

**Negotiating Power between Civil Society and the State:  
the Formulation of Asylum Policies in Italy and in the  
United Kingdom**

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**Thesis submitted for the  
Degree of Doctor of Philosophy  
Geography Department**

**April 2013**

## **DECLARATION OF AUTHORSHIP**

I, Cinzia Polese confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.



## **ACKNOWLEDGEMENTS**

First and foremost, I would like to express my sincere gratitude to my supervisors, Dr. Alan Ingram and Professor John Salt, for their insights, advice, and great support.

I would also like to thank my fellow PhD students, Ben, whose invaluable help to ‘brillianteering’ the final stages of the thesis has been extremely appreciated, Hang, Kezia, Lauren, Lea, Leo, and Valerie. I am happy and grateful for having made these important friends. It was an emotional rollercoaster filled with many cherished memories, including weddings and babies. Thank you!

Special thanks go also to all my interviewees without which the analysis of the topic would not have been possible. Thank you for your availability and trust.

I am also grateful for the + 3 Postgraduate Studentship given to me by the Economic and Social Research Council (ESRC), PTA-031-2006-00526 from 2006 to 2009.

Finally, I would like to thank my husband Mike whose support, patience and love have sustained me in these years. I love you, Maia and Elias very much!

## **ABSTRACT**

The research focuses on the formulation of asylum policies in two contrasting countries, the United Kingdom and Italy. The overall aim of the thesis is to account for the pattern of similarities and differences between asylum legislation in the two countries via an examination of the context and processes of policy making.

The hypothesis is twofold. Firstly, that differences in the nature of the state result in dissimilar policy outcomes and legislation. States vary according to their political and welfare systems and may be categorised on such bases. Although the EU Commission is strongly advocating the harmonization of asylum policies, member states still retain the power to decide who enters their territory and how to best deal with asylum claims, refugees and migrants.

Secondly, that policy is the product of interactions between governments and a range of stakeholders, in which each actor has a vested interest in the result and is able to deploy a particular kind, level and direction of power and influence. The effect is that asylum policy in one country may be dissimilar to that of another because of the interests and power of each state's stakeholders and the nature of the interaction between them and the government.

The stakeholders include governments and their local and national officials, social partners, local and community organisations, migrant organisations, Non-governmental Organisations (NGOs) and other institutions and groups such as employers, trade unions, religious groups, etc.

The research aims to identify how stakeholders in the two countries interact with each other in creating asylum policy and how the nature of the interaction varies between different types of state.

The methods employed are mainly qualitative. They include documentary evidence on parliamentary debates, NGOs reports, newspapers' articles analysis and in-depth interviews with stakeholders including elite interviewing.

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## ACRONYMS AND ABBREVIATIONS

|       |  |
|-------|--|
| ACNUR | <i>Alto Commissariato dell Nazioni Unite per i Rifugiati</i> (see: UNHCR)  |
| AI    | Amnesty International  |
| ARCI  | <i>Associazione Ricreativa Culturale Italiana</i> (Italian Cultural Recreational Association)                                  |
| ASGI  | <i>Associazione per gli Studi Giuridici sull'Immigrazione</i> (Association for the Juridical Studies on Immigration)           |
| CID   | <i>Centro di Identificazione</i> (Identification Centre)   |
| CGC   | <i>Confederazione Generale del Commercio</i> or <i>Confcommercio</i> (General Confederation of Commerce)                       |
| CGI   | <i>Confederazione Generale dell'Industria</i> or <i>Confindustria</i> (Confederation of British Industries: equivalent to CBI) |
| CGIL  | <i>Confederazione Generale Italiana del Lavoro</i> (General Italian Confederation of Work)                                     |
| CISL  | <i>Confederazione Italiana Sindacati dei Lavoratori</i> (Italian Confederation Union of Workers)                               |
| CIR   | <i>Centro Italiano Rifugiati</i> (Italian Refugee Centre)  |
| CNEL  | <i>Consiglio Nazionale dell'Economia e del Lavoro</i> (National Council for Economy and Work)                                  |
| CNA   | <i>Confederazione Nazionale Artigianato</i> or <i>Confartigianato</i> (National Confederation of Artisans)                     |
| CPT   | <i>Centro di Permanenza Temporanea</i> (Temporary Residence Centre)  |
| DDL   | <i>Disegno di legge</i> (bill)   |
| ECRE  | European Council on Refugees and Exiles  |
| FCEI  | <i>Federazione delle Chiese Evangeliche Italiane</i> (Federation of the Italian Evangelical Churches)                          |
| IAS   | Immigration Advisory Service   |
| IAT   | Immigration Appeals Tribunal   |
| ICAR  | Information Centre on Asylum and Refugees  |

|         |   |
|---------|---|
| ICS     | Italian <i>Consortium</i> of Solidarity   |
| ILPA    | Immigration Law Practitioners' Association  |
| JCWI    | Joint Council for the Welfare of Immigrants   |
| LGA     | Local Government Association  |
| MP      | Member of Parliament  |
| NGO     | Non-governmental Organization   |
| NIA Act | Nationality, Immigration and Asylum Act   |
| PNA     | <i>Programma Nazionale Asilo</i> (National Asylum Program)  |
| RC      | Refugee Council   |
| SPRAR   | <i>Sistema di Protezione per Richiedenti Asilo e Rifugiati</i> (Central Service of the protection System for Asylum Seekers and Refugees) |
| UIL     | <i>Unione Italiana del Lavoro</i> (Italian Labour Union)  |
| UNHCR   | United Nations High Commission for Refugees   |

#### **ITALIAN POLITICAL GROUPS**

|                      |   |
|----------------------|---|
| AN                   | <i>Alleanza Nazionale</i> (National Alliance)   |
| AUT                  | <i>Gruppo per le Autonomie</i> (Group for the Autonomies)   |
| CCD-CDU: Biancofiore | <i>Gruppo Unione dei Democratici Cristiani e dei Democratici di Centro</i> (Union of the Christian Democrats and Centre Democrats Group: Whiteflower) |
| DS-U                 | <i>Democratici di Sinistra-Ulivo</i> (Democrats of the Left-Olive Tree)   |
| FI                   | <i>Forza Italia</i> (Go Italy)  |
| LNP                  | <i>Lega Nord Padania</i> (Northern League also called <i>Carroccio</i> )  |
| MAR-DL-U             | <i>Margherita-DL-Ulivo</i> (Daisy-DL-Olive Tree)  |
| RC                   | <i>Rifondazione Comunista</i> (Comunist Refoundation)   |
| VERDI-U              | <i>Verdi-Unione</i> (Greens-Union)  |

# CHAPTER 1

## INTRODUCTION

### 1.1 AIMS AND OBJECTIVES

This thesis is about asylum policy-making and its formulation in two countries, the United Kingdom and Italy, where both the nature of government and the perception of asylum as a difficult issue are different. It analyses and compares asylum legislation passed in 2002 in the two countries: the Nationality, Immigration and Asylum Act for the United Kingdom and Law 30<sup>th</sup> July 2002, no. 189 – the so-called ‘Bossi-Fini’<sup>1</sup> – for Italy. Although different in essence, the two laws represent an important shift in the asylum system especially in the Italian case but also for the political thinking of the Labour government in the UK. The decision to look at these two particular Acts is therefore dictated by the fact that they were both passed in the same year and that they represented a change of direction for asylum legislation in both countries. The overall aim is to show how policy proposals with regard to asylum become policy decisions.

