoghue, *Dáil Éireann*, Vol. 520, 1 June 2000.

Effects

The failure of the Irish government to effect deportations properly until 2000, the prospect of receiving a work permit during the asylum application process, the long delay in assessing asylum applications and the prospect of bypassing the asylum process with the birth of an Irish-born child coincided with a considerable rise in asylum applications between 1997 and 2002.



Source: Office of the Refugee Applications Commissioner

The growth of political and media hostility towards asylum seekers coincided with the rise of asylum applications and resulted in a notable increase in racism in Ireland, particularly towards Africans. Much of the public enmity derived from the fear of the unknown. Most Irish people remained unaccustomed and unexposed to living alongside and dealing with foreigners until the 1990s. Therefore, the arrival of different peoples speaking different languages with different colour skin had the potential to alarm locals, who for decades had lived in a largely homogenous society.

Although the media's treatment of the asylum issue improved after the low of 1997, certain media outlets often highlighted the identity of foreigners, and in particular asylum seekers and refugees, when communicating negative stories. One reader highlighted this practice in a letter to the editor of the broadsheet *Irish Independent*:

When I read your paper on the internet recently I was confronted with the following headlines: "Investors stung for £10m by Nigerians", "Asylum seeker arrested over

‘suitcase body’ killing”, “Ethnic violence in our cities ‘waiting to happen’ warning”, “Refugee arrested over fee fraud scam” and “Refugee is charged with murder”.

One would be forgiven for believing that refugees and asylum seekers were responsible for a crime wave hitting the country on the basis of these headlines. Is it any wonder that you also report that four out of five people from ethnic minorities surveyed experienced racism here?

You don’t normally indicate which county Irish criminals come from in your headlines, why treat refugees differently? ... Like it or not, as shapers of public opinion you have a responsibility not to promote racist stereotypes.⁶⁹⁶

A study published towards the end of 1998 confirmed that the vast majority of non-white asylum seekers questioned experienced some form of racism at the hands of Irish people. A few months later, in February 1999, a Catholic organisation called the Pilgrim House Community found that 95 per cent of African asylum seekers incurred racially motivated verbal or physical attacks while only 14 per cent of East European asylum seekers sustained the same treatment.⁶⁹⁷ As one African surmised, asylum seekers – especially black ones – often received a hostile reception in Ireland:

On the streets of Dublin and in buses, too, I have continued to experience racism in the form of verbal abuses and unpleasant staring. I have also been assaulted several times. Imagine people calling me "motherfucker, dogs" or saying to me: "no blacks . . . no dogs, blacks go home . . . go back to your jungle".

It pains me a lot also whenever I am referred to as a "scrounger". Many people do not think of one fleeing from persecution as anything but a ne'er-do-well. Again, any day that I dress well, people complain and ask me how I am getting the money to buy clothes. Looking tattered, they also complain (nagging is the best word) and regard me as an impoverished man from Africa. ... What is the essence of life? I am not welcomed in my native country. I am not welcomed here, either – but why?⁶⁹⁸

One study published at the end of 2000 found that almost two-thirds of asylum seekers experienced racism, with the percentage rising to 87 per cent among black

⁶⁹⁶ Peter Fitzgerald, ‘Negative headlines’, letters to the editor, *Irish Independent*, 13 Sept 2001.

⁶⁹⁷ ‘Majority of asylum seekers abused – survey’, *Irish Times*, 1 Feb 1999.

⁶⁹⁸ ‘Unfriendly weather and locals make for a miserable life’, *Irish Times*, 29 Dec 1998 (the name of the author was not given as it was felt it might prejudice his asylum application).

asylum seekers.⁶⁹⁹ Another survey, published in the same volume, found that a large group of Irish teenagers questioned for a study felt that well-dressed asylum seekers and refugees abused the Irish welfare system or pursued criminal activities. They also feared that they represented a threat to Ireland's perceived cultural identity.⁷⁰⁰ Similar sentiments also appeared in responses from third-level students, with a quarter of those surveyed agreeing that people from ethnic-minority groups abused the social welfare system.⁷⁰¹ Perhaps the most fascinating aspect of this hostility pertained to its origin. Less than one per cent of those polled in the Pilgrim House Study had ever met or ever spoken to an asylum seeker. By contrast, sixty-one per cent cited the media as the source for their opinions.⁷⁰²

Tabloid newspapers often propagated plainly false information, which intensified public antipathy towards asylum seekers. Political refutations of such false information remained rare. On 13 November 2001, for example, the Fianna Fáil deputy Conor Lenihan – who later became Ireland's first minister with responsibility for integration – asked whether the government's asylum policy resulted in “preferential treatment for housing allocation, free or subsidised motor vehicles, or mobile phones to asylum seekers.”⁷⁰³ Perhaps unconvinced by the answer in the face of continuing rumours and stories about such a practice, Lenihan asked the same question again over three months later.⁷⁰⁴

The reason for the continued suspicion that such practices actually existed came from government inactivity. In October 2002, a Green Party member asked the Minister for Social Welfare whether or not she wrote to the *Irish Daily Mirror* after it ran an article entitled ‘Free Cars for Refugees: Cash Grants Buys BMWs’ one month earlier. The minister informed the Green Party member that although her department issued a press release refuting the allegation, it took no action against the newspaper in

⁶⁹⁹ Sinead Casey & Michael O'Connell, ‘Pain and Prejudice: Assessing the Experience of Racism in Ireland’, in Malcolm MacLachlan & Michael O'Connell (eds.), *Cultivating Pluralism: Psychological, Social and Cultural Perspectives on a Changing Ireland*, Dublin: Oak Tree Press, 2000, pp. 19-48.

⁷⁰⁰ Anna Keogh, ‘Talking about the other: A view of how secondary school pupils construct opinion about refugees and asylum seekers’, in Malcolm MacLachlan & Michael O'Connell (eds.), *Cultivating Pluralism: Psychological, Social and Cultural Perspectives on a Changing Ireland*, Dublin: Oak Tree Press, 2000, pp. 123-136.

⁷⁰¹ ‘Quarter of Irish students believe ethnic minorities abuse social welfare system’, *Irish Times*, 12 March 2001.

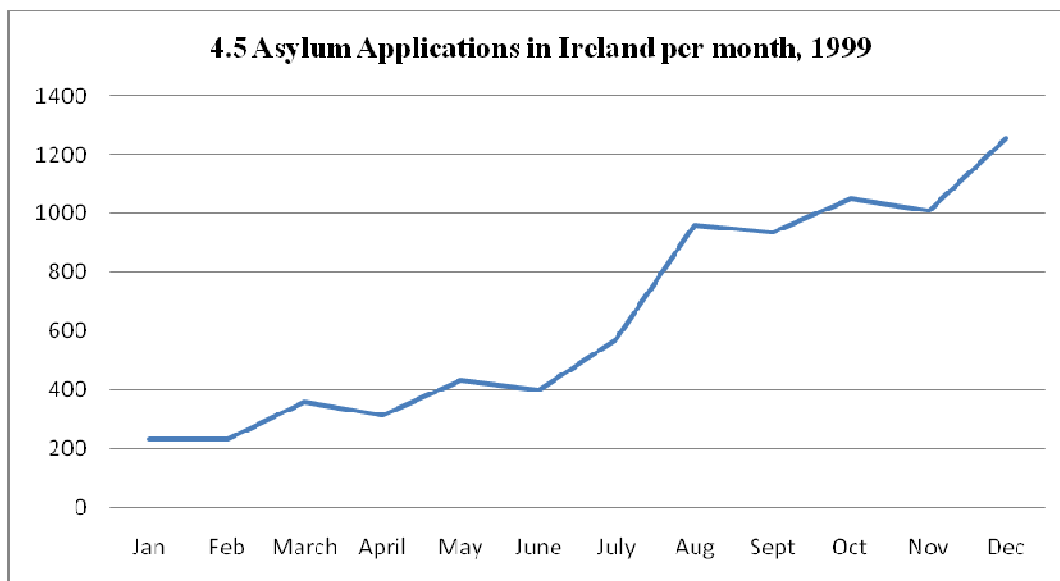
⁷⁰² ‘Welcome to Dublin, unless you're black’, *Irish Times*, 24 April 1999.

⁷⁰³ Conor Lenihan, *Dáil Éireann*, Vol. 543, 13 Nov 2001.

⁷⁰⁴ See Conor Lenihan, *Dáil Éireann*, Vol. 550, 20 March 2002.

question.⁷⁰⁵ Thus, the publishing of such untruths went largely unpunished.⁷⁰⁶

Vociferous hostility towards asylum seekers became more widespread in the spring of 2000 on the back of the government's decision to disperse people seeking asylum throughout the country, a trend helped in no part by the huge increase in asylum applications that took place in the second half of 1999. In the seven months from January to July 1999, 2,546 people requested asylum in Ireland. Yet, in the five months that followed the government's announcement to grant work permits to certain asylum seekers, the number more than doubled, to 5,178 applicants.⁷⁰⁷



Source: Irish Times and Irish Independent⁷⁰⁸

The department of justice believed one of the reasons for the swell in requests related to traffickers deliberately misrepresenting the work permit announcement. Other explanations provided by the department related to the boisterous economic situation in the country, the relatively attractive welfare system and the Minister for Justice's

⁷⁰⁵ See the response of Mary Coughlan, the Minister for Social and Family Affairs at the time, to the question posed by Green Party deputy, Ciaran Cuffe in *Dáil Éireann*, 16 Oct 2002. For the article in question, see 'Free Cars for Refugees: Cash Grants Buys BMWs', *Irish Daily Mirror*, 16 Sept 2002.

⁷⁰⁶ The *Irish Times* frequently criticised the irresponsible role of the media. For examples of this, see 'When careless talk costs lives', *Irish Times*, 27 Feb 2002; 'Whose news it is anyway?', *Irish Times*, 4 Dec 2002; 'Bad Language', *Irish Times*, 5 Feb 2003; and 'Urban myths of asylum are plain wrong', *Sunday Independent*, 11 May 2003.

⁷⁰⁷ 'Asylum seeker numbers set to hit record 12,000', *Irish Independent*, 24 Jan 2000.

⁷⁰⁸ Figures from January, February, March, April, September, October, November and December were taken from 'Backlog mounts as 7,762 people seek asylum in 1999', *Irish Times*, 4 Jan 2000. For July and August, see 'Tide of humanity rising all the time', *Irish Independent*, 3 Sep 1999. June was calculated by adding all the other months together and taking them away from the annual total.

inability to deport failed asylum seekers for most of 1999.⁷⁰⁹

Resident groups drew serious umbrage at the decision to locate asylum seekers in their towns and villages. Locals from Rosslare, in the country's south-east, opposed the move intently with one resident commenting that the asylum seekers could "come in with AIDs or anything else."⁷¹⁰ A Kerry councillor, fearing the arrival of asylum seekers, claimed that the vast majority of them were "freeloaders, blackguards and hoodlums."⁷¹¹ In a Cork suburb, locals boycotted a meeting with department of justice officials to discuss the arrival of asylum seekers. One local clearly voiced his disapproval: "Tramore does not want the refugees. Give them to someone else." More worryingly, a hotel in a small Tipperary town chosen to host thirty or more asylum seekers went on fire, the scene of a suspected arson attack.⁷¹² The up-market Dublin suburb of Ballsbridge, however, showed its opposition in a more subtle fashion. Residents immediately brought a case to the High Court, thereby halting state plans by citing planning irregularities in conjunction with the building supposed to house asylum seekers.⁷¹³ One Clare councillor summed up much of the public feeling when he commented in January 2001: "We have enough of refugees and we want no more of them."⁷¹⁴

The lack of government consultation with towns and villages on the issue made matters worse. As Hope Hanlon, the UNHCR representative for Ireland, wrote in December 1999 when discussing the government's plan to disperse asylum seekers:

A successful dispersal policy will hinge on preparing adequately both host communities and asylum-seekers alike. Successful integration in large part depends on the ability of both sides to understand where the other is coming from. It is a truism to say that informed debate will be the key.

Primarily, dispersal must be considered in consultation with local and regional authorities, voluntary groups dealing with refugees, schools, trade unions, churches, police, local authorities and the community at large.⁷¹⁵

⁷⁰⁹ 'Backlog mounts as 7,762 people seek asylum in 1999', *Irish Times*, 4 Jan 2000.

⁷¹⁰ 'South-east reacts angrily to prospect of a sudden influx of asylum-seekers', *Irish Times*, 8 April 2000.

⁷¹¹ 'Most refugees 'hoodlums' says Healy-Rae's son', *Irish Independent*, 15 April 2000.

⁷¹² See, respectively, 'Locals boycott meeting in Cork on plans for hostel', *Irish Times*, 19 April 2000; 'Tramore critical of plan to house 90 asylum-seekers', *Irish Times*, 21 April 2000; 'Suspected arson at hotel blocks refugees' arrival', *Irish Independent*, 26 April 2000.

⁷¹³ 'Ballsbridge challenge to refugees centre back in court this week', *Irish Times*, 24 April 2000.

⁷¹⁴ 'Councillor wants no more refugees', *Irish Times*, 11 Jan 2001.

⁷¹⁵ Hope Hanlon, 'Asylum policy stands poised at a crossroads', *Irish Times*, 13 Dec 1999.

Contrastingly, the government chose to send asylum seekers to certain towns and villages without the consent or the deliberation of local residents. It appeared that no dialogue took place until after the government took the decision, a determination that inflated public opposition further.

In addition to identity-based opposition to asylum seekers, resource-based opposition also became prevalent. This became particularly clear when hospital Masters claimed that asylum seekers giving birth placed more pressure on a health system already under great stress. Dr Peter McKenna, the Master of the Rotunda Hospital in Dublin – the main maternity hospital in the capital – claimed in June 2000 that:

We are seeing people come to us very late in their pregnancies, mainly Nigerians but also Eastern Europeans. We would often wonder how they manage to travel half way across the world pregnant and walk in the door to us at 39 weeks. We're past the stage of being surprised at the numbers of refugees giving birth but I have no doubt whatsoever that the system is being exploited.⁷¹⁶

Another Dublin maternity hospital, Holles Street, complained one year later that it could not cope with the “baby boom” because of a shortage of midwives. Dr Declan Keane, the master of Holles Street hospital, outlined the situation when he commented: “The numbers are now what they were back in [19]81 or [19]82. Back then, only 25 per cent of patients were first-time mothers. Now it's half – 48 per cent. There were no refugees then.” This, he claimed, had a stark effect on Dublin's three maternity hospitals: “From a risk management point of view, from a health and safety point of view, there is a safe number you can deliver – otherwise you start to cut corners. It could well happen within the next few months that our insurers say this hospital is uninsurable.”⁷¹⁷ Politicians and media groups carried similar messages. For instance, Enda Kenny, a future leader of the Fine Gael party, asked in parliament at the end of March 2002 whether the Minister for Health knew that “entire African villages in some countries intend to travel to Ireland and other EU destinations for general health care and for giving birth, with a view to future eligibility for health benefits.” Similarly, in May 2002 one independent councillor, aligned to Fianna Fáil, commented that asylum

⁷¹⁶ ‘Seeking asylum in the labour ward’, *Irish Independent*, 24 June 2000. See also ‘Immigrant baby boom puts pressure on Coombe’, *Irish Times*, 14 Aug 2000 and ‘Refugee baby boom as births rise 500pc’, *Irish Independent*, 7 Sept 2000.

⁷¹⁷ ‘Holles Street can't keep up with the baby boom’, *Irish Times*, 4 Aug 2001.

seekers were “breeding like rabbits.”⁷¹⁸ These negative perceptions inevitably created hostility amongst the public. A report published in March 2002 by the government-backed National Consultative Committee on Racism and Interculturalism, found, for example, that pregnant black women received taunts in public because of “sweeping generalised statements that one finds enunciated from certain quarters” regarding asylum women giving birth.⁷¹⁹

Nonetheless, the government did put in place several measures to combat the growth of racism after constant pressure from NGOs, religious groups and the UNHCR.⁷²⁰ In early 2001 the government established a three-year £4.5m (EUR5.71m) public awareness programme to address racism and endeavour to promote a more inclusive society. Moreover the government launched the National Action Plan Against Racism in September 2001 and in February 2002 all the major Irish parliamentary parties agreed to sign an anti-racism election protocol, which forbade the use of racist material or remarks by candidates and party workers and demanded sensibility in discussing race-related issues.⁷²¹ The signing of the anti-racism protocol by all of the main political parties meant that the subject of asylum seekers rarely made its way into pre-election discussions. Instead, parties fought the elections over traditional issues, with the Fianna Fáil-PD coalition receiving a resounding victory at a time of increasing economic prosperity. Aine Ní Chonaill, of the newly formed anti-immigration political party, Immigration Control Platform, received just 926 votes in her constituency out of a valid poll of 44,016.⁷²²

4.4 Regaining control, 2002-2008

When Michael McDowell of the Progressive Democrat party took over from John O'Donoghue as the new Minister for Justice after the 2002 general election, he vowed to implement a more vigilant asylum system. Though actors sympathetic to asylum seekers

⁷¹⁸ Enda Kenny, *Dáil Éireann*, Vol. 551, 26 March 2002 and ‘Councillor says asylum seekers are ‘breeding like rabbits’, *Irish Times*, 16 April 2002. The Councillor later apologised for his comments.

⁷¹⁹ ‘Pregnant blacks facing citizenship jibes – report’, *Irish Times*, 14 March 2002.

⁷²⁰ See ‘Ireland to fight racist attacks with new campaign’, *Irish Times*, 28 Aug 2000 for example of UNHCR criticism; see ‘Politicians ‘must lead from the front’ in tackling racism’, *Irish Times*, 30 Oct 2000 for religious orders’ criticism; see ‘Irish want action on racism but not refugees next door’, *Irish Times*, 11 May 2001 for NGO criticism.

⁷²¹ ‘Dail parties sign election protocol against racism’, *Irish Times*, 8 Feb 2002 & ‘Parties sign anti-racism pledge’, *Irish Times*, 8 March 2002.