The thesis is based on four hypotheses. The first hypothesis is that the issue of asylum may be perceived as a threat to states’ interests and sovereignty. The threat can be understood in terms of national security, economy and national identity. As such, it generates very different emotions as well as anxieties whereby the tabloid media and public opinion on one side, and interest groups on the other, play an important role. Freeman (2006, 238) states that asylum “is thrashed out in a complex, rapidly changing, multi-level arena” while at “[n]ational-level asylum politics is characterised by agitated publics, mobilised interest groups, partisan conflict, and, in some instances, activist national courts”. As a result, nation-states demand a more central role and respond to public pressure by legitimising strict entry rules, detention, deportation and limiting welfare entitlements. Because of the two countries under analysis, however, it is impracticable to speak only about the issue of asylum. This is because Italy has only immigration legislation that covers asylum partially. Asylum is mainly regulated by the European Directives on minimum standards. While asylum was very high on the UK political agenda in 2002, in Italy the debate

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<sup>1</sup> From the name of the two main legislators: Umberto Bossi, former leader of the Northern League, and Gianfranco Fini, former leader of National Alliance.

focused on illegal labour migration but was extended to include asylum in the hope of stopping false asylum claims.

Secondly, it is hypothesised that differences in the nature of government in the two countries, in particular with reference to their welfare and political systems, may result in dissimilar policy outcomes and legislation. In terms of their welfare systems, the UK and Italy also present considerable differences, with the latter displaying characteristics reflective of conservative states and Southern European states (Esping-Andersen 1990). Conservative states tend to have non-interventionist governments with the Church playing a vital role in society. Southern European states tend to be characterised by the important role played by the family, by the difficulty in carrying out reforms due to the weakness of institutions and widespread irregular labour markets. On the other hand, the UK shows features that are typical of liberal states with their generous but means-assisted welfare systems. The two countries, however, share one similar trait in that they may be described as having unitary and centralised governments (Lijpart 1999). The British state though is characterised (according to the ‘Westminster model’) by parliamentary sovereignty and “strong and stable single-party cohesive cabinets” (Baldini 2012, n.p.). The Italian state has been considered as a “consensual (yet polarized) country, with a rigid constitution and unstable coalition governments” (*ibid*). Both aspects – the political and welfare systems – may have an impact on the types of policies that the states create.

The third hypothesis relates to the countries’ governance systems. It is that governments have shared some of their powers by delegating services and competencies to other stakeholders<sup>2</sup>. This has resulted in a shift from ‘government’ to ‘governance’, meaning a “non-hierarchical mode of governing, where non-state, private corporate actors (formal organizations) participate in the formulation and implementation of public policy” (Mayntz 1998, 1). This shift has turned the strong, unitary state into a weaker, disunited state where different stakeholders exercise power over the policy-making process. However, the situation changes when it comes to immigration and asylum because of the difficulties faced by governments dealing with these issues (welfare

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<sup>2</sup> The terms ‘stakeholder’ and ‘actor’ will be used interchangeably. Stakeholders include governments and their local officials, social partners, local and community organisations, migrant organisations, Non-governmental Organisations (NGOs), and other institutions and groups such as employers, trade unions, religious groups, etc.

benefits, illegal labour migration, ethnicity etc.). As such, these domains are still very much in the hands of nation-states, which are constantly trying to reassert their sovereignty and boundaries towards three different elements: 'illegal' immigrants, and both supranational and national non-state actors. On the other hand, as governments need information on asylum, they have come to rely on some of the services provided by NGOs and pro-asylum organisations, thus surrendering part of their power to these other agencies.

The fourth hypothesis relates to the relationship between government, governance and networks. It is hypothesised that policy is the product of interactions between governments and a range of stakeholders, in which each actor is able to deploy a particular kind, level and direction of power and influence. The result is that asylum policy in one country may be different to that in another because of the vested interests and power of each state's stakeholders and the nature of the interaction between them and the government. Networks can develop within and across central government, among political parties, private companies and within civil society. Furthermore, these networks can be both formal and informal. Informal networks are likely to form around a particular issue such as asylum in this context. In addition, different political systems show a different degree of openness and cooperation between the government and other stakeholders. For example, the UK government was fairly open to consultations while the Italian one was not. In both cases, there were issue networks because of the large number of participants, unstable and fluctuating relationships, unequal powers, different levels of access and, in some instances, conflicts.

The overall model for the thesis is therefore that asylum policy formation in the two countries has been shaped by the following features:

- 1) The nature of asylum as a particularly difficult issue for governments that perceive it as a threat to their sovereignty.
- 2) The nature of the state which is largely instrumental in policy outcomes.
- 3) The degree to which there has been a shift from 'government' to 'governance', in which decisions involve networks of interest at national and international levels.
- 4) The manner in which power is unevenly held and exercised within networks.



In 2002, the most contentious migration issue for the UK was asylum, while for Italy it was illegal labour migration. The two governments reacted to the perceived threats accordingly as hypothesis 1 suggests.

In the UK, despite the devolution of competencies to other partners and regions in many areas, Westminster showed itself to be in control, with some nuanced flexibility especially during the bargaining process in the House of Lords. Following pressure from the tabloid media and public opinion, No.10 and the Home Office took charge of the situation, showing that the shift from 'government' to 'governance' on the asylum front was muted as per hypothesis 3. Although consultations through formal and informal meetings with refugee-assisting groups were widespread, the analysis of the parliamentary debates shows only limited bargaining. This happened in the House of Lords as the Conservative party, then in opposition, fought against some of the measures brought in by the bill.

In Italy, some devolution of responsibility also happened but again the government was firm and resolute over the idea of preventing illegal migration. Contrary to the UK, the unstable alliance between the parties that formed the majority turned out to be the real concern for the government. There were in fact many significant disagreements between four ideologically very different political parties (the liberal 'Go Italy'<sup>3</sup>, the populist Northern League<sup>4</sup>, the Catholic CCD-UDC<sup>5</sup> and the right-wing and post-fascist party National Alliance<sup>6</sup>). The opposition, which was also very fragmented, did not have any power due to the government's majority in both chambers of the government. They could only delay the process of the bill by obstructing its course through continuous requests for vote counting. A further discrepancy in the way the Italian government dealt with pro-migrant associations<sup>7</sup> compared to the UK government, was the fact that the latter were completely excluded from the policy process as the government refused to enter in discussion with them. However, some groups were still able to exert some influence,

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<sup>3</sup> *Forza Italia* whose leader was Silvio Berlusconi.

<sup>4</sup> *Lega Nord*.

<sup>5</sup> *Centro Cristiano Democratico* (CCD) and *Cristiani Democratici Uniti* (CDU).

<sup>6</sup> *Alleanza Nazionale* (AN).

<sup>7</sup> These include associations working to improve the rights of migrants (labour migrants as well as asylum seekers). For the purpose of this thesis, those considered were: intergovernmental organisations (such as the UNHCR); international organisations (Amnesty International); national NGOs (British and Italian Refugee Council, International Consortium of Solidarity, Joint Council for the Welfare of Immigrants, Justice, Liberty, Save the Children etc); community organisations; employers groups; and trade unions.

showing an uneven power distribution as hypothesis 4 suggests. Although the way in which the two governments dealt with pro-migrant groups was very different, the networks that formed in both countries can be considered issue networks. Furthermore, the influence of certain individuals within the networks varied according to the issue they were confronting at a given moment.

## **1.2 CONTRIBUTION TO THE CURRENT COMPARATIVE LITERATURE ON ASYLUM POLICY-MAKING**

What is new about this research is the fact that it compares the asylum policy-making process – and, in particular, the formulation aspect of this process – of two countries that have experienced very different political, historical and economic developments. Given their different nature, their attitudes and behaviours towards asylum, and the resulting asylum policies, reflect these differences.

From a theoretical point of view, although asylum and migration policy-making have received a lot of attention, little literature exists on the process leading to the creation of asylum policies. Where the process has been addressed, there is rarely a specific focus on asylum and different countries are not compared (Joppke 1997 and 1998; Zincone 2006a and 2006b; Zincone and Caponio 2004 and 2005; Statham and Geddes 2006; Lahav and Guiraudon 2007; Balch 2009; Somerville and Wallace Goodman 2010; and Balch 2010a and 2010b<sup>8</sup>).

In particular, “the study of policy networks does not permeate the literature on migration policy” as “the vast majority of commentators on UK migration policy barely mention the possibility that interest groups, or policy networks inclusive of non-state actors, have influenced policy” (Somerville and Wallace Goodman 2010, 954-956).

Zincone (2006b) has looked at Italian migration policy-making through the relationships of formal and informal actors within policy networks. In doing so, she has analysed two pieces of Italian immigration legislation to sustain the thesis that regardless of the political stand of the government in power, immigration policies only change to a certain extent. This indicates a

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<sup>8</sup> The authors compare the UK and Spain in terms of how ideas and knowledge may shape policy.

continuation of policies between right and left, and that politicians' rhetoric is different from their actions because of external pressures.

Colombo and Sciortino (2003), in their detailed analysis of the Bossi-Fini law, capture the bitter conflicts between the ruling parties but they focus only on the policy-makers within government and do not consider the involvement of other actors at different levels of the process. In an increasingly multi-level policy-making arena it is important to consider all the various aspects of the policy-making process, adopting both a top-down and bottom-up perspective. Looking at the interactions between formal and informal actors at different levels gives rise to further insight useful for a comparative analysis.

The literature on policy networks is quite rich, but there have been few studies (Somerville and Wallace Goodman 2010) of how they might be relevant to asylum and immigration in the UK. This thesis represents a step forward as it concentrates on specific asylum legislation rather than taking into consideration asylum legislation generally over a period of time. Furthermore, the thesis compares the legislation to the asylum situation in the two countries in the same year.

### **1.3 KEY QUESTIONS**

The key research questions for the thesis follow from the hypotheses outlined at the beginning of this chapter. The first question asks:

- 1) Why is asylum perceived as a difficult issue and a threat for nation-states?

The second hypothesis focuses on the nature of the state and because this is a comparative study, the central questions here are:

- 2) How do different kinds of states respond to the politics of asylum? If the way asylum policy-making is managed depends on the nature of the state, the extent of similarity or difference between nation-states in treating similar issues needs to be compared.
- 3) Why is asylum perceived differently from other types of migration? This is an important question not only because asylum stimulates very different and contrasting attitudes but also because Italy in 2002 did not have specific asylum legislation, unlike the UK.

The third and fourth hypotheses are closely related because they deal with actors other than the government. One part of the background to the research is the idea that in an increasingly globalised world, the nation-state is allegedly losing its powers nationally and internationally and that the notion of ‘government’ has consequently shifted to ‘governance’. The primary focus therefore is on the power struggle between key state and non-state actors involved in asylum policy-making, whilst considering pressures from civil society and the demands to harmonize policies in line with the other EU member states. The resulting questions therefore assess the types of networks involved in asylum policy-making and how power is held and exercised within them:

- 4) What kinds of policy networks are in evidence in the UK and Italy? In particular, what issue networks were formed and who belonged to them?
- 5) How do networks operate in the case of asylum policy formulation in terms of formal and informal relationships between members?
- 6) Where is the locus of power within networks with asylum policy?
- 7) What is the relationship between government and wider networks? Are there closer relations with some organisations than others and, if so, why?

With the aims and objectives of the research outlined above, the next two sections explore the historical context in which the thesis is placed. These sections provide a framework for understanding the general dynamics of asylum policies in Western states in response to increasing levels of international mobility and growing numbers of asylum claims. The last part outlines the variations in the asylum policy decisions of two countries under study.

#### **1.4 HISTORICAL CONTEXT: MIGRATION MOVEMENTS AND STATES’ RESPONSES**

Migration has occurred for centuries. From slavery during colonial occupation to more recent times, European states have been involved in, and responded to, the phenomenon in different ways. For example, Western European governments willingly accepted refugees fleeing from persecution in the 1930’s during the rise of fascism, through the two world wars and in particular in the aftermath of the Second World War. During these years, refugees became “an inherent

ideological value for the Western block in the discrediting of the communist model” (Joly 2001, 2). These were the years of humanitarian solidarity that led to the creation of the 1951 Geneva Convention relating to the Status of Refugees. However, the humanitarian feelings that characterised Europe in the post-war period were soon to pass. Post-war economic expansion played a vital role throughout Western Europe. Here “the growing labour and population requirements of nation-building states ... eased the dilemma of huge numbers of post-war refugees by creating a range of resettlement opportunities” (Gibney 2004, 3). In the following years, refugees, asylum seekers, and economic migrants became an essential source of cheap labour to be used temporarily in periods of economic growth, up to the 1973 oil crisis. In these years and throughout the 1980s, economic recession and restructuring corresponded to the closing down of opportunities for labour migrants.