⁷²² For more details about the Immigration Control Platform’s performance, see ‘Anti-immigrant candidates perform poorly’, *Irish Times*, 20 May 2002.

protested, their power to influence appeared to have decreased somewhat. Nonetheless, much of the government's problems stemmed from its past inability to deport rejected asylum seekers rather than from the direct influence of NGOs. The ability of asylum seekers to remain as parents of an Irish born child further complicated this problem. The 2002 European Court of Justice Chen case, when a Chinese couple received the right to reside in the UK because their daughter qualified for Irish citizenship on account of her birth in Belfast – as will be described below, people born in Northern Ireland automatically qualified for Republic of Ireland citizenship – contributed to the government's efforts to close this loophole.

Formation

The new Minister for Justice and former Attorney General, Michael McDowell, introduced a series of measures to lower asylum numbers shortly after taking up his new position. He advocated to fast track the asylum applications of people coming from a number of perceived “safe” countries in October 2002:

Certain countries will be listed in a formal way as countries in respect of which Ireland doesn't accept that they are likely to be oppressive or tyrannical regimes and in those cases there will be a presumption of manifest unfounded nature. There will still be a quick investigation of any particular claim but the presumption will be that the claim is unfounded.⁷²³

Another move to clamp down on asylum numbers came at the end of that same year with the introduction of the 2002 *Immigration Bill* before parliament. The bill proposed the introduction of carrier liability for any airline, ferry company or haulier caught transporting undocumented migrants to Ireland. The department of justice also announced an investigation into the amount of social benefits asylum seekers received “to ensure that Ireland does not find itself unwittingly subsidising international criminals engaged in this trade by allowing their victims to pledge future social assistance payments in exchange for their illegal passage to the State.”⁷²⁴ In late 2002 he also abolished the advisory board for services relating to asylum seekers and refugees, which

⁷²³ Quoted in ‘New plan to deter bogus asylum-seekers’, *Irish Times*, 28 Oct 2002.

⁷²⁴ This quotation was from a Department of Justice spokesman. See ‘New rules to tighten up asylum system’, *Irish Times*, 27 Dec 2002.

included a number of NGO and trade union representatives.⁷²⁵

Not only NGOs and religious leaders reacted to these policy changes with exasperation. The IMPACT trade union clearly stated that, in its opinion, the new policies discussed by the government represented “a further drift from care to deterrence.”⁷²⁶ However, McDowell steadfastly defended his department’s moves: “95 per cent of people support me. There’s a vocal minority of people who keep attacking me. But I believe that the people realise in their hearts that what has been going on for a number of years cannot be allowed to continue.”⁷²⁷ McDowell also rejected UNHCR criticism of the new legislation, citing other EU countries’ use of similar policies when defending the government’s plan.⁷²⁸ The Irish Human Rights Commission, whose statutory obligation required the organisation to ‘keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights’, complained in a letter to the Minister for Justice that ‘it was deeply concerned about aspects of the legislation [2002 *Immigration Bill*] and about the absence of time for adequate and reflective consideration of some very significant amendments’ that NGOs brought to attention in their submissions on the proposed bill.⁷²⁹ Moreover, the *Social Welfare (Miscellaneous Provisions) Bill* published in February 2003 intended to “prohibit asylum seekers and certain other non-nationals from accessing rent supplement payments”.⁷³⁰ Up until then, asylum seekers who remained in Ireland because of parentage of an Irish child received rent supplements on the same basis as Irish nationals. When new legislation came in force in June 2003 however, asylum seekers no longer qualified for such benefits. Instead they had to remain in direct provision accommodation. The Minister for Justice, Michael McDowell, defended the practice by again referring to the UK and the EU:

The introduction of direct provision on 10 April 2000 brought Ireland into line with other member states of the European Union, including the United Kingdom, and followed thorough investigation and planning. It is widely accepted that a harmonised approach to asylum seekers is by far the best approach and I believe the system of direct provision is a humane, fair and effective means of meeting the basic needs of our

⁷²⁵ ‘Refugee advisory board abolished’, *Irish Times*, 11 Nov 2002.

⁷²⁶ ‘Proposals on asylum are criticised’, *Irish Times*, 13 Jan 2003.

⁷²⁷ ‘McDowell defends handling of asylum seekers’, *Irish Times*, 6 Feb 2003.

⁷²⁸ See ‘McDowell rejects criticism by UN of Immigration Bill’, *Irish Times*, 31 March 2003.

⁷²⁹ ‘Commission ‘denied chance to examine refugee law changes’’, *Irish Times*, 2 July 2003

⁷³⁰ Michael McDowell, *Dáil Éireann*, Vol. 564, 1 April 2003.

asylum seeker population. In fact, I would strongly contend that the treatment of asylum seekers in the State is, at a minimum, on a par with the best on offer anywhere in the world.⁷³¹

One week later, McDowell told an upper house parliamentary committee that “the vast majority of [asylum] applicants are economic migrants and not asylum seekers”. To sustain his argument, he contended that “[n]inety per cent of cases are unfounded.”⁷³² In January 2004, he continued to pour scorn on many of the applications made for asylum when he underlined a perceived criminal element in the process: “There is clear evidence to show that our asylum determination process is being abused by criminal elements whose activities have clear implications for the security and authority of the State itself and the general economic welfare of its citizens.”⁷³³ Two years later, McDowell reiterated this belief when he defended the Secretary General of his department and the Director General of the Irish Naturalisation and Immigration Service who reportedly stated before the Dáil Publics Account Committee that ‘the majority of asylum seekers are economic migrants and that in pursuance of their claims such persons invariably lie through their teeth and that the judicial process at his Department is ambushed right up to the point of deportation’.⁷³⁴

Implementation

As Minister for Justice, McDowell placed a renewed emphasis on enforcing more deportations from 2002 onwards. In his first summer in charge, McDowell ordered a series of early morning Irish police raids to capture those selected for deportation.⁷³⁵ Nonetheless, the vast majority of asylum seekers refused refugee status never left Ireland under McDowell’s stewardship. The graph below shows the number of deportation orders signed between 2000 and 2004, as well as the number of deportations carried out. Evidently, the ratio of deportations carried out with McDowell as Minister for Justice remained remarkably similar to that of his predecessor’s. The real problem, as the government realised, related to the constitutional interpretation that an Irish-born child had the right to reside in Ireland with his/her family.

⁷³¹ Michael McDowell, *Dáil Éireann*, Vol. 589, 30 Sept 2003.

⁷³² ‘Nine in every 10 asylum requests have no merit, says McDowell’, *Irish Times*, 9 Oct 2003.

⁷³³ Michael McDowell, *Dáil Éireann*, Vol. 578, 27 Jan 2004.

⁷³⁴ Michael McDowell, *Dáil Éireann*, Vol. 623, 5 July 2006.

⁷³⁵ See ‘McDowell accused of policy U-turns on asylum seekers’, *Irish Times*, 5 Aug 2002.



Source: Dáil Éireann, Vol. 609, 8 November 2005.⁷³⁶

In 2002 the government consequently pressed ahead with its deportation order for a Czech couple and a Nigerian man who had failed to attain refugee status but relied on their parentage of an Irish child to remain in the country. In the High Court, Mr Justice Smyth noted that the Fajujonu family, whose case in 1989 had prompted thousands of asylum seekers to receive leave to remain in Ireland, had lived in the country for an “appreciable time” (eight years), whereas the applicants before him had lived in the state for less than one year. He judged that the amount of time spent by the child in Ireland, the age of the child and its adaptability to change at a young age retained importance when considering a deportation order.⁷³⁷ Citing these reasons, the judge refused their appeal to quash the state’s deportation orders.

The Supreme Court ruled on the case in January 2003. In the meantime, the number of asylum seekers applying to remain on the basis of parentage of an Irish child continued to rise, with 6,887 applying in 2002.⁷³⁸ Conversely, the Supreme Court ruling threw the status of many of these cases into doubt when it declined to reverse the Minister for Justice’s decision to deport the aforementioned applicants by a majority of 5-2. In *Lobe, Osayunde and Others v Minister for Justice*, the minister defended his decision to deport the applicants because of “the overriding need to preserve respect for

⁷³⁶ Figures taken from Michael McDowell, Dáil Éireann, Vol. 609, 8 Nov. 2005.

⁷³⁷ ‘Asylum plea by parents of Irish-born children again refused’, *Irish Times*, 9 April 2002.

⁷³⁸ Michael McDowell, Dáil Éireann, Vol. 584, 5 May 2004.

and the integrity of the asylum and immigration systems.” The Supreme Court clearly outlined its reasons for concurring with such a view:

A child who is a citizen of Ireland also enjoys a constitutional right to the care and company of his or her parents and other family members. Such rights were not, however, without limits. It did not, in particular, follow that such children had an automatic right to be provided with parental care within the State.

It is, in particular, legally and constitutionally possible for the State to deport the non-Irish national parents of an Irish child, if the Minister forms the view that the common good so requires. This is permitted notwithstanding the fact that an Irish-born child might also effectively have to leave the State in order to enjoy the continued company of its family.

... The family of an Irish-born child has no automatic right to reside in the State simply by virtue of such family relationship.

Thus, where the Minister can demonstrate that, with good and sufficient reasons, the common good requires that non-Irish nationals no longer be permitted to remain in the State, it was open to the Minister to deport such persons notwithstanding the fact that they are parents of Irish citizens.

*... The State has an inherent right and duty to control the access of aliens to the State. The State, in particular, has an inherent right to expel or deport aliens not lawfully resident in Ireland. These rights are an aspect of the State's sovereignty, and are exercised on its behalf by the Executive.*⁷³⁹

Cubie and Ryan pointed out that the decision deferred significantly to the government in making and enforcing Irish immigration policy.⁷⁴⁰ This move provoked much criticism. One independent legal expert, William Binchy, felt that the Supreme Court had ‘surrendered to the Government and civil servants a vast acreage of discretion’. He surmised that ‘children born in Ireland whose parents are asylum-seekers or illegal immigrants are not as entitled to the protection of the family provisions in the Constitution as other children of more conventional social profile.’⁷⁴¹ One of the two dissenting Supreme Court judges, Justice McGuinness agreed. She stated that:

⁷³⁹ Lobe, Osayunde and Others v Minister for Justice, Supreme Court, 23 Jan 2003. Taken from Dug Cubie & Fergus Ryan, *Immigration, Refugee and Citizenship Law in Ireland: Cases and Materials*, pp. 277-280 (my emphasis).

⁷⁴⁰ Dug Cubie & Fergus Ryan, *Immigration, Refugee and Citizenship Law in Ireland: Cases and Materials*, p. 280.

⁷⁴¹ William Binchy, ‘Thousands of families at risk after court decision’, *Irish Times*, 1 Feb 2003.

... given the repeated emphasis by this Court in its decisions over the years on the nature, weight and importance of the rights of the family of the family set out in Articles 41 and 42 of the Constitution – rights which the Minister accepts are rights possessed by these children and these families – I am not satisfied that respect for the maintenance of the immigration and asylum system is sufficiently grave and substantial a reason or so predominant and overwhelming a reason in the circumstances of the cases and in the context of the common good to justify the denial of the constitutional rights of these children and their families.⁷⁴²

As a form of compromise, the Supreme Court ruled that in determining the cases of family members the minister had to take into account the ‘the length of time that the family had residence in the State, the integrity and effectiveness of the immigration laws of the State and the provisions of the Dublin Convention’. Consequently all 11,000 applicants awaiting a decision on their right to remain in Ireland required individual consideration.⁷⁴³

In 2004 the Irish government announced its determination to counter the legal loophole contained in the Irish Constitution by proposing a citizenship referendum for June 2004. This responded to the Supreme Court’s ruling, which failed to adequately rectify the problem of asylum seekers applying for leave to remain on the basis of parentage of an Irish child because of its affirmation that all 11,000 required individual processing. Furthermore, it closed off an avenue for migrants to attain residency in another EU country. Ireland (and the UK) became aware of this loophole when the Chen case reached the European Court of Justice.

In the summer of 2000, two Chinese migrants, temporarily residing in mainland UK, travelled to Belfast to give birth to their daughter, Catherine Chen. Under Irish law, which gave all persons born in Northern Ireland the right to claim Irish citizenship, Chen’s parents applied for an Irish passport for their daughter. When the parents of Catherine Chen moved back to Cardiff, they claimed that Catherine’s EU citizenship, gained via her Irish citizenship, gave them the right to remain with her in the UK.

⁷⁴² Lobe, Osayunde and Others v Minister for Justice, Supreme Court, 23 Jan 2003. Taken from Dug Cubie & Fergus Ryan, *Immigration, Refugee and Citizenship Law in Ireland: Cases and Materials*, p. 279.

⁷⁴³ Lobe, Osayunde and Others v Minister for Justice, Supreme Court, 23 Jan 2003. Taken from Dug Cubie & Fergus Ryan, *Immigration, Refugee and Citizenship Law in Ireland: Cases and Materials*, p. 279.

Crucially, the European Court of Justice agreed.⁷⁴⁴ As a consequence, proposed changes to Ireland's citizenship laws would not automatically confer on children born in Ireland the right to Irish citizenship, thereby disallowing the parents of Irish-born children automatic rights to remain in the country if not Irish themselves.⁷⁴⁵

The government, defending the proposed legislation argued that Ireland remained the only EU15 country that still practiced *ius soli*. Although actors sympathetic to asylum seekers challenged the referendum, the build up remained remarkably muted. Instead, most debate focused on European and local elections due to take place on the same day. While Labour, Sinn Féin and the Green Party all opposed the referendum, the largest opposition party, Fine Gael, supported it.⁷⁴⁶ The Catholic Church remained remarkably quiet on the issue until one week before the referendum, when Catholic Bishops issued a vague statement, which, although sympathetic to immigrants and asylum seekers, declined to encourage people to vote for or against the referendum.⁷⁴⁷ The referendum passed comfortably, with 79 per cent supporting the government's proposed change and 21 per cent voting against it.⁷⁴⁸ The *Irish Nationality and Citizenship Act* 2004, enacted on 1 January 2005, stipulated that a person born on the island of Ireland to non-Irish nations is only entitled to citizenship if one of his parents has resided legally in the country for three of the previous four years.⁷⁴⁹ Although a notable change from previous policy, Ireland's *ius soli* citizenship policy still remained the most open of all EU countries.⁷⁵⁰

Effects

Following the referendum, the *Irish Nationality and Citizenship (Amendment) Act* 2004

⁷⁴⁴ On 19 Oct 2004, the European Court of Justice ruled in Catherine Chen's favour: '[...] a young minor who is a national of a Member State [...] and is in the care of a parent who is a third-country national [has] a right to reside for an indefinite period in that State. In such circumstances, those same provisions allow a parent who is that minor's primary carer to reside with the child in the host Member State.' See *Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department*, 19 October 2004 for more details.

⁷⁴⁵ Michael McDowell, quoted in 'If June referendum goes ahead, FG will support it', *Irish Times*, 21 April 2004.

⁷⁴⁶ For more details, see 'Four political parties join group to oppose referendum in Galway', *Irish Times*, 19 April 2004 & 'If June referendum goes ahead, FG will support it', *Irish Times*, 21 April 2004.

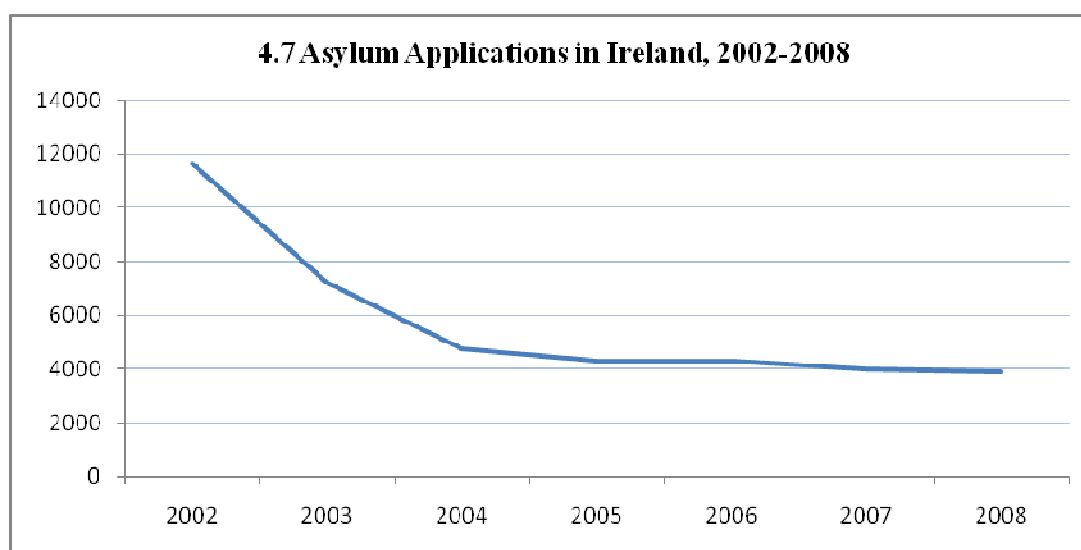
⁷⁴⁷ The Catholic Bishops' statement can be found at <http://www.catholiccommunications.ie/Pressrel/4-june-2004.html> (last accessed on 31 Aug 2009).

⁷⁴⁸ 'Wide and evenly spread Yes for birthright change', *Irish Independent*, 14 June 2004.

⁷⁴⁹ Section 6A(1) *Irish Nationality and Citizenship Act* 2004; see also John Handoll, 'Ireland', Rainer Bauböck et al. (eds.), *Acquisition and Loss of Nationality. Volume 2: Country Analyses*, Amsterdam: Amsterdam University Press, 2006, pp 289-328, p. 311.

⁷⁵⁰ Rainer Bauböck, pers. comm., June 2008.

came into force on 1 January 2005. As part of the legislation, the government decided to grant permission to remain to all the parents of children born in Ireland before 1 January 2005. As a result, nearly 17,000 received leave to remain.⁷⁵¹ Thereafter, asylum applications decreased. While over 11,500 applied for asylum in 2002, less than 4,000 applied in 2008. The enormous drop in numbers mirrored what occurred in many other European countries; although this failed to stop government politicians claiming credit for the decrease.⁷⁵² The neighbouring UK, for instance, received 103,000 applications in 2002 but only 27,850 claims in 2006.⁷⁵³



Figures: Office of the Refugee Applications Commissioner

In the interim, a steady stream of criticism from NGOs, concentrating on the defects associated with direct provision, continued to pepper debate. The Free Legal Advice Centre (FLAC) sternly criticised the practice in its report entitled ‘Direct Discrimination’. It found that direct provision left ‘asylum seekers bored, isolated, socially excluded, impoverished, deprived of services, unaware of their entitlements, demoralised, deskilled and institutionalised.’ It concluded that direct provision was ‘gravely detrimental to the human rights of a group of people lawfully present in the country and to whom the Government has moral and legal obligations under

⁷⁵¹See Department of Social and Family Affairs, ‘The Operation of the Conditional Residence Condition’, July 2006, p. 14 and Michael McDowell, Dáil Éireann, Vol. 622, 27 June, 2006.

⁷⁵²
⁷⁵³ Matthew Price, *Rethinking Asylum*, pp. 8-9.

international law.’⁷⁵⁴ According to Steve Loyal, asylum seekers placed in direct provision under the government dispersal programme constituted Ireland’s most disempowered social group, ‘since they lack[ed] the right to work and their access to education and training [wa]s severely limited. Their presence mark[ed] the nadir of the putative values of the Celtic Tiger: they [we]re marginalised, excluded, poor and, in many respects, they lack[ed] freedom.’⁷⁵⁵ More recently, Claire Breen wrote that Ireland’s practices contravened international and European law.⁷⁵⁶

In 2006 doubt also began to cast over what McDowell had termed Ireland’s “fair but firm” asylum policy when two members of the Refugee Appeals Tribunal resigned because of dissatisfaction with its chairman.⁷⁵⁷ One opposition member, Ciarán Cuffe from the Green Party, raised doubts about the supposed independence of the tribunal when he raised the issue in parliament several months later: “The Minister appoints the members of the tribunal, there is no independent selection or interview and I have heard that at least one member has never granted leave to remain to any individual with whose case he has dealt.”⁷⁵⁸ A Supreme Court ruling in June 2006 to grant the High Court permission to examine the statistics of the Refugee Appeal Tribunal placed further scrutiny on the tribunal.⁷⁵⁹ Three asylum seekers brought the case to the courts in order to restrain a certain Refugee Appeals Tribunal member from hearing their case because of alleged bias.⁷⁶⁰ Just days before due to hand over the documents on the tribunal’s statistics to the High Court, however, the Refugee Appeals Tribunal settled the case out of court and agreed to allow the three asylum seekers to try their appeals under other members of the tribunal.

Despite reservations over the even-handedness of the asylum system and the sustained criticism of dispersal, the effectiveness of sympathetic actors’ decreased during the 2000s as compassion appeared to fade among previously concerned sections

⁷⁵⁴ FLAC, *Direct Discrimination? An Analysis of the Scheme of Direct Provision in Ireland*, FLAC: Dublin, July 2003, pp. 40-1. This can be accessed at <http://www.flac.ie/download/pdf/directdiscrimination.pdf> (last accessed on 31 Aug 2009).

⁷⁵⁵ Steve Loyal, ‘Welcome to the Celtic Tiger: Racism, Immigration and the State’, Colin Coulter & Steve Colman (eds), *The End of Irish History? Critical Reflections on the Celtic Tiger*, Manchester: Manchester University Press, 2003, pp. 74-94, p. 79.

⁷⁵⁶ Claire Breen, ‘The Policy of Direct Provision in Ireland: A Violation of Asylum Seekers’ Right to an Adequate Standard of Housing’, *International Journal of Refugee Law*, Vol. 20, No. 4, 2008, pp. 611-636.

⁷⁵⁷ ‘Two barristers resign from refugee appeals body’, *Irish Times*, 3 Feb 2006.

⁷⁵⁸ Ciaran Cuffe (Greens), *Dáil Éireann*, Vol. 619, 17 May, 2006.

⁷⁵⁹ ‘High Court to examine refugee statistics’, *Irish Times*, 20 June 2006.

⁷⁶⁰ James Nicholson, who heard the most cases out of all members of the Refugee Appeals Tribunal, allegedly heard almost one thousand cases and rejected virtually all of them. Pat Rabitte, *Dáil Éireann*, Vol. 649, No. 4, 11 March 2008. See also *Nyembo v The Refugee Appeals Tribunal*, 2006.

of the media, the parliament and the public in the face of rising numbers of rejected asylum seekers apparently remaining in the country courtesy of Ireland's legal loopholes. Although the 2007 elections saw the demise of the PDs, with their leader and talisman, Michael McDowell, also losing his seat, Fianna Fáil continued to maintain its restrictive stance towards asylum policy, as the draft *Immigration, Residence and Protection Bill* published by the Irish government in January 2008 demonstrated. Opposition to parts of the bill dealing with the asylum process came from various opposition politicians, NGOs and the UNHCR, leading to the bill's return to the drafting stage from where it failed to emerge once again in 2008.⁷⁶¹

Conclusion

Ireland's reaction in the 1990s and 2000s to rising numbers of asylum seekers appeared contradictory. A 2000 survey highlighted this trait when it found that although 74 per cent of people questioned wanted strict limits on the number of asylum seekers allowed into the country, 60 per cent agreed that Ireland should implement a more generous approach because of the country's history of emigration and because of its then prosperity.⁷⁶² This symbolised the Ireland of the Celtic Tiger: drawn to the future and their European neighbours but haunted by their poor, emigrant past. This explains why sympathetic actors continued to use Ireland's history as a justification for treating asylum seekers more hospitably. These pleas affected people less as time progressed as more prescient matters, such as the threat of asylum seekers landing in their villages or towns, presented themselves. Although the Catholic Church consistently spoke out in favour of officially treating asylum seekers with great sympathy, that institution's power had waned significantly by the 1990s and 2000s because of large-scale revelations of sexual abuse carried out by various Catholic religious orders. NGOs tried in vain to publicise the difficulties facing asylum seekers and the need for compassionate policies rather than restrictive ones. The 2004 referendum, however, clearly demonstrated the public position on the issue. Nevertheless, when compared with other countries,

⁷⁶¹ See *Dáil Éireann*, Vol. 649, No. 4, 11 March 2008 for evidence of opposition politicians' disquiet; see press releases from the Irish Refugee Council, Free Legal Aid Centres and Integrating Ireland on 29 Jan 2008, and the Irish Refugee Council's 'Right to Protection', Submission to the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights on the protection aspects of the Immigration, Residence and Protection Bill, 2008, March 2008; for the UNHCR's view on the bill, see UN High Commissioner for Refugees, *UNHCR's Comments on the Immigration, Residence and Protection Bill 2008*, March 2008, <http://www.unhcr.org/refworld/docid/47d7be382.html> (accessed 3 Sept 2009).

⁷⁶² 'Substantial majority of voters want limits on refugee numbers', *Irish Times*, 24 Jan 2000.

Ireland's treatment of asylum seekers remained quite liberal.

The beginning of this chapter asked whether Ireland's response to asylum seekers was symbolised by the enmity or empathy previously highlighted in the Irish character by Frederick Douglass during the nineteenth century. Since 1989, Ireland has shown a remarkable mix of these traits in its response to people seeking refugee status in its territory. Many asylum seekers, particularly black ones, experienced hostility on a regular basis from natives. The official reaction to asylum seekers, however, contrasted from the public one in many ways. Despite the majority of asylum seekers originating from countries not associated with widespread conflict or renowned troubles (Nigeria and Romania), the country's generous *ius soli* citizenship laws and its inability to deport asylum seekers in substantial numbers – issues only addressed from 2003 onwards – allowed the vast majority of people who sought asylum in Ireland from the 1990s until the mid 2000s to attain some form of legal residence. Improved EU measures to restrict asylum seekers from ever entering Europe or passing from one European country to another has meant that Ireland has had to deal with decreasing asylum numbers in recent years, serving to place the issue on the back-burner. The main question now is how Ireland will adapt to its multicultural present and future.

Chapter 5

International Trends and National Differences

The small flow of Soviet defectors seeking asylum in Western Europe from the establishment of the Geneva Convention in 1951 to 1989 rarely tested western states' post Second World War commitments to asylum. This changed after 1989, however. The end of the Cold War meant that liberal democratic governments gained limited political benefits from accepting the large numbers fleeing the fallout from the collapse of Europe's communist regimes. Moreover, they acquired neither ideological nor economic advantages from assisting rising numbers of people fleeing from conflicts in the Developing World from the early 1990s onwards.

This chapter will seek to unravel common and divergent processes in how liberal democratic states reacted to such a phenomenon after 1989 by comparing Australia, Italy and Ireland with each other, as well as with other western states. Comparison, Peter Kolchin writes, 'can create an awareness of alternatives, showing developments to be significant that without a comparative perspective might not appear so.' Furthermore, comparing cases can explain 'differences or peculiarities, weighing and eventually isolating variables responsible for particular conditions', as well as helping us to 'recognise common patterns and make historical generalisations'.⁷⁶³ Of course, the comparative method also creates certain problems. Unfortunately, studying three cases inevitably leads to certain national oversights and can lead to sweeping generalisations. Nonetheless, this chapter intends to show that despite these obstacles the positives of this comparative adventure outweigh the negatives.

The individual nature of all three cases shines through. National histories, identities and geographies all combine to produce specific tendencies. Nonetheless, this chapter also finds parallels, some of which emerge when comparing pairs of the case studies to individual countries. For example, it contrasts the EU member states, Italy and Ireland, with non-European Australia; Catholic Ireland and Italy with the more secular Australia; sender societies Ireland and Italy with Australia's settler society; how boat people became the focus of debate in Italy and Australia but not in Ireland; and how

⁷⁶³ Peter Kolchin, 'Comparing American History', *Reviews in American History*, Vol. 10, No. 4, 1982, pp. 64-81, p. 64-5. For a similar argument relating to the comparative study of migration history, see Nancy Green, 'The Comparative Method and Poststructural Structuralism: New Perspectives for Migration Studies', Jan and Leo Lucassen (eds.), *Migration, Migration History, History: Old Paradigms and New Perspectives*, Bern and New York: Peter Lang, 1997, pp. 57-72, p. 72.

common law Australia and Ireland diverged from civil law Italy. By opening up the scope to include other countries, certain international trends become apparent, such as the rise of restrictive rhetoric amongst politicians, the media and the public towards asylum seekers. In response actors sympathetic to asylum seekers, such as pro-asylum secular and religious NGOs, certain IGOs, various radical opposition political parties and empathetic media outlets, mounted a sizeable campaign to challenge the growth of sceptical rhetoric on asylum. To expound on some of these themes further, this chapter compares and contrasts asylum policymaking under the three rubrics used heretofore: policy formation, policy implementation and policy outcomes. In order to historicise asylum policymaking in liberal democratic states since 1989, and therefore set the time period against previous decades, analysis is split between the 1990s and the 2000s.

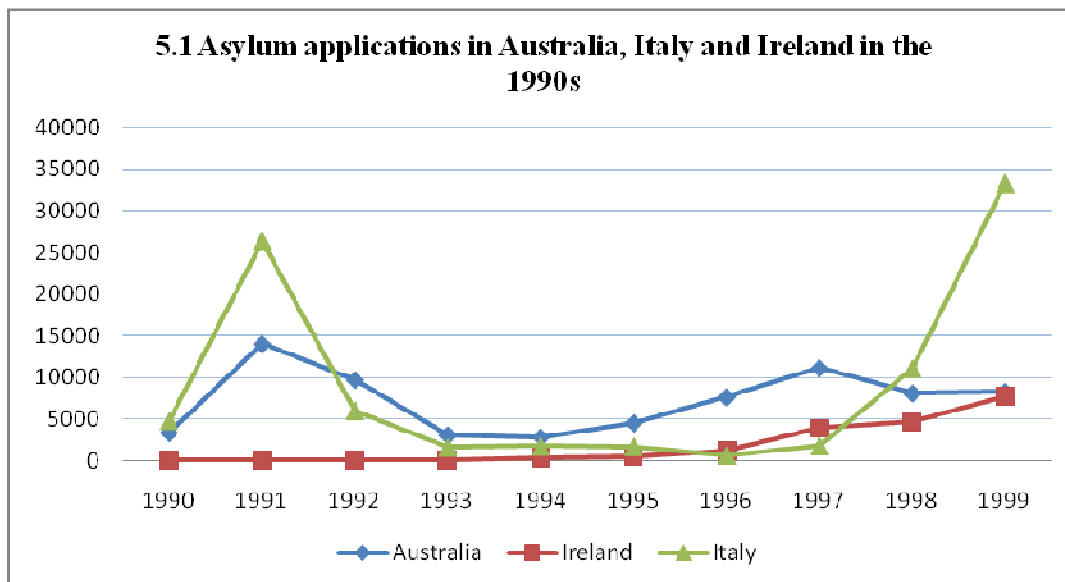
5.1 The 1990s

Sadako Ogata, the UN High Commissioner for Refugees from 1990 to 2000, termed the 1990s the 'turbulent decade' on account of the violence and instability that produced so many refugees from the Balkans, Kurdish Iraq and Kurdish Turkey, Afghanistan, Rwanda, Sierra Leone, Ethiopia, Eritrea, Haiti and Central America ⁷⁶⁴ In addition to the flows these conflicts produced, poor unskilled labour migrants also used the asylum process as an avenue to circumnavigate immigration restrictions. Consequently, asylum application numbers remained high in liberal democratic states throughout the decade, even after the war in the former Yugoslavia abated.

Formation

Accordingly, the number of people seeking asylum in all three of my case studies increased in the 1990s compared to previous decades. Many refugee claimants came in the wake of the fall-out caused by the events of 1989. Cambodian boat people and a large number of Chinese students applied for asylum in Australia after communist-democratic transition problems in the former and the violent break up of student protests in the latter. Similarly, thousands of Albanians and Yugoslavians fled to Italy throughout the 1990s.

⁷⁶⁴Sadako Ogata, *The Turbulent Decade. Confronting the Refugee Crises of the 1990s*, London and New York: W.W. Norton, 2005.



Figures: UNHCR, *Asylum Applications in Industrialized countries, 1980-1999*, Geneva: UNHCR, 2001; Commissione Centrale per il riconoscimento dello status di rifugiato; Barry York, *Australia and Refugees, 1901-2002*, p. 140. Ray Burke, *Dáil Éireann*, 4 February 1992 and the Office of the Refugee Applications Commissioner.

Ireland received large numbers of asylum applications from former communist European countries, such as Romania, but this only occurred from the mid 1990s onwards. All three countries saw applications rise significantly towards the late 1990s.

Italy and Ireland initially reacted to its first experiences with refugee claimants in the 1990s with marked empathy. After the murder of the South African refugee Jerry Masslo in Italy in 1989, a great outpouring of support for refugees took place amongst the Italian public, culminating in an anti-racism march of between 100,000 and 200,000 people in Rome. Judging by the reaction of Italians to a Eurobarometer poll in December 1988 that asked whether to extend or restrict the rights of non-EU citizens, the public broadly supported the creation of the liberal 1990 *Martelli Law*. Sixty-eight per cent of Italians believed that non-EU citizen rights should be extended, compared to the EU12 average at the time of only thirty per cent.⁷⁶⁵

Compared to their EU counterparts, the Irish public also appeared remarkably positive towards foreigners in the late 1980s, when sixty-nine per cent of those questioned in a Eurobarometer poll responded that the presence of non-EU citizens represented 'a good thing' or was 'good to some extent' for Ireland in the future. Only thirteen per cent remarked that non-EU citizens' presence represented 'a bad thing' or was 'bad to some extent'. The EU12 average told a different story, with forty-six per

⁷⁶⁵ European Commission, 'Eurobarometer No. 30', Dec. 1988, p. 65.

cent responding positively and thirty-five per cent negatively.⁷⁶⁶ Irish politicians' reaction to the first asylum debate in 1995 reflected this positivity towards foreigners. In contrast to the communitarian and religious reasoning behind Italian debates, however, the constant commemoration of Ireland's painful past prompted calls for extensive and generous asylum policy reform. Irish politicians in government and in opposition frequently referenced Irish emigration history in 1995 to support the formation of the expansive 1996 *Refugee Act*.

Italy and Ireland made their first telling forays in immigration and asylum policy since the Second World War from the late 1980s onwards. By then, NGOs had firmly established themselves as intrinsic ingredients of civil society in the West. The end of the Cold War opened up additional political space for NGOs, which the explosion in global communications facilitated and the major UN impetus to include civil society in the early 1990s developed.⁷⁶⁷ Moreover, networking between organisations ensured increased power.⁷⁶⁸ While the UN granted consultative status to forty-one NGOs in 1946; by 1992 more than 700 NGOs had attained consultative status with the number steadily increasing ever since then to 3,052 organisations in mid 2009.⁷⁶⁹ This rise mirrored developments in the politics of asylum, as NGOs advocating for the rights of refugees and asylum seekers grew enormously. The UNHCR listed 39 NGOs that worked on issues related to refugees in the early 1950s. A 1993 OECD report written in collaboration with the UNHCR discussed 1300 NGOs.⁷⁷⁰ Similarly, the number of implementing partners the UNHCR worked alongside went from 594 in 1994 to 852 in 2008, with NGOs representing approximately three-quarters of these partners.⁷⁷¹

Secular and religious NGOs led many of the public demonstrations that took place around Italy in support of refugees and immigration after Jerry Masslo's murder.

⁷⁶⁶ *Ibid.*, p. 64.

⁷⁶⁷ See Claude E. Welch, *NGOs and Human Rights*, p. 3 and Peter Willetts, 'Non-Governmental Organizations', *UNESCO Encyclopaedia of Life Support Systems*, Section 1 Institutional and Infrastructure Resource Issues, November 2001. Accessible at <http://www.staff.city.ac.uk/p.willetts/CS-NTWKS/NGO-ART.HTM>.