Finally, in the 1990s, important geopolitical changes like the end of the Cold War and various conflicts (for example, former Yugoslavia, Iraq and Somalia) occurred and generated new flows of international migrants. The majority of these movements have had their origins outside Europe, due to internal ethnic conflicts, rather than inside Europe, as was the case between the two World Wars (Gibney 2004). Over the years, there has been a change in refugee movements ranging from and due to: “postwar resettlement, ethnic migrations, guestworkers, family reunion, asylum seeking, the collapse of the Iron Curtain, Balkan crises and the EU enlargement each of which has created and is still creating new movements” (Salt 2007, 470). These movements are extremely varied in numbers, nature and length, as people have different reasons as well as ways to move according to their personal and national contexts. They may be “fleeing persecution” or they may be “migrants trying to escape the hardships and uncertainties of life in developing countries” (UNCHR 2007a, 6).

As a result of changes in migration flows and the increased numbers of asylum seekers and economic migrants in the 1980s and 1990s, European countries started creating, sometimes on an *ad hoc* basis, stricter policies tightening controls on their borders (such as visa restrictions, carrier sanctions and lists of safe third countries and safe countries of origin). In turn, migration issues have become increasingly politicised. Asylum has become a “touchstone issue on political agendas across the industrialised world” (Koser 2007, 234), while, at the same time, there have

been tensions between a requirement for “the mobility of labour” (Nagel 2002, 975) and a desire to control mobility and access to territory in order “to maintain sovereignty over national territory” (*ibid*). According to Nagel (2002, 976), this tension has

[t]hroughout the history of the modern nation-state system ... given rise periodically to panics about ‘floods’ of immigrants and the ‘threats’ they pose to national cohesion and to citizenship. While these panics often erupt during times of economic downturn, they just as often appear when national economies are visibly thriving on the labour of newcomers.

Restrictive migration policies have led to the channelling of migrants and people fleeing from persecution into the asylum process as the only available route of access into the country. As a result, significant numbers of asylum applications came to be lodged by people who were not “in genuine need of protection” (Koser 2007, 234) but rather seeking economic opportunities. Important factors such as increasing North-South inequalities, globalisation, poverty and human rights abuses have produced the so-called “migration-asylum nexus” (Castles 2004, 211; see also Turton 2003), wherein it is hard to separate economic and forced migration. In turn, this blurring creates an opportunity for the media to talk about ‘hordes’ of ‘bogus’ asylum seekers ‘swamping’ the country and for politicians to create stricter asylum policies.

As different states have realised that they face similar problems, they have increasingly collaborated, resulting in the harmonization of policies. The EU is the main vehicle for this, introducing a regional dimension to this process. As Joly (2001, 3-4) states, it looks as if

regimes in distinct regions in the world are more interdependent and interconnected so that one can speak of a convergence towards a single regime [...] regionalisation has become a strategy and a policy explicitly stated by industrialised countries, which aims to keep refugees in their region of origin, out of Western Europe.

However, despite this apparent convergence and increasing similarity, differences in the nature of welfare states, of policy processes and of the range of stakeholders mean that nation-states may be more or less liberal in terms of the specifics of asylum policies. As Freeman (2006, 227) recognises, there are still “nationally distinct approaches to managing migration flows and their political consequences” because states continue to be influenced by their history and therefore create policy differently.

Kunz (1981) was one of the first scholars to consider why states' policies towards refugees differ. He argued that under-populated countries will welcome refugees to increase their population and provide manpower. A different approach will be adopted by "overpopulated and demographically self-sufficient countries", which will be less keen to accept a large number of refugees. However, being "more mature and self-assured" (Kunz 1981, 48) they will be more sympathetic, offering refugees a safe haven. The United Kingdom is amongst those countries that historically might be said to belong to this second group of multiethnic and pluralistic societies. "Monistic societies" i.e. monoethnic as opposed to multiethnic and pluralistic societies, however, will be likely "to give significant preference to sib-arrivals from countries of affinity, but keep only the servant door open to peoples of other races and traditions" (*ibid*, 49). An example of the idea that societies conceived as 'monoethnic' are more hostile to receiving culturally different people can be discerned during the making of the 'Bossi-Fini' law. During one parliamentary question time, an MP from the Catholic party Union of Italian Democrats, pointed out that a "criterion of cultural homogeneity" (1.1) (Volontè MP<sup>9</sup>, Chamber of Deputies Deb 14 November 2001, sitting 62, 67) was important and that "particular attention shall be given to those citizens coming from countries that hold stronger links with European culture and that therefore, can integrate more easily in our society" (1.2) (Fini MP, *ibid*, 68).

Kunz's analysis, if it was ever true, is now well out of date. Many European countries have a similar attitude of mistrust towards asylum seekers and migrants in general, especially in the aftermath of 9/11, regardless of their population size, economic stability and ethnic composition. So although the United Kingdom is expected to be sympathetic on the basis of Kunz's argument, in reality it has become increasingly strict whilst the numbers of deportations of failed asylum seekers has risen, partly in response to an effort to dispel the perceived idea that the country has been a 'soft touch', as it was described by Shadow Home Secretary Ann Widdecombe (BBC 2001a). This belief has been endorsed by many tabloids as well as right wing politicians believing that the UK was "being exploited" by "bogus asylum-seekers and illegal immigrants ... in order to benefit from the generosity of [its] welfare state" (Hastilow 2007, n.p.).

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<sup>9</sup> Member and spokesperson of the Catholic political party UDC (*Unione dei Democratici Italiani*).

### 1.4.1 Italy and the United Kingdom

Italy and the UK make for a potentially revealing comparison because despite certain similarities (growing number of migrants and asylum claims), they have different historical, political and migration trajectories and have subsequently developed different asylum/immigration policies in different ways.

The United Kingdom has a long history of immigration and of immigration legislation, with the first Aliens Act dated 1905, and the first modern immigration legislation adopted in 1962. In terms of asylum, the first legislation dates back to 1993 (1993 Asylum and Immigration Appeals Act; 1996 Asylum and Immigration Act; 1999 Immigration and Asylum Act; 2002 Nationality, Immigration and Asylum Act; 2004 Asylum and Immigration (Treatment of Claimants, etc.) Act; 2006 Immigration, Asylum and Nationality Act ). This corresponded with the end of the Soviet bloc and a subsequent increase in the number of asylum applications. Since then, there have been eight subsequent Acts. As Sales (2007, 147) explains,

each new piece of legislation has created a different system of support alongside previous arrangements ... The trend has been to separate asylum seekers from society on arrival, with the presumption that most applications will fail. Another aspect of the legislation has been to make status more temporary.