⁷⁶⁸ Morten Kjaerum, 'Human Rights Organisations and the Formation of Refugee Regimes', Daniele Joly (ed.), *Global Changes in Asylum Regimes*, Gordonsville, VA, USA: Palgrave Macmillan, 2003, pp. 204-14, p. 207.

⁷⁶⁹ UN Department of Economic and Social Affairs. Accessed at <http://www.un.org/esa/coordination/ngo/> (18 May 2009).

⁷⁷⁰ See memo from Alexander to Goedhard, 29 Dec 1950, Voluntary Agencies, Series 4, Fonds 4.0 GEN, Records of the Central Registry; Archives of the UNHCR (Hereafter referred to as Series 4, Fonds 4.0 GEN UNHCR and OECD, *Human rights, Refugees, Migrants and Development: Directory of NGOs in OECD countries*, p. 11.

⁷⁷¹ UNHCR Inter-Agency Unit, 'UNHCR partnerships', presentation to the annual UNHCR-NGO consultations, 29 June-1 July 2009, Geneva.

Many of the secular NGOs held links to the Italian Left more generally and the Italian Communist Party more particularly, which up until its breakup in 1991 remained remarkably strong in Italy. ARCI provided a good example of the left-leaning nature of many of the sympathetic secular NGOs. As Alana Lentin points out, however, the political attachment of some NGOs resulted in less pressure on certain governments than others.⁷⁷² Most of the religious NGOs retained links with the Vatican, such as Caritas, and retained an ability to influence the Christian Democrat party until its demise in the corruption scandal that hit Italy in the early 1990s. Their strong presence and vocal support for expansive immigration and refugee policies led the Italian government at the time, and the Socialist minister responsible for migration, to consult with non-state actors extensively in the lead-up to the formation of the relatively expansive 1990 Martelli law, which opened the way for non-Europeans to apply for asylum in Italy. Moreover, Catholic NGOs, as well as left-wing secular NGOs, greatly influenced the 1998 Turco-Napolitano law.⁷⁷³ Similarly, in Ireland, politicians invited NGOs advocating for refugees and asylum seekers to help them create a liberal asylum policy, to which they duly obliged by playing a central role in the formation of the generous original version of the 1996 *Refugee Act*. Particularly prominent Irish NGOs included the Irish Refugee Council, the Irish Red Cross and Amnesty Ireland throughout this period. The UNHCR also played a decisive role in cajoling governments in both countries to adopt generous asylum policies.

By contrast, many of Australia's asylum and immigration policy changes in the early 1990s often represented variants of its *Migration Act*, drafted with little input from refugee NGOs in 1958. Correspondingly, Australian governments consulted much less with NGOs, when compared with what occurred in Italy and Ireland when forming new asylum legislation although protests regularly came from the Australian Human Rights and Equal Opportunities Commission (HREOC) and the Refugee Council of Australia; as well as the UNHCR. Furthermore, because Australia successfully established a noticeable division between economic migrants and asylum seekers as far back as 1980, when Malcolm Fraser's Liberal-National coalition government established Australia's 'Special Humanitarian Programme', NGOs representing labour and family migrants

⁷⁷² Alana Lentin, "Wherever it Raises its Ugly Head." *Anti-Racism and the Public Political Culture of the Nation-State: A Political Sociology of European Anti-Racist Discourse and Praxis*, EUI Florence: PhD Thesis, 2002, p. 177.

⁷⁷³ Giovanna Zincone, 'The Making of Policies: Immigration and Immigrants in Italy', *Journal of Ethnic and Migration Studies*, Vol. 32, No. 3, 2006, pp. 347–375, p. 354.

remained largely absent from national asylum debates. The interrelated nature of immigration and asylum in new countries of immigration meant that NGOs and trade unions in Italy and Ireland, such as the *Confederazione Italiana Sindacati Lavoratori* and the Irish Congress of Trade Unions, contributed to asylum-related debates.

Sympathetic actors in Italy and Ireland fared better than in Australia also because of religious leaders and organisations' contrasting influences. The Catholic Church wielded substantial power in both countries over the course of the twentieth century. In Ireland, this process began before the southern part of the country gained independence from the UK because of Catholic orders' sizeable presence in the education system. The Church's influence increased after independence, as the 1937 Irish Constitution acknowledged.⁷⁷⁴ Until the 1950s, the influence of the Catholic Church remained potent, as the consistent correspondence between Éamon De Valera, the then Irish Prime Minister, and the Archbishop of Dublin over important political decisions demonstrated. The political power of the Church only began to decrease in the 1960s and 1970s.⁷⁷⁵ While the sexual and paedophile scandals that rocked the Church throughout the 1990s did much to downgrade the role of the Church in Irish society, the approval of the divorce referendum by a majority of less than one per cent in the mid 1990s and abortion's continuing illegal status gives an insight into the power the Church still holds over Irish society.

In Italy, the Christian Democrats' position as the most popular political party in the country from the late 1940s until the early 1990s meant that the Church also played an extremely influential role in Italian society throughout the twentieth century. The location of the Vatican in Rome further enhanced the Church's input. Even in the wake of the Christian Democrat Party's demise in the 1990s, the *Economist* suggested in 2007 that 'the church wields more direct influence in Italy than at any time in 40 years' because of its success at stifling Italian politicians from legislating on fertility treatment and extending legal rights to civil couples, including gay ones.⁷⁷⁶ Though not perhaps as successful on migrant-related issues, the Church still retained considerable power. Indeed, the presence of small political parties emanating from the Christian Democrats in Italian governments – on the left and right of the political spectrum – throughout the

⁷⁷⁴ Ronit Lentin, 'Irishness', the 1937 Constitution, and Citizenship: A Gender and Ethnicity View', *Irish Journal of Sociology*, Vol. 8, 1998, pp. 5-24.

⁷⁷⁵ Louise Fuller, 'Religion, Politics Socio-cultural Legacy in Twentieth-Century Ireland', *The European Legacy*, 10:1, 2005, pp. 41-54, p. 51.

⁷⁷⁶ 'Italy and the Catholic church - A Resurgent Vatican's Influence in Italy', *Economist*, 31 May 2007.

1990s and much of the 2000s led to a persistent Catholic influence in Italian politics.

During the 1930s, Jewish organisations had dominated pro-refugee actions. But the marked decrease in European Jews because of Nazi extermination and post-war emigration meant these groups diminished somewhat. Various Christian NGOs stepped in to the vacuum, including various international Catholic organisations such as Caritas and Pax Romana. Specific national Christian NGOs also sprung up in increasing numbers. Often these groups referenced the new and old testaments' various passages about helping foreigners to support their stance (as Jewish NGOs had done with the latter). Leviticus, for example, stated that 'The alien who resides with you shall be to you as the citizen among you; you shall love the alien as yourself, for you were aliens in the land of Egypt.'⁷⁷⁷ Pope Pius XII declared the Holy Family 'the models and protectors of every migrant, alien and refugee of whatever kind who, whether compelled by fear of persecution or by want, is forced to leave his native land, his beloved parents and relatives, his close friends, and to seek a foreign soil.'⁷⁷⁸ During discussions on the Refugee Convention in 1951, the Vatican implored the sanctity of the family upon states and ultimately ensured the insertion of the right for refugees to accommodate their families in their countries of asylum in the convention. More recently, John Paul II took up the call. In 1982, he wrote to the UNHCR that refugees represented 'a shameful wound of our time'.⁷⁷⁹ The Vatican's supportive stance on refugees continued, with various Catholic NGOs and leaders appealing for compassion and solidarity with asylum seekers in debates throughout the 1990s.

When Catholic NGOs spoke on immigration and asylum in Ireland and Italy, politicians and the public often listened. Caritas in Italy, for example, produced an annual report on immigration that most political, government and media sources relied upon. Catholic organisations and leaders' pleas for compassion for asylum seekers and immigrants had a powerful societal effect by bounding sceptical actors to use sensitive language when discussing asylum for fear of offending religious voters.⁷⁸⁰ Contrastingly, religious groups and religious leaders – although they too criticised government asylum policies – did not exert such political authority in Australia.

⁷⁷⁷ Leviticus 19: 33-34. Quoted in Niklas Steiner, *Arguing about Asylum*, p. 11.

⁷⁷⁸ Quoted in Paulette Chu Miniter, 'Is the Catholic Church pro-immigrant? You bet.', *USA Today*, 20 Aug 2006.

⁷⁷⁹ Pope John Paul II to UNHCR, 25 June 1982. See http://www.vatican.va/roman_curia/pontifical_councils/corunum/documents/rc_pc_corunum_doc_250619_92_refugees_en.html (Accessed on 18 June 2009).

⁷⁸⁰ And Protestant organisations and leaders, in Ireland's case.

Religion had a negligible effect on domestic Australian affairs, which consequently provided a very different dynamic to discussions.

Australia originally reacted sympathetically to its first asylum debate sparked by the arrival of boat people from Indochina in the mid to late 1970s. Only twenty per cent of those polled in late 1977 wanted the government to stop boat people. When boat people began to arrive once more on Australian shores from late 1989 onwards, the reception they received proved remarkable different. These latter boat people met with a torrent of hostility and the state immediately began to detain them for the duration of their asylum applications. Reflecting the swing in public opinion, a 1993 poll showed that 44 per cent of those questioned wanted the government to send back all boat people compared to the 20 per cent of 1977.⁷⁸¹

What occurred in Italian and Irish asylum debates after the formation of the Italian *Martelli Law* and the Irish *Refugee Act* also demonstrated the remarkably short shelf life that a compassionate response to asylum crises has in liberal democratic states. Two waves of Albanian boat people in 1991 led to two strikingly divergent receptions: one hospitable and the other hostile. In Ireland political debate towards asylum seekers became noticeably more adverse by 1997. Unlike earlier debates, politicians and the media began to refer to these people in an overwhelmingly negative light. Despite NGOs and religious groups' efforts to appeal to the public's moral conscience in promoting the hospitable treatment of asylum seekers, references to the large use of taxpayer money and welfare funds often met with more receptive audiences than the former. Divergently, what happened to Kosovan refugees who arrived in all three countries via organised schemes under the patronage of the UNHCR in 1999 revealed that when politicians and the media represented refugees in a more positive manner, the public reception became markedly more compassionate.⁷⁸²

The move from empathy to enmity in Australia, Italy and Ireland closely reflected the pattern of asylum debates recorded in Switzerland, Germany and the UK by Niklas Steiner. Politicians in the three latter countries frequently used the past – mostly in relation to the 1930s and 1940s – to promote more generous policies in early asylum debates. Nevertheless, these references repeatedly faded from later asylum debates as if, in the words of Steiner, 'some kind of statute of limitations on moral guilt

⁷⁸¹ Katherine Betts, 'Boatpeople and Public Opinion in Australia', *People and Place*, Vol. 9, no. 4, 2001, pp. 34-48, p. 40-1.

⁷⁸² See Matthew Gibney, 'Kosovo and Beyond: Popular and Unpopular Refugees', *Forced Migration Review*, Vol. 5, August 1999, pp. 28-30.

had run out'.⁷⁸³ The same phenomenon occurred in Italy and Ireland: references to the past receded when they bore an uncomfortable relationship with the turn towards restrictive policies. This represented a worrying trend if one is to believe Kendall Phillips's opinion that '[i]f the existence of a healthy and functioning public is intertwined with its capacity for remembrance, then the gradual erosion by forgetting must represent a grave danger.'⁷⁸⁴ Unlike the other countries mentioned, Australia's traditional national identity never required tampering; the notion that it selected its immigrants rather than merely accepted them had become established in the national consciousness decades before. Indeed, politicians consistently raised the point to defend the heavy-handed treatment meted out to boat people during the 1990s.

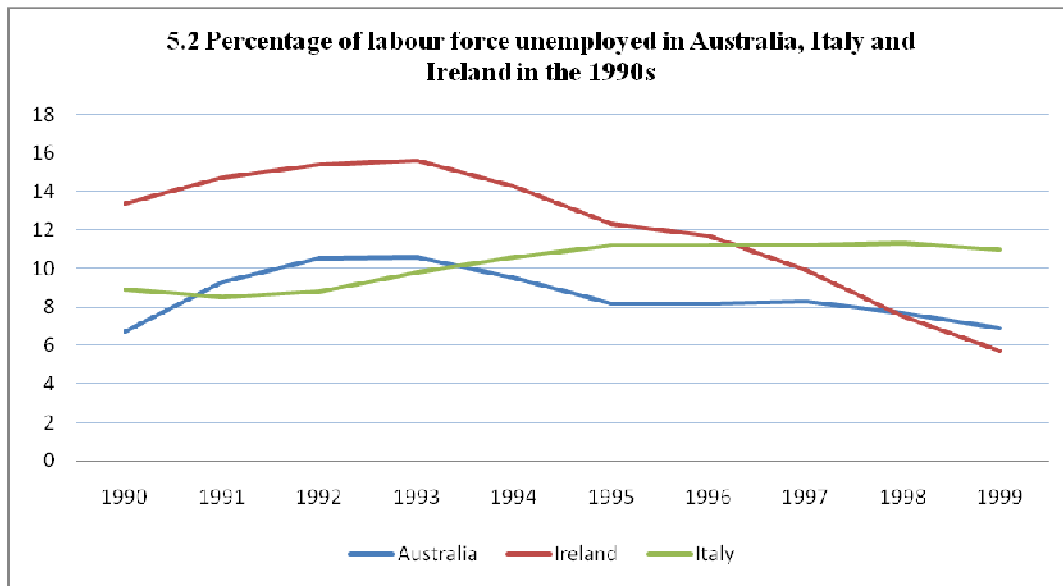
Asylum seekers were seen to represent more legitimate targets for political criticism than economic migrants because they often required state aid, offered little by way of visible economic benefits to the host state, and arrived uninvited. Accordingly, sceptical actors increasingly dominated asylum policy debates throughout the 1990s. Critical actors in all three countries remained unconvinced that asylum seekers could integrate into the host societies. Furthermore, they frequently doubted the veracity of asylum seekers' claims for protection. The growth in popularity of sceptical actors coincided with a rise in racism in the EU and Australia throughout the 1990s.⁷⁸⁵ People most likely to support xenophobic views appeared dissatisfied with their life circumstances, feared unemployment, remained insecure about their futures, and held little confidence in public authorities and the political establishment.⁷⁸⁶ Many of these factors affected asylum and immigration debates in Australia and Italy; albeit less so in Ireland. Unemployment reached almost eleven per cent in Australia in the early 1990s for the first time since the economic recession of the 1970s. Despite decreasing somewhat by the mid 1990s, it remained high into the late 1990s. In Italy, unemployment surpassed ten per cent in the early 1990s, where it remained for the rest of the decade. Ireland contradicted this trend as its unemployment rate fell substantially from 1993 onwards. Nonetheless, unemployment still measured almost ten per cent in Ireland in 1997.

⁷⁸³ Niklas Steiner, *Arguing about Asylum: The Complexity of Refugee Debates in Europe*, New York: St. Martin's Press, 2000, pp. 138-9.

⁷⁸⁴ Kendall Phillips, 'Introduction', Kendall Phillips (ed.), *Framing Public Memory*, Tuscaloosa: University of Arizona Press, 2004, pp. 1-14, p. 4.

⁷⁸⁵ See European Commission, 'Eurobarometer Opinion Poll no. 47.1: Racism and Xenophobia in Europe', 1997 and the section entitled 'Between Waves' in the Australian chapter.

⁷⁸⁶ *Ibid.*, p. 1.



Figures: OECD, *OECD Factbook 2007: Economic, Environmental and Social Statistics*, under 'Labour'

Australia's economic growth remained steady but low throughout the decade whilst Italy experienced serious economic stagnation. Ireland, by contrast, experienced consistent economic growth as the 1990s progressed.

Poor economic conditions, allied to disgruntlement with traditional political parties, led many to seek new alternatives.⁷⁸⁷ Support for extreme right-wing and populist parties began to grow.⁷⁸⁸ Reflecting this trend, the anti-immigrant tone inherent in these parties' rhetoric contrasted sharply with the established parties' reluctance to debate issues related to immigration. Furthermore, the inability of governments to adapt to the challenges produced by immigration served to provide anti-immigrant political parties with a seemingly legitimate target to communicate their message.

In Italy, the break-up of the country's political system in the early 1990s because of corruption scandals and the collapse of communism in Soviet Europe left a political vacuum that the *Movimento Sociale Italiano's* successor, *Alleanza Nazionale*, a previously isolated party linked to Fascism, and the freshly amalgamated leagues (*Lega Nord*) partly filled. The remarkable growth of these two parties, especially the latter, led to a considerable rise in discussions on immigration. Debate consequently became more

⁷⁸⁷ See Peter Mair, 'Polity-scepticism, Party Failings, and the Challenge to European Democracy', Wassenaar: NIAS, 24th Uhlenbeck lecture, 2006.

⁷⁸⁸ Piero Ignazi, *The Re-emergence of Extreme Right-Wing Parties in Europe*, Vienna: Institut für Höhere Studien, No. 21, 1995.

polarised in Italy. Hostility for immigrants derived partly from the fear that they could seriously affect state and regional public services relating to housing, the health system and education. Because Italian policy failed to differentiate between asylum seekers and economic migrants, various debates on asylum intermingled with those on migration more generally. The other major factor affecting immigration debates in Italy centred on the perceived cultural and physical threat immigrants might bring.

Serious economic recession, the Mabo legal judgement on Aboriginal land rights and disgruntlement over government immigration policy meant that Pauline Hanson's outspoken views on Aboriginal and immigration policies received a rapturous reception in some sections of Australian society when she broke onto the political scene in 1996. Opinion polls from the late 1980s onwards had suggested that large sections of the public remained critical of the country's immigration policies. Nevertheless, no politician had managed to fully profit from the gulf that existed between public opinion and official policy until Hanson emerged.

Both resource-based and identity-based opposition to asylum seekers figured in the lexicology used in Irish debates. Despite the country's unparalleled economic development, politicians, the media and the public kept close watch over their guarded national social welfare schemes. When certain sceptical actors accused asylum seekers of unfairly taking advantage of the country's social services, it created a rise in antagonism towards newcomers. Ireland's previous isolation and perceived homogeneity meant that hostility to asylum seekers most manifestly different from Irish people increased in line with augmented asylum applications. Racist attacks on black asylum seekers rose as the decade proceeded. Nonetheless, Ireland's relatively stable political system and economic viability meant that no anti-immigrant party successfully managed to achieve any meaningful foothold in Irish politics.

The media occupied a particularly significant role in instigating hostility towards asylum seekers in the 1990s. In theory, the media's role included monitoring and criticising the actions of those in power and reflecting public opinion for decision makers and for the general public. Yet, Margolis and Mauser concluded that the media reflected rather than monitored the actions of governments.⁷⁸⁹ Both sympathisers and

⁷⁸⁹ Herbert J. Gans, *Deciding What's News*, New York: Vintage Books, 1980, p. 117; Edward S. Herman & Noam Chomsky, *Manufacturing Consent. The Political Economy of the Mass Media*, New York: Pantheon Books, 1988, p. 22; Michael Margolis and Gary Mauser, 'Public Opinion as a Dependent Variable: An Empirical and Normative Assessment', Michael Margolis and Gary A. Mauser (eds.), *Manipulating Public Opinion*, California: Brooks/Cole, 1989, pp. 365-379, p. 366.

sceptics required the media to make their voices heard in asylum debates. But as Herbert Gans pointed out, ‘since journalists must often let sources come to them, the news is weighted toward sources that are eager to provide information’. Political parties, of whom those in government dominated, habitually provided these sources to journalists writing about asylum. As Chomsky and Herman noted, governments go to great lengths to oblige journalists by providing them with facilities, advance copies of speeches and scheduling press conferences at times that facilitate their inclusion in the next day’s news. Actors supporting asylum seekers often found it difficult to promote their views in the media.

In contrast to mainstream politicians constricted to discussing asylum in a politically correct manner – at least in early debates – because of their duty to uphold anti-racist norms, the media often used much more explicit and hostile language.⁷⁹⁰ The media recurrently communicated scare stories about biblical “floods,” “flows,” and “invasions” to the public, causing Michael Dummett to comment:

[N]ewspapers, with only occasional partial lapses into decency, have acted upon a very simple principle: identify a fairly widespread prejudice, pander to it and inflame it, in the process misleading or actually lying to the readers as far as can be safely done. The objective aimed at in following this principle has of course been to increase the circulation of the newspapers and, likewise, the numbers of people listening to or watching the broadsheet programmes.⁷⁹¹

Nonetheless, not all media outlets contained inherently restrictionist musings on asylum seekers. Some contained both sympathetic and sceptical voices while some held explicitly expansive views, such as the *Irish Times*, *Il Manifesto* and the *Melbourne Age*. Nonetheless, these outspoken sources constituted a diminishing minority as the 1990s evolved.

The empirical chapters demonstrated that mainstream political parties, public opinion and the media became generally more sceptical of asylum seekers as the 1990s progressed, leading many western governments to promote the formation of more restrictionist asylum policies. NGOs, small sections of the media, certain intergovernmental organisations, such as the UNHCR and the Council of Europe, and

⁷⁹⁰Teun A. van Dijk, ‘Principles of Critical Discourse Analysis’, *Discourse and Society*, Vol. 4 (2), 1993, pp. 249-283, p. 268.

⁷⁹¹Michael Dummett, *On Immigration and Refugees*, London and New York: Routledge, 2001, p. 3.

certain minority opposition parties remained sympathetic to asylum seekers and strove to stem the turn towards restrictive asylum policies. Despite sceptics' crucial advantages over sympathetic actors when shaping the formation of asylum policies, they had major difficulties executing these policy changes.

Implementation

In an attempt to reduce asylum numbers in the 1990s, liberal democratic governments discouraged potential asylum seekers from entering their territories by impeding their entry through carrier sanctions and visa requirements and by increasing border control. They also consciously made the lives of asylum seekers already present in their countries more difficult by detaining asylum seekers in some cases, dispersing them in others, and reducing the amount of benefits asylum seekers could receive. Stricter deportation measures also became a feature of many countries' asylum policies. A question this thesis has sought to answer, and a question previous research on asylum policy has often neglected to ask, is whether these policies succeeded in achieving the goals behind their formation.

The bureaucratic nature of the state meant that forming restrictive policies did not necessarily lead to the instigation of tougher policies. In an interrelated argument, James Hollifield's "gap hypothesis" underlines the endurance of immigration in spite of the formation of restrictive immigration policies.⁷⁹² This frequently held true for asylum policies, with people continuing to apply for asylum in Australia, Italy and Ireland in the late 1990s, despite the formation of perceptibly more restrictive asylum policies. State systems encountered enormous difficulties differentiating between which asylum seekers deserved their states' protection and which did not. Economic asylum seekers' efforts to pass themselves off as persecuted asylum seekers hindered this further. Hannah Arendt's comment concerning the 1930s repeated itself over and over: 'Once the government tried to use its right and repatriate a resident alien against his will, he would do his utmost to find refuge in statelessness.'⁷⁹³

When western governments managed to distinguish between asylum claims, they still encountered enormous difficulty trying to deport people deemed undeserving of protection because of problems ascertaining the identity of asylum seekers with no

⁷⁹² Wayne Cornelius, Philip Martin and James Hollifield (eds), *Controlling Immigration: A Global Perspective*, Stanford: Stanford University Press, 2004 (updated edition of 1994 publication), p. 3.

⁷⁹³ Hannah Arendt, *The Origins of Totalitarianism*, p. 363.

documentation. Furthermore, no international obligations existed that required origin countries to receive their returning nationals without evidence of nationality. The Refugee Convention's *non-refoulement* principle meant that even if a state managed to positively identify rejected asylum seekers and their host states agreed to their return, deporting them remained a controversial issue. On issues relating to human rights and deportation, Matthew Gibney and Randall Hansen rightly point out that public opinion can be 'fickle and unstable'.⁷⁹⁴ Large sections of the public and the media might support the creation of restrictive asylum policies but might contrastingly turn around and support campaigns to halt the deportation of certain failed asylum seekers. They desire policies to halt the large faceless numbers of asylum seekers but often oppose deportation policies to remove real human people that they can relate to. By referencing countries' migration histories and memories, humanitarian and religious traditions, and moral consciousnesses, actors sympathetic to people in search of protection managed to attract further empathy from actors often opposed to asylum seekers. In Ireland, for example, NGOs frequently associated asylum seekers with Irish emigrants in the public sphere, thereby tying natives' harsh pasts with asylum seekers difficult present.⁷⁹⁵ In France, the *sans papiers* movement in 1996 emphasised the virtues of the country's tradition of espousing human rights.⁷⁹⁶ Religious groups and leaders also cited countries' moral duties when attempting to stifle governments' turn towards more restrictive policies, as occurred in the Netherlands.⁷⁹⁷ Nevertheless, sympathetic actors also required more concrete methods to successfully dispute government moves to further restrict asylum. National courts provided such an avenue.

The growth of inherently liberal principles in many western states throughout the second half of the twentieth century made it increasingly difficult for governments to exercise complete control over asylum seekers.⁷⁹⁸ Following the Second World War, certain European governments eager to distinguish themselves from their Fascist predecessors adopted liberal constitutions that placed a strong emphasis on rights. To

⁷⁹⁴ Matthew Gibney and Randall Hansen, 'Deportation and the liberal state: the forcible return of asylum seekers and unlawful migrants in Canada, Germany and the United Kingdom', UNHCR Working Paper No. 77, 2003, p. 2.

⁷⁹⁵ Irial Glynn, 'What Place has an Emigration Past in an Immigration Present? Ireland and Italy compared', *Italian Studies in Southern Africa*, Vol. 21, No.s 1 & 2, 2008, pp. 134-157.

⁷⁹⁶ James Hollifield, 'France: Republicanism and the Limits of Immigration Control', Wayne Cornelius *et al.* (eds.) *Controlling Immigration*, 2004, pp. 183-214, esp. 206-7.

⁷⁹⁷ For an example of this, see 'Dankzij aanmeldcentra 10 procent asielzoekers meteen uit land gezet', *Trouw*, 14 Oct 1994.

⁷⁹⁸ Christian Joppke, 'Why Liberal States Accept Unwanted Immigration', *World Politics* 50.2, 1998, pp. 266-293, p. 271.

oversee the enforcement of these new constitutions, Germany and Italy established constitutional courts. France introduced a preamble to its 1958 Constitution that indirectly referenced a number of significant texts on rights and modified its constitutional practice to allow any sixty members of its senate or assembly to begin constitutional challenges if they saw fit in 1974.⁷⁹⁹ After the fall of Spain and Portugal's dictator governments in the same decade, they too adopted liberal constitutions, followed by Greece in the 1980s. By then, the growing expanse of NGOs had identified constitutional courts as potential avenues to effect government policies, especially for rights issues, which began to dominate constitutional courts.⁸⁰⁰

This reflected a practice already well advanced in North America and Australasia where civil actions became more common; a trend that later became apparent in European common law systems, such as in Ireland and England. The 1954 US Supreme Court case, *Brown v Board of Education*, which ruled that the segregation of Kansas schools represented a violation of the American Constitution, had already demonstrated the power of the courts in challenging policy. In Canada, the 1973 *Calder v. British Columbia (Attorney General)* case sparked an overhaul of national policies relating to indigenous land rights. Though Australian Aborigines failed to acquire land rights in their appeal to the Supreme Court in 1971, the *Milirrpum v Nabalco Pty Ltd* did lead to an intensification of indigenous campaigning for land rights in Australia.⁸⁰¹

Many countries' constitutions extended right to nationals and non-nationals alike. This led to a noticeable increase in cases brought before courts by asylum seekers. In 1982, for instance, an American district court issued a preliminary injunction against the deportation of Salvadoran asylum seekers, a decision approved by the Federal District Court of Los Angeles in 1988.⁸⁰² Similar developments began to also take place in Europe, where judges and advocates started to use domestic high courts more frequently to challenge regulatory changes.⁸⁰³ The European Court of Human Rights (ECtHR) played an expanded role in advancing this from the early 1980s onwards. In 1983, amended rules for the court allowed individuals to take cases before the court,

⁷⁹⁹ Martin Shapiro and Alec Stone, 'The New Constitutional Politics of Europe', *Comparative Political Studies*, Vol. 26, No. 4, 1994, pp. 397-420, p. 403.

⁸⁰⁰ *Ibid*, p. 410.

⁸⁰¹ See Irial Glynn, 'The Australian Aborigines' Struggle for Land Rights, 1788-1996', *History Review*, Vol. XXIV, Dublin, 2004, pp. 74-85 for more details.

⁸⁰² *Orantes-Hernandez v. Smith* (1982) and *Orantes-Hernandez v. Meese* (1988).

⁸⁰³ Virginie Guiraudon, *Policy Changes Behind Gilded Door: Explaining the Evolution of Aliens' Rights in Contemporary Western Europe, 1974-1994*, MA: Harvard (PhD), 1997, p. 234.

thereby heralding in a new age of appeals to the ECtHR, brought by sympathetic actors assisting asylum seekers.⁸⁰⁴ Crucially, the bestowal of rights on “persons” rather than “citizens” in the European Convention of Human Rights (ECHR)⁸⁰⁵ allowed the court to hear cases concerning Europeans and non-Europeans alike.⁸⁰⁶ The European Convention’s legal superiority over Belgian and Dutch domestic legislation – and more recently the United Kingdom and Ireland – meant that it served as a bill of rights for certain countries without liberal constitutions.⁸⁰⁷

When governments introduced new asylum legislation in the 1990s, particularly relating to deportation, NGOs and human rights lawyers worked as agents, advisers and advocates for asylum seekers and repeatedly called upon judiciaries to decide upon the legality of asylum policy changes. Often, drawing on constitutional and legal precedents, judiciaries decided in favour of the asylum seekers in question, and in so doing challenged the validity of government policy changes, as occurred repeatedly in Australia and Ireland. Until 1998, legal aid enabled asylum seekers to appeal to the Australian High and Federal Courts.⁸⁰⁸ After 1998, various *pro bono* legal groups from Australia’s states provided asylum seekers with the complimentary legal assistance, in addition to the Immigration Advice and Assistance Scheme. In Ireland, the Free Legal Aid Centres (FLAC) and the state-financed but independent Legal Aid Board, which set up a special Refugee Legal Service in 1999 helped asylum seekers with their appeals. In Australia, the widespread use of the courts by rejected asylum seekers to appeal the decision to remove them from the state meant the government’s asylum and deportation policy remained constantly in flux. The Irish government’s policies experienced similar turmoil. The lack of a fixed Italian asylum policy meant this trend failed to extend to Italy in the same way. Nonetheless, as demonstrated by Dagmar Soennecken’s recent study on the growth of judicial power in Germany and Australia, sympathetic actors found other avenues to successfully contest restrictive government initiatives.⁸⁰⁹

Effects

⁸⁰⁴ David Jacobson, *Rights across Borders*, p. 85.

⁸⁰⁵ *European Convention on Human Rights*, 1950.

⁸⁰⁶ David Jacobson, *Rights across Borders*, p. 83.

⁸⁰⁷ Martin Shapiro and Alec Stone, ‘The New Constitutional Politics of Europe’, p. 411.

⁸⁰⁸ See the discussion between Senator Brian Harridine (Ind.) and Amanda Vanstone (Minister for Justice) in the *Australian Senate*, 12 May 1998, pp. 2520-1.

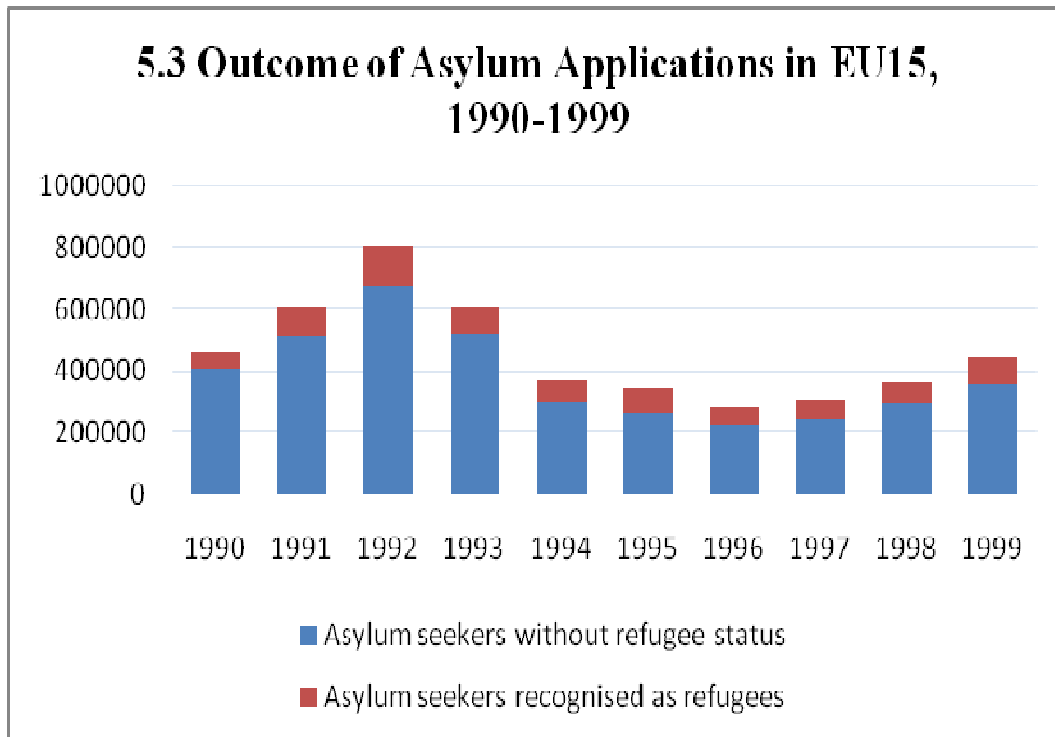
⁸⁰⁹ See Dagmar Soennecken, *The Growth of Judicial Power over the Fate of Refugees: A Comparison of Canada and Germany*, University of Toronto: PhD thesis, 2009, pp. 218-246.

Ultimately, the vast majority of people who applied for asylum in Australia, Ireland and Italy during the 1990s remained in Australia, Italy and Ireland despite only a small proportion obtaining refugee status. In Australia, this state of affairs derived largely from the elongated nature of deportation orders caused by numerous appeals to the relatively generous Federal and High Courts from asylum seekers. In Italy, many remained by moving into the ever-growing mass of irregular immigrants in the country. Some succeeded in regularising their status through government amnesties in 1990, 1994 and 1998. From the 234,000 regularised in the 1990 amnesty, the 244,000 regularised in the 1995 amnesty, and the 217,000 regularised in the 1998 amnesty, for instance, 71,191 came from Albania and 16,341 came from Sri Lanka; countries that produced asylum claims in Italy throughout the 1990s.⁸¹⁰ People from these countries European countries throughout the 1990s continued to inhabit the submerged world of Italy's undocumented population that the enormous national black labour market relied upon. Certain migrants who claimed asylum in Italy, with Kurds especially prominent, ventured further north to other EU countries, most notably Germany and France, where sizeable networks of their compatriots already lived. In Ireland the vast majority of rejected asylum seekers managed to stay because of the country's inability to deport rejected asylum applications. The legal loophole that allowed asylum seekers with an Irish-born child to remain in the country facilitated the transition to permanent legal status for many of these people.

Other liberal democratic states' deportation policies in the 1990s remained similarly ineffective. Most rejected asylum seekers continued to reside in Western European countries in large numbers. Of the approximately 3.8 million who applied for asylum in the EU15 in the 1990s, only 21 per cent received refugee status.⁸¹¹

⁸¹⁰ Claudia Finotelli, 'Accolti o sanati? L'asilo e la protezione umanitaria in paesi di "nuova" e "vecchia" immigrazione', p. 226.