Italy has only recently become a country of immigration. In the decade 1989-1999, Italy's foreign population increased considerably, from 490,000 to 1,500,000 (Bertozzi, 2002). Foreign nationals with a regular residence permit<sup>10</sup> have increased in numbers, "estimated at 2.6 million in 2004 (approx. 4.2% of the total resident population)" (European Foundation for the Improvement of Living and Working Conditions 2007, 18). This number, according to data available from the Ministry of Interior, has further increased to 3 million, which is double the number compared to five years earlier (Ministero dell'Interno 2007a, 1). The rise of immigration in Italy has been therefore rather swift when compared to other EU countries and to the UK in particular (Schuster 2000; Vincenzi 2000). It has taken the country by surprise, and it has been argued that Italy has been unable to manage and understand it (Sigona 2005). Furthermore, Italy does not have specific asylum legislation. This is due to the fact that article 10

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<sup>10</sup> "As of 31 December 2010 the total resident population of Italy was 60,626,442, with an increase of 286,114 (+0.5%) due exclusively to migration from abroad". Total immigration was 458,856 (Istat 2011).



of the Italian Constitution and EU Directives<sup>11</sup> approved in agreement with member states to aid in the process of creating a common asylum system have been deemed to be sufficient by the various Italian governments.

In the UK, asylum is still high on the agenda although numbers have decreased considerably since 2002, while in Italy asylum has never been a priority because of the low numbers of asylum claims<sup>12</sup> compared to other EU member states, the different ways Italy has devised to give protection<sup>13</sup> instead of granting asylum and, finally, because of party-political interests. Nevertheless, some of the outcomes of the two pieces of legislation analysed here are similar in nature, namely, those aimed at deterring the entrance of unwanted migrants, who have been seen as a potential threat to the nation-state's unity, security and cohesion. As such, both countries have adopted and implemented measures to discourage asylum seekers from coming and claiming asylum in the first place with the enforcement of border security; bilateral agreements; and juxtaposed controls (UK) or the use of the Navy to stop migrant boats at sea (Italy). In-country, they both use administrative detention and fast-track measures (including deportation) where possible. This is, however, a general trend that has been happening throughout the EU for the past twenty years or so. It is important to ascertain what elements constitute the key differences in the policies' development and why these elements are different. Two specific pieces of legislation have been studied and analysed. For the Italian case, this thesis focuses on Law 189/2002<sup>14</sup> also known as the 'Bossi-Fini'. It entered into force in 2002 but was implemented only in 2005 with "Implementing Regulation 303/04" (European Council on Refugees and Exiles 2005, 173). The relevant UK legislation is the 2002 Nationality Immigration

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<sup>11</sup> Main EU Directives on asylum that have been transposed into national law by Italy and the UK: Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof; Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers; Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted; Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

<sup>12</sup> For example, throughout the 1990s Italy accepted a high number of Albanians after the breakdown of their communist regime. However, Italy did not recognise them as asylum seekers. Rather, they were issued a two year residence permit, if they could prove they had left the country prior to 1998 (Istat 2006; Barjaba 2004).

<sup>13</sup> Humanitarian and subsidiary protection set by the EU Directives.

<sup>14</sup> *Modifica alla normativa in materia di immigrazione e di asilo* (Change to the legislation on immigration and asylum).

and Asylum (NIA) Act. The two laws were passed in the same year, 2002, thus representing a good device for comparison. But they also correspond to a shift in the asylum regime. According to UNHCR (2006, 1), the Bossi-Fini is deemed

a landmark albeit controversial Immigration Law [...] with two - out of a total of thirty-eight - articles on asylum<sup>15</sup>. The provisions on asylum included in the Law were initially intended primarily to avoid actual or perceived abuse of the asylum procedures, but in fact, the two articles effectively resulted in redesigning the asylum procedure.

The NIA Act marks the separation from previous Acts towards building “a seamless management system, along with strong enforcement powers” (*ibid*, 22). The Act was seen as a deterrent for people not in real need of refuge.

## 1.5 THESIS STRUCTURE

The thesis is structured as follows:

Chapter 2 outlines the main theoretical approaches relevant to the four hypotheses dealing with asylum issues, the nature of the state, governance and networks. The focus on these particular aspects is due to the fact that, first and foremost, refugees and migrants, although facing different problems, are often viewed as being part of the same category, thus, creating an asylum/migration nexus. This nexus, plus the lack of refugee theories, may be manipulated at decision- and policy-making level thus creating an asylum issue to which governments respond as if it were a threat to their sovereignty. It is at this point that the role and nature of the nation-state is evaluated. States with different welfare and political systems create different types of policies. Furthermore, although EU member states retain the power to decide who enters their territory and how best to deal with asylum claims, refugees and migrants, they are also subjected to the EU Commission’s strong advocacy for harmonization of asylum policies. But to what extent do states retain their decision-making powers? Have they partially lost their powers by devolving decisions to both regions and provinces at the national level as well as to supranational institutions? Does multilevel governance undermine member states authority? The focus at this point switches to theories of policy networks. Policy networks may be understood as a threat to national sovereignty as they

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<sup>15</sup> Articles 31 (Permesso di soggiorno per i richiedenti asilo – residence permit for asylum seekers) and 32 (Procedura semplificata – simplified procedure).

may constrain government's power. This final part considers the nature and interaction of various stakeholders at state and non-state level who have a specific interest in asylum and migration, thus, affecting certain aspects of the policy-making process. Policy networks consist of interactions at government and parliamentary level, tertiary and private sectors and some parts of the public. Through the analysis of these networks, findings have further established the existence of issue networks that have limited power and as such were not seen as posing a real threat to the governments' decisions in terms of asylum policy-making.

Chapter 3 discusses the methodology adopted in this study. This chapter details the sources and evidence that were used to answer the research questions. Statistical data on asylum available for Italy and the United Kingdom (asylum applications, total initial decisions and granted refugee status) were used to compare the differences between the two countries in terms of asylum perceived as a threat and the consequent response by the states. Parliamentary debates (Hansard for the UK and its equivalent for Italy), committee reports, NGO reports and media articles were examined to investigate how legislation came about. They specify in which part of the process the legislation was formed and, in particular, the tendencies of different political parties in the making of the legislation, including influences and relative power. The key issues contained in the two pieces of legislation and the stakeholders at national and local level are also identified. Interviews with the stakeholders show how they interacted with each other and perceived their degree of power in influencing the decision-making process.