⁸¹¹ UNHCR, *Refugees and Others of Concern to UNHCR: 1999 Statistical Overview*, Geneva: UNHCR, 2000, p. 119.

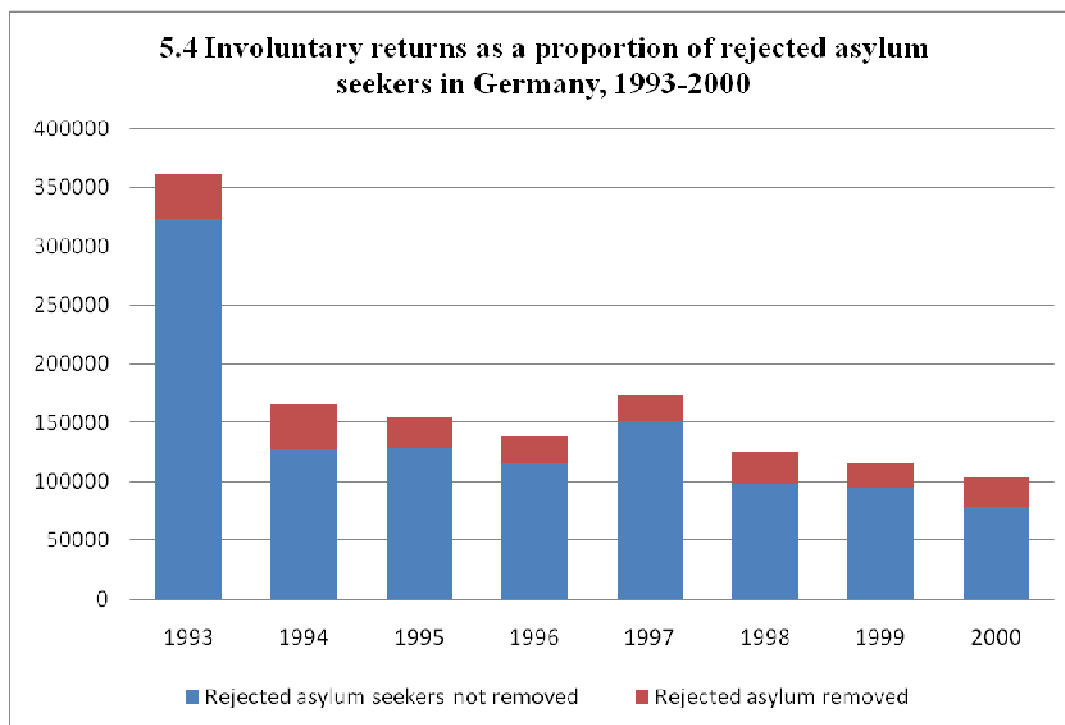


Figures: UNHCR, *Refugees and Others of Concern to UNHCR: 1999 Statistical Overview*, p. 119.

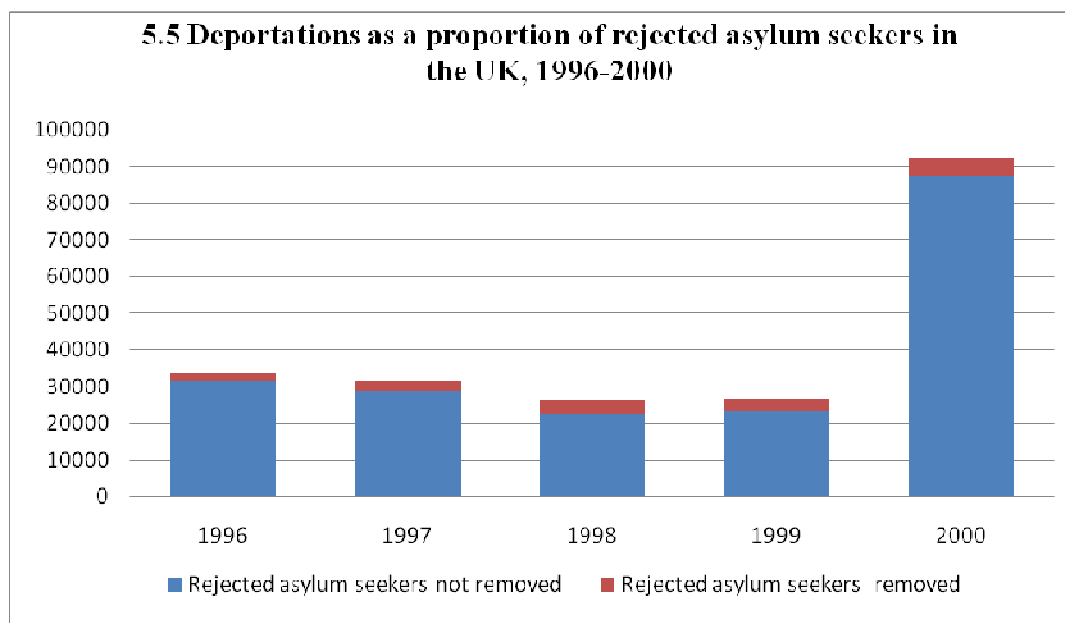
Of the 79 per cent of asylum seekers who failed to receive refugee status, some attained leave to remain on humanitarian grounds or temporary protection visas. Nonetheless, the majority obtained no secondary status. Unfortunately, it remains difficult to quote exact numbers of those deported from the EU because, as Liza Schuster acknowledges, '[s]tatistics on deportation are not compiled systematically, are frequently incomplete and often it is difficult to work out exactly what or who is being counted'.⁸¹² Statistics available for Germany and the UK, however, do show the general inability of states to deport large numbers of its rejected asylum seekers.⁸¹³

⁸¹² Liza Schuster, 'The Exclusion of Asylum Seekers in Europe', Centre on Migration, Policy and Society Working Paper No. 1, University of Oxford, 2004, p. 5.

⁸¹³ Irish Refugee Council, pers. comm., 2006.



Figures: Matthew Gibney and Randall Hansen, 'Deportation and the liberal state: the forcible return of asylum seekers and unlawful migrants in Canada, Germany and the United Kingdom', p. 3 & p. 5.



Figures: *Ibid.*

Of course, European governments' inability to sometimes enforce policy changes because of uncompromising sender states, large costs and inefficient bureaucracy greatly complicated efforts to impose restrictive asylum policies. But one of the purposes of this

thesis is to identify and emphasise the underappreciated role of actors sympathetic to asylum seekers and refugees, hence my emphasis on internal factors rather than external ones.

Policy changes brought in to make the asylum process more unattractive failed to lower the number of people applying for asylum but did manage to greatly affect the health, housing and welfare of asylum seekers. The detention of boat people in Australia for unlimited periods led to potentially serious psychological and physical effects, as noted in the Australian chapter. Detention in Italy, brought in from the late 1990s onwards, caused less harm because of its shorter duration. Nonetheless, the lack of welfare provisions in Italy led to asylum seekers sometimes living in squalid and unsafe environments whilst awaiting the processing of their applications. Indeed, it caused many asylum seekers to leave the asylum process and instead become undocumented migrants because of the paltry existence many had to endure throughout the asylum process. The state only guaranteed funding for the first forty-five days of the procedure, even though the process usually lasted much longer. Many worked irregularly, without any safeguards for their rights or safety, to subsidise themselves. In Ireland, a curtailment of entitlements, such as a decrease in language lessons and integration measures, led to the build up of a disconnected, disenfranchised minority. Asylum seekers became more ostracised as a group. The negative debates surrounding asylum seekers also saw an increase in racist and xenophobic incidents by natives on asylum seekers.

During the 1990s, European governments funded NGOs to help refugees and asylum seekers adjust. Policy-makers consulted NGOs and the UNHCR (witness the *1996 Irish Refugee Act* and the 1990 Martelli and 1997 Turco-Napolitano laws in Italy). The media quoted NGOs and those seeking asylum relied on NGOs for assistance and advocacy.⁸¹⁴ Australia remained a noticeable exception to this rule, as NGOs remained largely outside of policy debates. Nonetheless, they still managed to influence Australian asylum policies because of their involvement in the large rise of appeals placed before the courts. Accordingly, most asylum seekers successfully remained in the countries in which they sought asylum. Though they faced constant problems in their new countries relating to employment, accommodation and integration, they ultimately received the asylum they originally sought by continuing to reside outside their home

⁸¹⁴ Frank Sharry, 'NGOs and the Future of the Migration Debate', *Journal of International Migration and Integration*, Vol. 1, 2000, pp. 121-130, p. 121.

state.

5.2 The 2000s

Acknowledging the difficulty that governments faced when attempting to deport asylum seekers in the 1990s, governments made strident moves to close off sympathetic actors' avenues to affect asylum policies in the 2000s. It became more difficult for asylum seekers to ever seek refuge in their countries in the first place by the increased externalisation of the asylum process. Asylum seekers that managed to make it to western destinations also faced a more difficult path than their 1990s' predecessors as governments strove to impede asylum seekers' access to national courts. Governments also improved their deportation arrangements by instigating agreements with sender states and began to process asylum claims more rapidly, thereby diminishing asylum seekers' chances to integrate into host societies. These moves led to a noticeable decrease in asylum applications in most western countries. Italy proved the exception, however, as the EU's improved externalisation measures meant that the EU's border countries became predominantly countries of first asylum rather than states that asylum seekers passed through en route to somewhere more northerly.

Formation

The growth of anti-immigration parties caused an explosion of political discussion on asylum and immigration. Accordingly, it had a knock-on effect on the more established political system, with serious cleavages developing between mainstream political parties over these issues as voters from divergent political backgrounds decamped to anti-immigrant parties. As Paul Sniderman *et al.* recorded, when issues relating to immigration moved to the centre of political argument, 'the animating values of the right resonate[d] not only with its own adherents but also with a very large portion of the adherents of the left'.⁸¹⁵ The success of anti-immigrant parties in Australia and Italy throughout the 1990s caused many mainstream political parties in the 2000s to adopt more hard-line attitudes to asylum and immigration to offset the loss of traditional supporters and to attract potentially new voters.

By breaking down the previous bipartisan nature of Australian immigration debates, Pauline Hanson initiated a new dawn in Australian politics. Virginie Guiraudon

⁸¹⁵ Paul Sniderman, Pierangelo Peri, Rui De Figueiredo, Thomas Piazza, *The Outsiders: Prejudice and politics in Italy*, Princeton University Press, Princeton and Oxford, 2000, p. 13.

has written extensively about how debates on aliens' rights in Europe grew increasingly volatile when they went from being discussed behind closed political doors to being the subject of public debate from the mid 1970s onwards.⁸¹⁶ A similar phenomenon occurred in Australia after Pauline Hanson rose to prominence in the late 1990s. Nevertheless, mainstream political parties refused to question immigration more generally, as Hanson consistently did. Questioning Australia's immigration policy would have provoked outrage from many powerful actors, as Gary Freeman has demonstrated.⁸¹⁷ Instead, mainstream politicians in Australia confined their outspoken comments largely to boat people. By picking a small group of defenceless migrants, Australian politicians managed to appeal to sections of the public supportive of Hanson's policies while at the same time maintaining the country's expansive economic migration programme.

The terrorist attacks in New York and Washington on 11 September 2001 allowed the Liberal-National government to criticise boat people further, since most came from rogue Islamic countries, such as Afghanistan and Iraq. A smear campaign instigated by the government and supported by most of the media met with little or no meaningful political opposition from Labor. This signalled a notable change, with Muslims replacing Asians as the bogeymen of Australia thereby confirming Leo Lucassen's contention that the geographic sources of apparent immigrant threats change over time as old groups become incorporated into society and contemporary critics overemphasize the threat of newcomers.⁸¹⁸

A remarkably similar occurrence transpired in Italy where Berlusconi's *Forza Italia* party began to criticise undocumented migrants more regularly in order to neutralise the anti-immigrant *Lega Nord* in northern Italy.⁸¹⁹ Boat people again received much of this condemnation because of their very public arrival. Concurrently, Berlusconi's *Forza Italia* party, and to a certain extent Fini's *Alleanza Nazionale* party, continued to voice their support for documented labour migration in order to appease powerful actors and exude tolerance. Since many asylum seekers arrived in Italy by boat and without the requisite visa, those in search of protection often met with hostile

⁸¹⁶ See Virginie Guiraudon, *Policy Changes Behind Gilded Doors*, p. 9.

⁸¹⁷ Gary Freeman, 'Modes of Immigration Policies in Liberal Democratic States'.

⁸¹⁸ Leo Lucassen, *The Immigrant Threat. The Integration of Old and New Migrants in Western Europe since 1850*, Urbana and Chicago: University of Illinois, 2005. See especially pp. 100-103.

⁸¹⁹ Irregular domestic workers (*colf*) and care assistants (*badanti*) remained a noticeable exception to this rule, as their popularity amongst many of Italy's right-wing parties' electorate meant they remained off limits for attack.

receptions from mainstream political parties and the media, as the response to the arrival of a large boatload of Kurds in mid 2002 revealed, with the leader of the *Lega Nord* calling for boats to be bombed. Mainstream political parties, the media and public opinion placed great emphasis on the physical threat that these irregular migrants allegedly brought with them. In addition to the security threat posed by irregular migrants, a supposed cultural threat also emerged in the growing opposition put forward towards Muslims in Italy, especially after September 2001. Oriana Fallaci's 2002 book on Islam's supposed attack on freedom and civilisation, for example, sold over one million copies.⁸²⁰ Berlusconi publicly supported Fallaci's controversial stance; and while doing so he pointed out 'the superiority of our civilisation for well-being and respect for human rights; things that are not found in Islamic countries'.⁸²¹

Minor, pro-asylum sympathetic political voices continued to oppose mainstream governing political parties' turn towards more restrictive policies in the 2000s. Examples included the Greens in all three countries, the Refounded Communists in Italy and the Labour Party in Ireland. Nonetheless, dissenting figures in governing political parties that favoured forming more generous asylum policies appeared to hold more influence as the 2000s progressed. Petro Georgiou of the Australian Liberal Party stood out when, in mid 2005, he proposed a private member's bill that led to a slight softening of government detention policy for boat people. A year later, Georgiou and two other Liberal backbenchers crossed the floor to vote against a migration amendment bill that would have led to all asylum seekers coming to Australia by boat having their applications processed abroad. The Prime Minister later withdrew the bill because of the threat further Liberal rebels would cross the Senate floor. In Italy, the presence of two small parties emanating from the defunct Christian Democrat party in the Berlusconi government between 2001 and 2006 stymied some of the proposed tough policies on asylum seekers and immigrants.⁸²²

In Ireland, no successful anti-immigrant party emerged. Perhaps as a consequence, political debate on asylum bore less emphasis on asylum seekers perceived differences and more stress on their economic costs. The debate about asylum seekers' use of Dublin's maternity hospitals represented a prime example of this. The

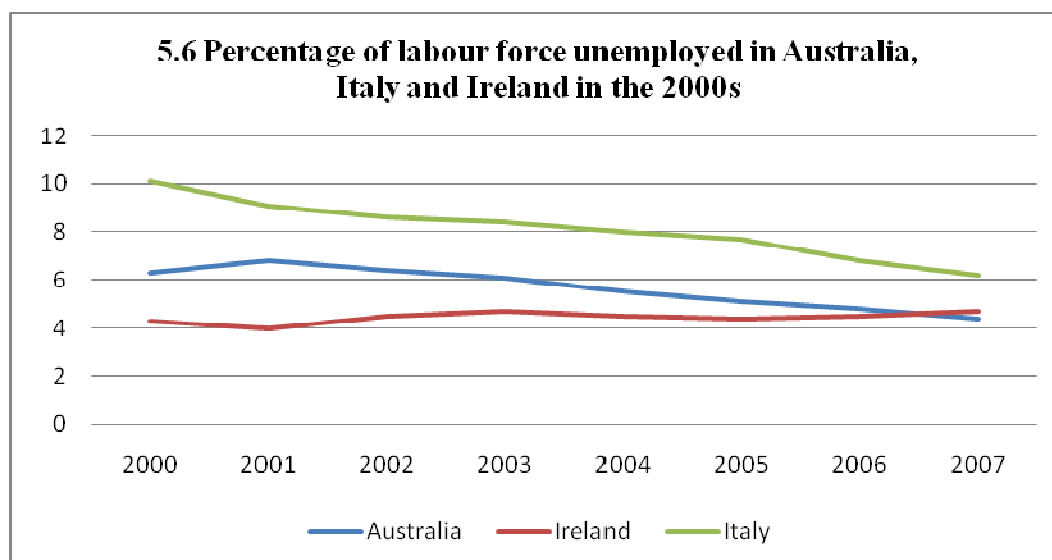
⁸²⁰ Oriana Fallaci, *La Rabbia e l'Orgoglio*, Milan: Rizzoli, 2002.

⁸²¹ Andrew Geddes, 'Il rombo dei cannoni? Immigration and the centre-right in Italy', p. 362.

⁸²² Asher Columbo and Giuseppe Sciortino, 'La legge Bossi-Fini: estremismi gridati, moderazioni implicite e frutti avvelenati', Jean Blondel and Paolo Segatti (eds.), *Politica Italia*, Bologna: Il Mulino, 2003, pp. 195-215, p. 208-9.

perceptible reduction in comparisons between asylum seekers and Irish emigrants symbolised Ireland's hardening attitude. Previous images promoting empathy began to diminish as the country's increasing Western- and European-isation meant that its poor past became less pertinent than its expected bright future. Contradicting Roddy Doyle's comment from the 1980s, Irish people by the 2000s no longer symbolically considered themselves the blacks of Europe.

The growth of compassion fatigue meant that NGOs and religious figures met with less backing than before from the public, politicians and the media despite the best efforts of the NGOs in all three countries.⁸²³ This occurred notwithstanding declining unemployment in the 2000s; before the 2008-09 economic crisis.