Chapters 4 and 5 examine the history, trends and developments of asylum and migration legislation in the UK and Italy. This examination matters because it provides the context to understand why asylum was perceived as a threat through the comparison of the two countries. The UK has a long tradition of immigration legislation. On the other hand, Italy is the only country in the European Union not to have specific asylum legislation and the first immigration legislation goes back only as far as 1990 (Martelli Law). In context, the United Kingdom has a string of pieces of asylum legislation, with the first (The Immigration and Asylum Appeals Act) dating back to 1993 and the eighth and latest one dating 2009 (Borders, Citizenship and Immigration Act).

Chapters 6 and 7 focus on the United Kingdom and Italy respectively and include the analysis of the parliamentary debates, committee reports, NGOs' reports and media articles. The aim of these two chapters is to use the theoretical framework to explore where the decision-making process is centred, relative to multiple stakeholders from local communities to national government. Each stakeholder has aims, objectives and approaches which are singular and strictly related to their views. Results in the two countries were contrasting. I argue that in the UK, despite consultation with charities and NGOs, the government remained the real power holder. The legislation therefore reflects a top-down approach, although some flexibility can be identified with regard to a few issues linked to the establishment of accommodation centres. In this case, there was limited bargaining in the House of Lords. In Italy, consultation on asylum policy was limited to the UNHCR and with regard to immigration, the employers' organisations and a few other bodies (such as the Navy for example) were engaged. Bargaining in the Italian case was much more to the forefront. It occurred within the ruling coalition and only on aspects related to the immigration side of the law. While many important concessions were made on immigration, asylum was not the object of contention, although some bottom-up influence happened indirectly through the involvement of the local mayors and their cooperation with the National Association of Municipalities.

Chapter 8 provides a summary analysis and comparison of the two countries, drawing on interviews and the theoretical framework. The chapter clarifies the similarities and differences of the two countries in terms of their decision-making process on asylum and immigration policies. In particular, it emphasises the approach different stakeholders have towards each other and towards these policies according to their power as well as personal and national interests.

Chapter 9 provides an overview of the most important findings of the research and details the contribution of the thesis to comparative research on asylum-policy making.

## CHAPTER 2

### THEORETICAL FRAMEWORK

This chapter reviews relevant theoretical approaches from political science, public policy, public administration and migration, with particular attention to conceptualising the nature of the state, government systems and political parties as well as governance and networks. These aspects will be utilised to produce a framework for testing the hypothesis that states with different political systems deal with the issue of asylum differently. As suggested in Chapter 1, states may deal with asylum in distinct ways because it may or may not be perceived as a threat and may be seen differently from other types of migration. Furthermore, states are caught between their duties towards their citizens and the ethos related to giving refuge to people seeking asylum in line with the international conventions and treaties they have ratified. As such, governments may be constrained by supranational as well as national organisations concerned with the well-being of displaced people.

The first part of the chapter concentrates on asylum and immigration theories. This is related to the first hypothesis which suggests that asylum is an important and complex issue for governments due to the perceived threat it represents. Asylum and migration theories focus on these complexities and their relevance for asylum policy, dealing with a range of issues from the entry of asylum seekers and the reasons behind their movement to the decision-making process that produces policy. The perception of the nature of asylum may thus have an effect on policy-making. Asylum theories are often considered as a subset of migration theories, leading to the possible misconception that asylum seekers, economic migrants and illegal immigrants belong to the same group without any formal distinction. There is also a lot of misunderstanding around asylum and migration issues due to superficial and sometimes sensationalist press coverage which can create confusion and possible resentment in public opinion. The public, in turn, may voice their discontent through voting, opinion polls, or even protest. Moses (2006, 139) argues that “in democratic states, public policy should reflect public opinion, and public opinion in the developed world is clearly opposed to immigration”. This is likely to have an effect on policy makers’ decisions.

The second section of this chapter considers the nature of the nation-state. It aims to examine how different states respond to the asylum issue in order to make asylum policies. States are called to provide assistance to asylum seekers but in the case in which asylum is perceived as threat, a state's duty is, first and foremost, towards its citizens. Furthermore, states vary according to their "historical circumstances" (Badie and Birnbaum 1983, 4) as well as their political and welfare systems and may be categorised on such bases. To carry out this investigation, Esping-Andersen's (1990) influential typology of welfare states is discussed.

The thesis also connects with geographic themes by engaging with questions of scale. In recent years there has been much discussion of rescaling or unbundling of the state and its functions in geography (Smith 1992; Brenner 2004; Marston *et al* 2005; see also Money 1999 who compares immigration policy from a political and geographical point of view). For example, in relation to state power, Gill (2010) examines alternative approaches to state theories put forward by geographers and sociologists studying various aspects of forced migration. He emphasises that often studies in this field still point "towards a widespread tendency to reify the state in asylum and refugee research" (*ibid*, 627) marking a sharp separation between state and society.

The consequence of this view, the author continues

include a tendency to downplay the agency of social forces in the governance of asylum communities, a tendency to overlook the importance of political struggles between competing public sector factions, a tendency to underemphasize the agency of state actors themselves within state bureaucracies, and a tendency to overestimate the ease by which state policies are translated into outcomes regardless of social and cultural circumstances (*ibid* 639).

In practice, the state still appears as the prominent actor when it comes to border controls and states' response to asylum seekers. On the other hand, more recently geographers and sociologists have distanced themselves from this essentialist view of the state. Rather, they have offered an anti-essentialist and poststructuralist vision of the state. This perspective comprises the increasing presence of actors within the asylum sector thus blurring the boundaries between state and social actors.

On the other hand, the thesis suggests persistence of a three key scales (national, regional and local) when it comes to asylum policy making as the central state is still important.

The third and fourth parts of this chapter focus on the concepts of ‘governance’ and ‘policy networks’ respectively. These two concepts are used in the context of this thesis to show that although different actors co-exist in the asylum realm, they do not bear the same weight on the asylum policy process. More specifically, with regards to ‘governance’, in recent years and in many fields there has been a shift from ‘government’, referring to the decision-making process of a highly centralized state with vertical interactions, to ‘governance’, a term used to underline the horizontal relations of different networks formed by state and non-state actors to influence policies. Several scholars have demonstrated that there has been a delegation of competencies in several fields and possibly a loss of power or, in Rhodes’ (1994, 1996) terms, a ‘hollowing-out’ of the state to other stakeholders, such as transnational bodies, regions and sub-regions, and private and public sectors (Rhodes 1994, 1996, 2007; Sassen 1996; Hollifield 2000; Holliday 2000; Guiraudon 2001; Bevir and Rhodes 2010). This is also known as multi-level governance whereby different levels of government and private and public actors exercise their power and influence.

Governance implies the existence of different actors at state and non-state level who have vested interests in a given issue. Having different values, priorities and perspectives, these actors may influence each other’s views throughout the decision-making process in order to reach a desired end result. On the other hand, network members have different levels of power and their influence therefore varies. The study of networks allows an analysis of their role, how they operate, power relations between different members and relationships between central government and other actors.

## **2.1 ASYLUM AS AN ISSUE: ASYLUM AND MIGRATION THEORIES**

Policy decisions are usually taken when issues become urgent. Asylum in many countries is considered a pressing issue because of the objective difficulties linked to it. While asylum movements are part of the most generic migration movements, which also include flows such as refugee resettlement, family reunification, economic and student migration, it is not always easy to differentiate them. Furthermore, the unplanned arrival of asylum seekers at borders and the scale of movement affect perceptions of the nature of their movements. Hence, asylum is often

perceived by governments, the tabloid media and public opinion as a threat to national security, national identity and cohesion, and the economy.

Numerous disciplines have sought to come to terms with migration's complex and multifaceted nature, creating very different theoretical frameworks. However, "accumulated scholarship remains unable to explain key features of current migratory reality" (Sciortino 2000, 213). This is because the majority of theories have focused on specific aspects of migration due to the intrinsic interests of the various disciplines. As such, due to the diverse nature of migration, there is no single, theory of international migration, "only a fragmented set of theories that have developed largely in isolation from one another" (Messina and Lahav 2006, 31; see also Massey *et al.* 1993; Teitelbaum 2002; Arango 2004; Brettell and Hollifield 2008). Most theories occupy themselves with labour migration and with voluntary movement. Until relatively recently, refugees and asylum seekers not strictly entering into the voluntary migration process are either left out of the more generic discourse or have become a subset of it (Kunz 1973; Zolberg *et al.* 1989a; Arango 2004; Healey 2006). The result is that policy makers do not have a coherent theory of forced migration.

The earliest acknowledged asylum theory is that of Kunz (1973). It explicitly dealt with refugee movements and the many different reasons and ways these may happen. His choice of the term 'kinetics' was due to the fact that asylum movement is controlled by inertia and the "friction and the vectors of outside forces applied" (*ibid*, 131) on refugees. This theory was created at a time – the 1970s – when much of the world experienced a general economic recession that led to a decrease in the demand for external labour (Koser 2001; Gibney 2004). Increasing numbers of refugees for both political and economic reasons created concerns about being 'swamped' in many receiving states. The increase in refugee flows since then has been mainly due to the insurgence of wars in states like Vietnam and Ethiopia in the 1970's, Pakistan, Iran<sup>16</sup> and Sri Lanka in the 1980's, Somalia and the Former Yugoslavia in the 1990's, Iraq and Afghanistan more recently. Even more recently, many people have fled social unrest in Egypt, Libya and Tunisia, and these have mainly be young men moving for economic reasons. Many have tried to reach the tiny Italian

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<sup>16</sup> Iran-Iraq war 1980-1988.



island of Lampedusa, causing distress, worry and resentment in Italy, the government and the rest of Europe (see Chapter 5).

In developing his theoretical framework, Kunz emphasised that the urgency of refugee movements required a quick response from policy makers. Secondly, he assumed that when the refugee is re-settled and no longer in a 'midway-to-nowhere' situation, he/she becomes similar to the voluntary migrant. This blurring of the destination is still current nowadays and affects the policy-making process as policy-makers are often unable to distinguish between asylum seekers, refugees and voluntary migrants. As Kunz (1973, 128) argues,

once the refugee is re-settled he is more often than not equated by administrators and general public alike with the voluntary migrants around him. First of all, the re-settled refugee ceases to be a problem demanding international solution. For the refugee administrator he becomes a closed case for whom solution has been found. Secondly, once refugees arrive in a place of settlement they tend to merge statistically with voluntary migrants.

This means that what begins as unplanned entry merges into a settled adventitious population. The challenge of distinguishing between voluntary migrants and asylum seekers/refugees was taken up by Richmond (1993) in his duality of 'proactive' and 'reactive' migrants. The former, like professionals, contracted temporary workers and retirees, consciously take the decision to leave but only after having carefully considered the factors for or against their move. On the other hand, reactive migrants include UN Convention refugees or those escaping from other adversities or calamities and whose freedom is instead very limited due to a sudden crisis "which leaves few alternatives but escape from intolerable threats" (*ibid*, 9).

The next major step was that of Zolberg, Suhrke and Aguayo (1989b) who regarded Kunz's 'kinetic theory' as too "formalistic and very abstract" (*ibid*, vi). They developed an interdisciplinary theoretical framework for crisis situations in various parts of the world. They argued first that refugee movements are themselves "patterned by identifiable social forces and hence can be viewed as structured events" (*ibid*, vi) just like any other type of migration. Second, they asserted that the root causes of refugee movements are to be found not only in internal struggles within the country of origin but also in the outside world that is other nation-states. Furthermore, the authors use as their foundation the fact that the term 'refugee' was originally coined in the receiving countries:

Defining refugees for purposes of policy implementation requires a political choice and an ethical judgement ... For a refugee flow to begin, certain conditions must be met in one or more of the states of destination as well as in the state of origin ... Should a government be bent on persecuting some target group, the asylum policies of other countries may well determine whether the persecution will lead to a refugee flow or to some other outcome (Zolberg *et al.* 1989b, 4-6).

Receiving countries, therefore, are not passive entities but have a responsibility both to asylum seekers and their own population.

Finally, Koser (2001) and Castles (2004) introduced the asylum/migration nexus to explain how asylum and labour migration have become almost indistinct over time. Until the 1970s there were three routes to arrive on European shores: through labour recruitment programmes, through refugee resettlement programmes, and through family reunion or marriage (Gibney 2004; Van Hear 2007). The 1973 oil crisis led to a recession and difficulties in employing European citizens. As a result, overseas labour recruitment severely decreased. Simultaneously, refugee resettlement programmes were reduced. One of the consequences was the “convergence of political refugees and economic migrants in a single migration route, namely asylum seeking” (Koser 2001, 88; Koser 2007). From here comes the erroneous assumption that all or a majority of asylum seekers are not in search of protection but of work. They are, therefore, considered economic migrants or ‘bogus’ asylum seekers, hence creating the asylum/migration nexus and an “economic versus political” dichotomy (Zolberg *et al.*, 1989b, 31). This overlap between asylum and immigration is a characteristic of those immigrants whose aim is to look for a better chance in life. So we are in the presence of two possible situations. The first relates to an economic situation when immigrants enter a country claiming asylum, although they are not in need of protection. The second relates to a political situation that, conversely, occurs when individuals seeking asylum enter a country illegally because they do not have documents, whilst hoping to stay or move on to a different country. As Cornelius and Rosenblum (2005, 102) argue,

forced migrants confront decision-making challenges similar to those of voluntary migrants, and structural pushes, pulls, and transborder social networks exert a strong influence on migration decisions when humanitarian ‘push factors’ are controlled for (see also Joppke 1997; Gibney 2004; UNHCR 2007a).