OECD, *OECD Factbook 2009: Economic, Environmental and Social Statistics*, OECD: Paris, 2009, Labour section.

In the 1990s, sympathisers relied on the courts to stymie governments' attempts to implement harsher asylum policies. In the 2000s, this proved more difficult as governments attempted to close off appeals to national courts, amend legal loopholes and externalise the asylum process.

Implementation

⁸²³ Australian NGOs to the fore included the HREOC, the Justice Project, the Jesuit Refugee Service and the Refugee Council of Australia; in Italy, the ICS, ARCI, Caritas, and the CIR remained to the fore; in Ireland, Irish Refugee Council, the NCCRI, FLAC and the Immigrant Council of Ireland led the charge against restrictive measures.

Recognising the difficulties produced by pro-asylum actors in implementing restrictive asylum policies throughout the 1990s, governments attempted to stave off their influence in the 2000s. They did so by circumnavigating many of the channels pro-asylum actors relied upon in the 1990s to protect asylum seekers from the potential damages of restrictive asylum policy changes. In Australia, this took an extreme form after the *Tampa* standoff in autumn 2001. The incident allowed the government to successfully introduce a privative clause denying asylum seekers the right to seek judicial review of their asylum claim in all but the most exceptional of circumstances. The Labor opposition had opposed the clause for the previous two years but its fear of losing further votes over *Tampa* led to the collapse of its resistance. Despite the judiciary managing to thwart this clause one year later, the Pacific Solution's externalisation of asylum still succeeded in restricting asylum to a degree sceptical European actors could only dream of. Out of all the EU countries, Italy perhaps came closest to replicating the Australian stance when, in 2004, it began to deport undocumented migrants to Libya, despite not processing asylum seekers' claims for protection before deportation. Sympathetic actors did eventually manage to halt the Italian government's practice.⁸²⁴ Nonetheless, the potential political benefits that can arise from taking a harsh public stance on irregular migration meant that international condemnation could be offset by considerable domestic gains, which perhaps explains Italy's decision to resume the deportation of undocumented migrants to Libya in 2009.

The Europeanisation of asylum policy in the 2000s also served to further restrict asylum policy in Italy and Ireland. Although intra-national discussions on migration in Europe began in the 1980s, the 2000s marked the reintegration of asylum policies into the domain of Brussels. The 1999 European Council meeting at Tampere signalled the beginning of the supra-nationalisation of asylum and the end of the differences between the Commission and the member states concerning asylum and migration policy.⁸²⁵ Up until then, member states came together via European trans-governmental working groups to consider these policy issues. Significantly, these groups excluded the European Commission. When the member states agreed to bring the issue back under

⁸²⁴ The European Court of Human Rights ordered Italy to suspend the repatriation of individuals to Libya because of the inadequate response of Italian authorities to its queries regarding how people were identified, whether they had applied for asylum or not, and on what grounds Italian authorities had decided to repatriate. European Court of Human Rights 11593/05 présentée par Mohamed SALEM et soixante-dix-huit autres requérants contre l'Italie, 11 May 2006.

⁸²⁵ Emma Haddad, 'The External Dimension of EU Refugee Policy: A New Approach to Asylum?', *Government and Opposition*, Vol. 43, No. 2, 2008, pp. 190-205.

the competence of the Commission, it did so only after it became firmly established under the responsibility of the EU's third pillar, which represented security and justice affairs. This reflected the influence of the Trevi, Ad Hoc Committee on Immigration (AHI) and Schengen groups, which the member states established in the 1980s.

Previous discord between the Commission and the member states stemmed from a critical case in the European Court of Justice taken by Germany, France, the Netherlands, Denmark and the UK against the European Commission in the mid 1980s. The five countries argued that the Commission exceeded its mandate when it made efforts to implement a set of guidelines for a community policy on immigration. In their submissions to the European Court of Justice, the five contended that the Treaty of Rome made no provision for a common policy in the social field; the Commission's role, they contended, was designated to exclusively deal with non-binding instruments.⁸²⁶ At the oral procedure stage, the Commission communicated its past problems with the member states regarding a common migration policy. Its attempts to initiate discussions on a common policy had, it stated, met with total opposition from certain member states.⁸²⁷ The European Court of Justice annulled certain parts of the Commission's policy initiative, with the overall effect of fudging the issue. It also displayed the intent of many member states to keep the Commission, which had heretofore proposed several inclusive initiatives on migration, away from an issue that they regarded as one inherently linked to that of sovereignty.

In the 1990s, member states' tendency to remove the possibility of Commission tinkering with national immigration and asylum policies for non-EU citizens continued, with asylum numbers remaining 'too high' and politically explosive for most countries' governments to give up national competency.⁸²⁸ Instead, trans-governmental working groups, comprised of government ministers from various member states with responsibility for asylum, brought forward several asylum initiatives. The aim of the first inter-governmental Schengen Agreement, signed in June 1985 by the Benelux countries, France and Germany, aimed to gradually decrease controls on community citizens crossing internal borders; but the intention of the second Schengen Agreement,

⁸²⁶ Kenneth R. Simmonds, 'The Concertation of Community Migration Policy', *Common Market Law Review*, Vol. 25, 1988, pp. 177-200, p. 182 and p. 183.

⁸²⁷ *Ibid*, p. 197.

⁸²⁸ Timothy Hatton & Jeffrey Williamson, 'Refugees, Asylum Seekers and Policy in Europe', National Bureau of Economic Research Working Paper Series, 2004, <http://www.nber.org/papers/w10680> (19 Aug 2009). See p. 25 and p. 32.

signed in 1990, bore little resemblance. As Sandra Lavenex explained, ‘the biggest consensus among the contracting parties was manifested in questions relating to the fight against illegal immigration and the intake of asylum seekers, which was in fact where the most detailed and far-reaching provisions were adopted – although the question of asylum seekers and refugees was not even mentioned in Schengen I.’⁸²⁹ With these changes, Schengen came to signify “Fortress Europe” due to the inclusion of a number of measures relating to the harmonisation of regulations concerning checks at external frontiers, the improvement of international co-operation at the level of the police and judiciary and the harmonization of visa and immigration policies.⁸³⁰ Nonetheless, various teething problems with these new restrictive practices meant they only bore fruition in the 2000s, however, as rising asylum claims in the late 1990s demonstrated.

Similarly, member states set up the Ad Hoc Group on Immigration (AHI) in 1986 as an offshoot of the Trevi group, which consisted of officials from all European member states’ justice and interior ministries – but not the Commission. As Lavenex has pointed out, the presence of Schengen officials in the AHI meant that the ‘Schengen actors were able to engage in double-tracked activities, and thus, could pass on their ideas to other member states’.⁸³¹ She records that the provisions of the second Schengen Agreement closely resembled those of the 1990 Dublin Convention, which attempted to regulate the in-flow of asylum seekers to the EU.⁸³² Its objective?: to eradicate so-called “asylum-shopping” by ensuring that an asylum seeker could only make an application in his or her country of arrival. These kinds of intra-governmental initiatives continued throughout the 1990s. Virginie Guiraudon acutely surmised the idea behind these moves:

Building upon pre-existing policy settings and developing new policy frames, governments have circumvented national constraints on migration control by creating transnational co-operation mechanisms dominated by law and order officials, with EU institutions playing a minor role. European trans-governmental working groups have

⁸²⁹ Sandra Lavenex, *The Europeanisation of Refugee Policies*, Hampshire: Ashgate, 2001, p. 95.

⁸³⁰ Julian J.E. Schutte, ‘Schengen: Its Meaning for the Free Movement of Persons in Europe’, *Common Market Law Review*, Vol. 28, 1991, pp. 549-570, p. 550.

⁸³¹ Sandra Lavenex, *The Europeanisation of Refugee Policies*, p. 91.

⁸³² *Ibid.*

avoided judicial scrutiny, eliminating other national adversaries and enlisted the help of transnational actors such as transit countries and carriers.⁸³³

The European dactylographic system, a biometric identification project known more commonly as Eurodac, represented one striking example of this development. In late 1991, inter-governmental discussions took place on the prospect of instigating a European finger-printing scheme for asylum seekers. In November 1992, the AHI established a progress report to establish the feasibility of such a project. Political dialogue over the system began one year after the report confirmed the viability of the project in 1995. The steep increase in asylum figures from mid-1997 onwards, caused mainly by political instability in Kurdish Iraq, caused states to expedite plans to implement the scheme. Inter-institutional problems arose between member states and the European Commission concerning which of them would hold responsibility for implementing the scheme. Again, the member states managed to ensure the operation of the scheme rested with them when the European Council adopted Eurodac in 2000 and put it into force in January 2003.⁸³⁴

In Ireland, governments from 1997 onwards referenced other EU countries' asylum policies, particularly British asylum policy, to defend the formation of more restrictive legislation and practices; a factor again evident in the debates leading up to the 2004 citizenship referendum. German government politicians notably did the same when controversially reforming its Basic Laws in 1993 to restrict asylum.⁸³⁵ The *Immigration, Residence and Protection Bill* 2008 demonstrated Ireland's desire to integrate the EU Qualification Directive (European Council Directive 2004/83/EC) on minimum standards for the qualification on protection. It emphasised the role of 'subsidiary protection', however, in a highly restrictive spirit, which caused widespread

⁸³³ Virginie Guiraudon, 'European Integration and Migration Policy: Vertical Policy-making as Venue Shopping', *Journal of Common Market Studies*, Vol. 38.2, June 2000, pp. 251-271, p. 251.

⁸³⁴ Jonathan P. Aus, 'Eurodac: A Solution Looking for a Problem?', *European Integration Online Papers*, Vol. 10, No. 6, 2006. Available at <http://eiop.or.at/eiop/texte/2006-006a.htm> (accessed on 28 June 2009). See pp. 7-12.

⁸³⁵ Germany amended Article 16 of its Basic Law in 1993, which had simply stated that 'Persons persecuted on political grounds shall have the right of asylum'. Although this statement remained in place in the amendment, entry became more restricted due to the accompaniment of four more strict stipulations. For a more in-depth study of the amendment, see Sam Blay and Andreas Zimmermann's 'Recent Changes in German Refugee Law: A Critical Assessment', *American Journal of International Law*, Vol. 88, No. 2, 1994, pp. 361-378. This change was not without controversy, causing serious disharmony in Germany's SPD party. For further details on this, see Virginie Guiraudon, *Policy Changes Behind Gilded Doors*, pp. 150-1 and Liza Schuster, *The Use and Abuse of Political Asylum in Britain and Germany*, London: Frank Cass, 2003, pp. 180-2.

unquiet amongst NGOs and opposition politicians and led to the bill returning to the drafting board once more. Successive Italian governments, by contrast, have consistently failed to implement EU measures relating to asylum; instead they have employed what Caponio and Zincone call a “sham Europeanisation” to supposedly incorporate EU asylum policies.⁸³⁶ This stems, once again, from the absence of organic domestic legislation covering the country’s asylum policy. In addition to aiding states’ to further restrict their asylum regimes, closer European ties also succeeded in stifling some member states’ restrictive desires.

The ECHR, which all EU member states were obliged to sign, insured that detention of asylum seekers remained a controversial policy for European members to apply. The Council of Europe regularly reminded European states of their commitment to the ECHR. The ECtHR interpreted article 3 of the convention, which prohibited ‘inhuman or degrading treatment or punishment’, as applying to conditions of detention and as further reason to enforce the *non-refoulement* principle if potential deportees faced the possibility of experiencing maltreatment in their home country. The steady stream of asylum cases going to the ECtHR in the 2000s testifies to the ability of the Convention to challenge national asylum policies, as demonstrated most clearly by the 2004 ECtHR case which ordered Italy to halt the deportation of migrants back to Libya.⁸³⁷ Although several states, including Italy, did choose to detain asylum seekers, they never managed to employ as strict a detention policy as Australia because of the influence of supranational organisations. Consequently, European states usually employed detention as a short-term measure. In contrast, Australia’s defiance during and after the *Tampa* incident candidly exhibited its ability to act alone.

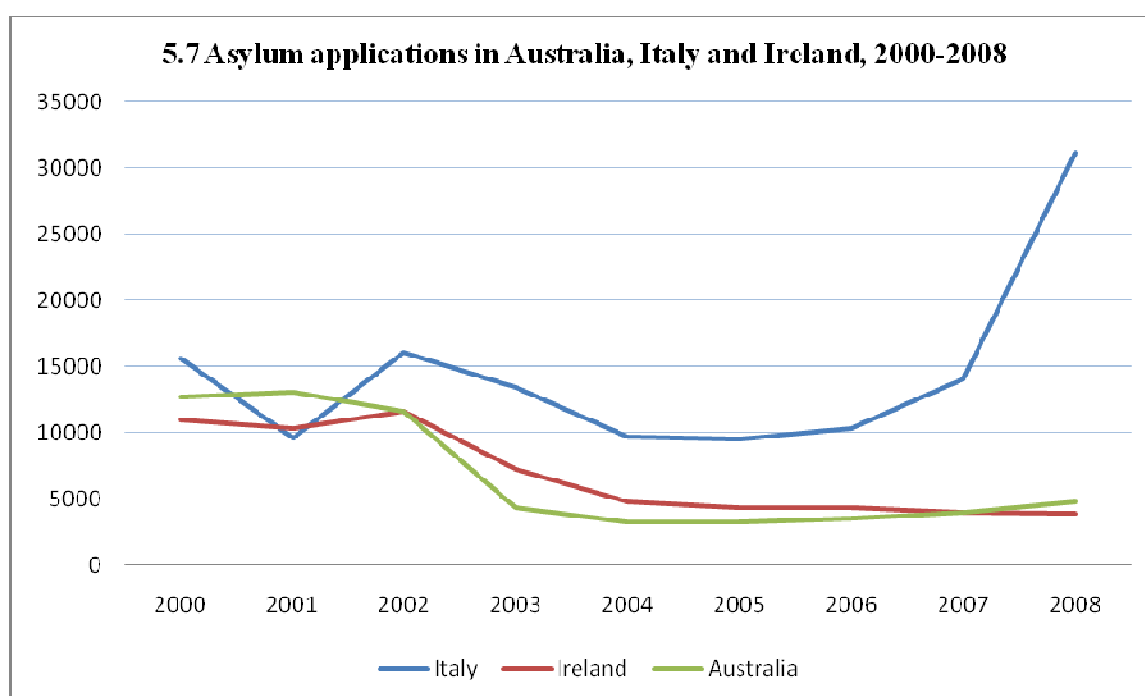
Effects

States’ externalisation and securitisation of asylum led to significant decreases in applications after 2002. From 2006 onwards, Italy alone experienced a large rise in asylum applications. Several reasons explain Italy’s exceptionality. Increased European

⁸³⁶ Giovanna Zincone and Tiziana Caponio, ‘Immigrant and immigration policy-making: The case of Italy’ IMISCOE Working Paper: Country Report, 2006, p. 15. Available at <http://www.imiscoe.org/publications/workingpapers/documents/Italianimmigrantsandimmigrationpolicy-making.pdf>.

⁸³⁷ For some of the more recent cases brought to the ECtHR by migrants around the Council of Europe’s member states, see Pieter Boeles and Marianne Bruins, ‘Case Reports of the European Court of Human Rights’, *European Journal of Migration and Law*, Vol. 8, 2006, pp. 357-377. For the cases involving states’ deliberations on asylum applications, see pp. 359-361 & 373-377.

cooperation meant asylum seekers no longer managed to travel through Mediterranean EU member states with the same ease as before. In the past, Italy allowed thousands of potential asylum seekers to pass through its northern borders. As Massimo D'Alema had suggested during his premiership in the late 1990s, if Italy had installed a coherent asylum policy, it would have meant an increase in asylum applications. Although Italy still lacked a proper asylum policy by 2006, northern states had managed to stem the flow of asylum seekers travelling north from EU Mediterranean countries, such as Italy.



Figures: Numbers for 2000-2003 taken from previous tables used in the thesis. Numbers for 2004-2008 come from UNHCR, 'Asylum Levels and Trends in Industrialized Countries 2008: Statistical Overview of Asylum Applications Lodged in Europe and Selected Non-European Countries', 2009, p.13, <http://www.unhcr.org/statistics/STATISTICS/49c796572.pdf>.

The reaction of states to asylum seekers by the 2000s demonstrated the enduring nature of national asylum and immigration policies. Countries with traditionally officious immigration policies managed to retake control; countries without any applicable immigration policies reacted unwittingly. Australia always presided over a very ordered immigration system since its federation in 1901. When boat people in the 1990s and 2000s threatened this, successive governments implemented a series of punitive measures in order to restore control. In so doing, Australia upheld its long-standing policy of disallowing any unwanted arrivals from entering its society, even if it

meant becoming a temporary international pariah.⁸³⁸

Ireland, although not as renowned as Australia for its strict immigration policies, contained similarly restrictive rules relating to entry and stay from its independence to the early 1990s. The state refused to let anybody believed to threaten the national identity and character of the country to enter the country. Asylum seekers from the 1990s onwards, however, applied for protection from within Ireland rather than from without. Because of the enormous rise in applications that Ireland experienced, the state and successive governments reacted with hesitancy when dealing with asylum seekers. Yet, after 2002, and especially after the 2004 citizenship referendum, the Irish government succeeded in steadfastly negating these problems, as the reduction in applications confirmed. Of course, people still managed to apply for protection in Australia and Ireland after 2002 because they could not reintroduce measures as restrictive as those employed before the 1970s. Nonetheless, numbers decreased and with it the amount of debate and discussion over asylum in public and political debates more generally.

Other states that had historically overseen immigration regimes low on efficiency and high on ineptitude, such as Italy, struggled to cope with the large increase in immigrants arriving in the latter decades of the twentieth century and beyond. Despite repeated policy changes that have avowed to tackle immigration over the last twenty years, Italy's infamous bureaucratic inefficiency saw little change as large numbers of irregular migrants and asylum seekers continued to enter annually. One might say that Italy's failure to fashion a coherent asylum policy over half a century after it had ratified the UN Convention on Refugees exposed such impotence. This ignores the tendency of Italy to knowingly allow asylum seekers to pass through its country in the 1990s en route to its northern EU neighbours. By the late 2000s, however, northern EU states had arrested such a development and Italy consequently received a notable jump in asylum applications, especially when compared to other EU member states. In Italy's defence, its geographic proximity to North Africa, the Middle East and the Balkans and its 7000 kilometres of coastline meant stemming this flow remained an incredibly difficult task to fulfil. Ireland and Australia, two isolated islands – one in the north, one in the very south – meant they never experienced the incessant flows that Italy regularly encountered.

⁸³⁸ This resembled the state's reluctance to change its 'White Australia' immigration policy or to grant Aborigines Australian citizenship until the 1960s.

Settler-societies, with their long histories of immigration, had extensive experience of dealing with migrants. Hence, when Australia put in place a number of measures to stem the flow of people seeking asylum in their country, it met with success. Sender societies, like Ireland and Italy had no modern history of dealing with people arriving in their country. Consequently, it took longer for these countries to develop adequate methods to lower the number of people seeking asylum. Ireland and Italy's membership of the European Union and the Council of Europe – both founded in the hope of insuring that Europe became a more humanitarian continent than the Second World War suggested – meant that its approaches to halting the arrival of asylum seekers required more sophistication than those employed by settler-societies not answerable to strong supranational organisations. Countries could not, for instance, openly admit that their policies potentially deterred people fleeing persecution from applying for asylum – as Australia did – because it would have gone against the principle of the ECHR.

Nonetheless asylum seekers who received visas to remain in Australia – some of them after an extended stay in one of country's unpleasant detention camps – benefited from the country's long history of immigration and its turn towards multiculturalism in the 1970s. Extensive measures had developed by the 1990s to facilitate foreigners' efforts to adapt to life in Australia. Furthermore, considerable state and federal funding promoted diversity. In addition, access to citizenship remained available to all legal residents who spent two of the previous five years legally resident in the country before July 2007. After July 2007, in a move consistent with the Liberal-National coalition government's tougher outward stance towards immigration, Australian legislation required migrants to have resided legally in the country for four years to acquire citizenship; and only then after passing a new written exam testing the candidate's knowledge of Australian culture and history. Although changes in Australia's requirements made attaining citizenship more taxing than before, conditions appeared remarkably flexible when compared to Italy. Migrants in Italy must have resided legally in the country for ten years to acquire citizenship; unless they could claim Italian ethnicity via *ius sanguinis* (available up to the third generation), which would mean the grant of citizenship after three years or unless they married an Italian, which would have

meant gaining citizenship in six months.⁸³⁹ Ireland, despite its 2004 citizenship reform, retained relatively open conditions for migrants to acquire citizenship. Migrants had to have resided in the country for five of the previous nine years to apply for citizenship. Children born in the country could claim citizenship if one of their parents had previously lived in Ireland for five of the previous nine years. In Australia, children had to wait ten years to attain citizenship if no parent held Australian nationality, while in Italy they had to legally reside in the country for their first eighteen years to gain citizenship.

Conditions in Ireland and Italy for asylum seekers who arrived without the necessary documents remained better than in Australia – detention remained relatively rare and, when used, lasted for short periods – but the latter represented a more adaptable and open society for refugees to join. Ireland and Italy’s history of receiving shelter from other countries in times of need meant that it had to, initially at least, tread carefully for fear of appearing to forget its past. Therefore, when governments formed measures to stop asylum seekers arriving, politicians talked about restricting only “bogus” asylum seekers, not “genuine” refugees, who they promised to welcome – even if the reality suggested otherwise. Australia, by contrast, placed no emphasis on whether asylum seekers deserved protection or not; because they arrived uninvited they remained unwelcome, no matter what their circumstances.

⁸³⁹ Marta Arena, Bruno Nascimbene and Giovanna Zincone, ‘Italy’, Rainer Bauböck *et al.* (eds.), *Acquisition and Loss of Nationality*. Volume 2: Country Analyses, Amsterdam: Amsterdam University Press, 2006, pp. 329-366, p. 330-2.

Conclusion

Many scholars are still coming to the field of migration studies from varying disciplines. When these disciplines gather, as one expert wrote, it can sometimes resemble when 'one sometimes arrives at a party and is ... surprised to find out who else is there'.⁸⁴⁰ Historians, more than others at the party, appear particularly uncomfortable and tend to linger unsociably in the corner because, according to Jan and Leo Lucassen, '[t]he migration landscape is full of canyons and fast running rivers', and '[t]he deepest canyon separates social scientists from historians'.⁸⁴¹ By using a comparative framework that borrows from Fritz Scharpf's basic game theory from 1997, practicing a methodology that is largely associated with the historian, and using government, non-government and legal sources, this study has attempted to utilise a wide variety of disciplines to present a comprehensive account of asylum policymaking trends in three countries from 1989 to 2008.

The historical chapter provides the most salient developments in asylum policy throughout the twentieth century in order to set the context for later discussions. Before 1989, states consistently endeavoured to shut the door on people who offered them little in return; a trend that has arisen frequently since the politicisation of asylum in the seventeenth and eighteenth centuries. Most generous asylum regimes since then derived from national self-interest. France's neighbours welcomed Huguenots in the late seventeenth century predominantly because of the benefits they brought with them; not because of states' compassion towards them. Similarly, the Poles seeking asylum in France in the 1830s received a welcome reception by French high society because the refugees came from predominantly wealthy and skilled backgrounds, as the young Chopin demonstrated. When thousands of poor, East European Jews fled pogroms in Tsarist Russia, countries reacted less amenable, as symbolised by Britain's decision to close its doors to people obviously in dire need of protection at the beginning of the twentieth century. This trend repeated itself in 1920s Europe when wealthy barons fleeing Russia after the Civil War received hospitable treatment whilst poor Russian

⁸⁴⁰ Silvia Pedraza, 'Immigration research: a conceptual map', *Social Science History*, 14, 1990, 43-67, p. 44. Quoted in Caroline Brettell & James Hollifield, 'Migration Theory', in Caroline Brettell and James Hollifield (eds), *Migration Theory*, Routledge, New York and London, 2000, pp.1-26, p. 2.

⁸⁴¹ Jan and Leo Lucassen, 'Migration, Migration History, History: Old Paradigms and New Perspectives', Jan and Leo Lucassen (eds.), *Migration, Migration History, History: Old Paradigms and New Perspectives*, Bern and New York: Peter Lang, 1997, pp. 9-40, p. 10.

refugees faced serious challenges to survive – until their illegality threatened states' authority.

States begrudgingly accepted Jewish asylum seekers fleeing persecution in Nazi Germany at first. But most countries soon chose to turn their backs as numbers rose throughout the late 1930s, especially after the Nazi regime began to disallow Jews from taking their monetary possessions with them when fleeing. Even when the extent of the Nazi atrocities came to the world's attention, states still remained reticent to rectify matters, as the failure of the 1943 Bermuda Conference attested. Only public dissatisfaction and the work of Jewish NGOs forced the Allies into action, mirroring what occurred in the early 1920s when private voluntary organisations compelled the League of Nations to take note of the plight of Russian refugees.

Two types of people sought asylum from the end of the Second World War up until the 1980s in liberal democratic states: survivors of Nazi aggression, who had states resettled by the early 1950s; and escapees from the Soviet bloc. The first group served to allay the guilt from past inactions. The second group, made up of Soviet defectors, received a sympathetic welcome because of their small numbers, the ideological advantages they offered, their relatively similar cultural backgrounds and their significant labour skills at a time of economic rebuilding. In contrast, the majority of asylum seekers who applied to western countries for protection from the late 1980s onwards came from either the poorer South (and were hence of a different skin colour to past asylum seekers) or the by-then politically inconsequential East Europe. Asylum thus awakened debate on a broad range of issues throughout the 1990s and 2000s markedly different from before.

Rather than aiming to provide a theoretical framework that would explain asylum policymaking by eliminating variables shown to have little impact on outcomes, this study focused on integrating contextual explanations into a general narrative that highlighted the characteristic features of each case by introducing two broad coalitions of actors. One featured actors sympathetic to asylum seekers' plight while the other consisted of actors more sceptical of asylum seekers' motives and impact. By analysing the formation, implementation and outcomes of new asylum policies, this study encapsulated political and public debates on asylum, the role of a wide range of actors in policymaking, and the effects policy changes have on asylum flows and asylum seekers themselves.

Many peculiarities emerged in the comparison between Australia, Italy and

Ireland. Every country had, to a certain degree, a unique asylum system based on a particular contextual setting within which asylum policy was established and applied. History, identity and geography all contributed heavily to the shaping of national asylum policies from 1989 to 2008. In Ireland, for example, the continuing resonance of the country's emigrant history and its past experience of colonial rule meant that asylum seekers received a relatively welcome reception in Ireland initially. The Catholic Church and NGOs ensured that some sympathy for asylum seekers remained ever present in debates after the early warm welcome became markedly cooler. Ireland's northerly geographic position in Europe and the EU's emphasis on returning asylum seekers to the first member state they entered meant that Ireland never had to face an enormous rise of people seeking asylum from neighbouring countries.

Italy also had an extensive emigrant past but it rarely featured in more recent national migration debates because of the state's reluctance to commemorate its migrant past – a phenomenon made worse by the breakup of Italy's major political parties in the early 1990s. Italy remained reluctant to host uninvited people in need of shelter but its geographic position and its imperial past meant many asylum seekers from former Italian colonies continued to arrive in search of sanctuary. The continued absence of any national asylum policy meant that refugees and migrants on temporary humanitarian visas often lived an inhumane existence in abandoned buildings dotted around the peripheries of the country's towns and cities. Although many of the people seeking asylum in Italy came from previous Italian colonies, such as Albania, Eritrea, Ethiopia and Somalia, the failure to remember the colonial campaigns meant that empathy for these newcomers remained in short supply. As occurred in Ireland, the powerful Catholic Church remained outspokenly pro-migrant, providing opposition to left- and right-wing government migrant initiatives that it disagreed with. Unlike Ireland, however, Italy's geographic location in the Mediterranean, close to the war-ravaged Balkans, an unstable Middle East and a refugee-producing Africa meant that it received a constant ebb and flow of asylum seekers. Although its EU membership meant that many of these newcomers simply passed through Italy in the 1990s on their way to a more northerly location, the tightening of the EU's Schengen area and the increased implementation of the Dublin Convention by EU member states meant that Italy and other southern Mediterranean EU member states began to bear the brunt of non-European migrants seeking to enter the EU from the mid 2000s onwards.

Australia, too, had its own unique asylum system. Unlike its EU counterparts,

Australia's history of immigration intake meant that a clear delineation existed between economic migrants and asylum seekers. Nonetheless, the country still treated asylum seekers differently, depending on whether they entered the country on valid visas or whether they entered irregularly because of its historic fixation on border control. This trait stemmed from Australia's long history of controlling immigration to its country, as well as the uncertainty that derived from living so far from its traditional population base and so close to its densely populated northern Asian neighbours. Although the Catholic Church and other religious organisations criticised successive government actions towards boat people, they failed to make the same impact as in Ireland and Italy because of their lesser role in domestic Australian politics. Boat people also came to Australia, but in much smaller numbers than to Italy because of Australia's relative isolation and because of its tight policing of its northern coast. Because Australia was not a member of any supranational organisation on a par with the EU, the country could act as it saw fit to deter boat people; unlike in the EU where certain norms and institutions existed to stem overly restrictive measures. Despite Australia's ability to implement more restrictive asylum policies than EU member states – which it did in the wake of the *Tampa* crisis in 2001 – it is notable that the country has reverted to a decidedly more liberal set-up since the return of Labor to government in late 2007.

EU member states, with Italy to the fore, have since the late 2000s attempted to put in place an asylum system that replicates policies used by Australia in the early 2000s by externalising asylum, making more use of detention and reducing the entitlements of asylum seekers deemed worthy of protection. Perhaps Australia's more recent return to policies that emphasise humanitarian traditions suggests that, in contrast to what Steiner termed the existence of a statute of limitations on moral guilt, there may exist a limit to how restrictive countries can make their asylum policies before there is a marked return to more liberal principles. Anti-immigration parties' demise appears less likely in Europe than in Australia, where Pauline Hanson's anti-immigration party disappeared in five years, however,

Despite the uniqueness of the case studies, however, notable trends from 1989 to 2008 emerged, especially when compared and contrasted with asylum policymaking during the Cold War. From the end of the Second World War to 1989, governments defended their generous asylum policies by employing ethical arguments based on ideological principles, humanitarianism, moral values and the individual's entitlement to human rights. While sympathisers continued to adhere to these principles in the 1990s,

governments began to fashion arguments based on principles relating to state sovereignty, public security and the integrity of welfare regimes to support restricting asylum. Rarely had governments raised such issues during the Cold War. For many European countries without recognisable refugee or asylum systems during the Cold War, such as Ireland and Italy, economic factors, such as unemployment rates and economic growth, also began to play important roles in asylum debates, largely due to the fusion of asylum and immigration issues.

Asylum during the Cold War	Asylum after the Cold War
<i>Small</i> number of asylum applications	<i>Large</i> number of asylum applications
<i>Ordered</i> transport of asylum seekers from transit countries in Europe to resettlement countries (usually the USA, Canada, Australia, etc.)	<i>Disordered</i> arrival of asylum seekers (sometimes interpreted as a loss of control/sovereignty)
<i>Belief</i> that asylum seeker required protection	<i>Doubt</i> that asylum seeker required protection
<i>Large ideological benefits</i> associated with receiving <i>Soviet</i> defectors/escapees	<i>Little ideological benefits</i> associated with receiving asylum seekers from the <i>poor South</i> or <i>post-communist East Europe</i>

Considering the recent global economic downturn, the conclusion will finish with a comparison with the Inter-War period because of the obvious parallels with the 1930s economic crisis. The arrival of communism in Russia in 1917 led to over one million refugees streaming into western states in the 1920s. Approximately seventy years later, the collapse of communism in Eastern Europe again led to huge numbers of people seeking asylum in liberal democratic states. Both groups, while not generally welcomed, eventually managed to settle in the countries in which they applied for asylum. Despite a noticeable decrease in refugees in the 1930s, those seeking protection

in that crisis-hit decade received more hostile treatment from European governments than their 1920s counterparts, as governments strengthened enforcement mechanisms to restrict and expel refugees. Due to the increasing economic difficulties stemming from the economic crisis of 2008-09, governments are likely to do the same in forthcoming years.

In the 1930s, national and international voluntary organisations sympathetic to the plight of people fleeing their home countries objected to governments' increasingly strict asylum practices. But these voluntary organisations had no avenues to seriously challenge governments' turn towards restrictionism and frequently campaigned for diverging goals (at Evian, for instance, private organisations sought four markedly different solutions). By contrast, NGOs during the 1990s took advantage of the expansion of national courts' powers – a development Charles Epp termed the rights revolution – to dispute the imposition of more parsimonious asylum policies, as the Australian and Irish chapters confirmed.⁸⁴² They also effectively joined forces; often making strange bedfellows in the process as the combination of the communist-linked ARCI and the Vatican-linked Caritas in the National Asylum Programme in Italy showed. In Australia, NGOs merged under the banner of the Refugee Council of Australia; in Italy in they came together under the Communal Action plan and the National Programme for Asylum (and its successors); and in Ireland under the rubric of Integrating Ireland. This teamwork also appeared on the European stage, with the European Council of Refugees and Exiles including the Irish Refugee Council and the Italian Refugee Council, along with 37 other national NGOs from Europe. Sympathisers' propensity to affect political, media and public opinion – by alluding to certain national, moral and humanitarian principles – also managed to weaken governments' efforts to impose more inhibitive asylum policies, as clearly displayed in the Australian, Italian and Irish chapters. Efforts by governments to externalise asylum and thwart the influence of sympathisers by bypassing national courts during the 2000s conveyed the success sympathisers had during the 1990s. By the late 2000s governments appeared to have substantially curbed the impact of sympathisers.

Reaching western countries to apply for asylum became more difficult to achieve

⁸⁴² Charles Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*, Chicago: University of Chicago Press, 1998. Dagmar Soennecken's recent PhD on the impact of national courts on asylum policymaking in Germany and Canada provides an excellent theoretical and empirical study that extends this theme further; Dagmar Soennecken, *The Growth of Judicial Power over the Fate of Refugees: A Comparison of Canada and Germany*.

in the 2000s, leading many potential asylum seekers to rely on human traffickers in order to enter western states. This often compelled asylum seekers to undergo perilous journeys across seas in rarely seaworthy boats or concealed travel in truck and ship cargoes. Though many governments defended these policy changes by saying they merely wanted to stem the number of “bogus asylum seekers” and “economic refugees” arriving, these changes affected all asylum seekers in equal measure. The NGO United against Racism estimated in July 2009 that over 13,250 people died trying to enter Europe since 1993; the majority of these deaths occurring in the 2000s.⁸⁴³ The challenge for sympathisers now is to adapt to offset such a development. The current economic crisis, unfortunately, makes this an even more arduous and difficult task to grapple with, as the 1930s demonstrated all too clearly. Indeed, when discussing that period, Hannah Arendt wrote:

No paradox of contemporary politics is filled with a more poignant irony than the discrepancy between the efforts of well-meaning idealists who stubbornly insist on regarding as “inalienable” those human rights which are enjoyed only by citizens of the most prosperous and civilised countries, and the situation of the rightless themselves.⁸⁴⁴

Despite the enduring veracity of the paradox Arendt outlines, this thesis has shown that the efforts of sympathisers, who Arendt terms ‘well-meaning idealists’, became more salient. As a consequence, people who managed to make asylum claims no longer remained ‘rightless’. By acting in unison and advocating for common goals actors sympathetic to asylum seekers can continue to make a real difference.

⁸⁴³ <http://www.unitedagainstracism.org/pdfs/listofdeaths.pdf> (27 Aug 2009).

⁸⁴⁴ Hannah Arendt, *The Origins of Totalitarianism*, p. 355.

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