Consequently, governments may be confronted with migration plans which do not sit easily within migration management systems.

The degree of familiarity in terms of politics, language and culture may attract an individual to go to one country or another. Furthermore, migrants' plans to travel from their country of origin to the host country depend on certain factors such as: lack of opportunities; porous borders coupled with inadequate control and deficient migration policies; informal labour market; and family reunion (Papadopoulou 2005). What is important to stress here is that the lack of knowledge and understanding by policy makers about the above issues could potentially bear serious consequences for asylum policy outcomes whilst also generating resentment in the wider public.

Boswell (2009) talks about "legitimising knowledge" (*ibid*, 167), that is, the legitimisation of politics through knowledge. This is because a) "knowledge can lend authority to political actors" and b) "[s]cientifically based empirical or analytical claims can substantiate and thereby enlist public support for particular policy positions" (*ibid*, 167). In order to increase knowledge and understanding, research and policy should be more connected so to give policy makers "a solid base of knowledge" and counteract "some of the pitfalls of internal decision-making" (Iredale *et al.* 2004, 115). Theories may become valuable for those involved in generating policies as they can "carry very different implications for policy formulation" (Massey *et al.* 1993, 463). However, linking research and policy may present some obstacles. First of all, the length of time required to carry out rigorous research can be an issue. Migration is frequently considered by policy makers as a short-term cycle or process and there is usually a sense of urgency which does not allow enough time for discussion of research and its assimilation (Freeman 1995; Castles 2004; Iredale *et al.* 2004). Secondly, Gibney (2004, 17) argues of theorists, that "in concentrating on what is ethically desirable, and ignoring the question of what is politically possible, ... will simply talk past rather than engage with the claims, interests and agendas of governments ". Furthermore, theories can sometimes be abstract and not easily empirically testable and therefore not applicable to real political issues.

In conclusion, asylum is an important and difficult issue for many governments. The complexity of asylum derives from the fact that people move for several reasons so that asylum

seekers may be confused with voluntary migrants and vice-versa. Although research into the asylum and refugee phenomenon has grown (Black 2001), no single theory of refugee migration exists. This is problematic for politicians who need to act fast when making policies as popular media often turns the matter into sensationalist headlines. In these circumstances, asylum seekers become the scapegoat and are perceived and treated as a threat. Nation-states react by trying to play a bigger central role in dealing with the issue and by reaffirming their sovereignty through the imposition of strict policies. Following from this, the next section looks more closely into the nature of the state and in particular, the notions of nation-state and sovereignty and what kinds of constraint governments face at national, international and supranational levels.

## **2.2 NATURE OF THE STATE**

The second part of this chapter is in line with the second hypothesis that proposes that the nature of the state determines how the issue of asylum is handled. In this respect, the behaviour of states is influenced by their historical and political characteristics and their perception of asylum as a problem. Furthermore, a state's first and foremost commitment is generally considered to be the protection of its own citizens, which may leave little space for non-citizens. This particular aspect – and what this means for asylum seekers and refugees – is considered in the next section. The chapter then continues by analysing one other important variable in terms of the nature of the state: its approach to welfare.

### **2.2.1 The state**

The works and ideas of Jean-Jacques Rousseau, Thomas Hobbes, Jean Bodin, and John Locke have a common thread: that the state was created by the *demos* (population) for the *demos* itself. However, whereas Hobbes and Bodin talked about the alienation of the state for the greater good of its citizens, Locke's idea of the state was that it "emerged as a concentrated form of power and authority that, while connected to the human population that originally brought it into being, was not reducible to that population" (Gibney 2004, 199). Later, Marx and others did

not see the state as an observer but as an active entity with conflicting interests, a sort of broker (Gibney 2004; see also Boswell 2007).

Although the nation-state has changed enormously over the centuries, it still retains its initial scope, that of the protection of its citizens. For example, Gibney (2004) in *The Ethics and Politics of Asylum*, examines immigration policies in four different countries (Australia, Germany, United Kingdom and United States) and comes to the conclusion that although very different in nature

none [of these countries] considered the needs of outsiders as at all approaching a par with those of its own citizenry. Everywhere entrance policies were different, and yet everywhere such policies were constructed, implemented and maintained by states through a deliberative logic that attached priority to the interests of their own citizenries (*ibid*, 197).

Nevertheless, the nation-state is called to provide not only for its own people but also for people such as refugees and asylum seekers, who are not catered for by their own states. Gibney asks what kind of responsibilities liberal democratic states have towards refugees and economic migrants. He is especially concerned with asylum seekers who ‘knock on the doors’ of these states at a time when asylum has become a highly politicized and controversial issue and not merely a selfless call to help those less fortunate:

A kind of schizophrenia seems to pervade Western responses to asylum seekers and refugees; great importance is attached to the principle of asylum but enormous efforts are made to ensure that refugees (and others with less pressing claims) never reach the territory of the state where they could receive their protection (*ibid*, 2).

Gibney analyses two theoretical positions in stark contrast to each other. The impartialists hold “global liberal and utilitarian approaches” (*ibid*, 20) and believe in the rights of the human community. Based on this perspective, states should be able to make a judgment on entrance based on this factor, that is, “to take into equal account the interests (utilitarianism) or rights (global liberalism) of the human community in its entirety in decisions on entry” (*ibid*, 194). The partialists, in contrast, include groups like communitarians, conservatives and nationalists who believe in the strength of nation-states as sovereign, i.e. free to decide who can enter their territory according to standards they have set. For example, ways of reasserting control have been identified in stricter rules of entry, detention including that of children, removal, non-

suspensive appeals in those cases when asylum claims are rejected, carrier sanctions and stricter rules for family reunion. Also the reinforcement of border control especially offshore border controls and detention centres on remote islands are part of the “tactic of migration control” (Mountz 2011, 118; see also Mountz 2010) and a way to re-organise nation states’ geographical landscape boundaries for their own benefits. The reason behind the detention of asylum seekers in remote islands is because “states and third parties” aim “to hide asylum seekers from view of media, human rights monitors, and publics at large” (*ibid*). Sovereignty also includes the “right to construct policies that preserve a society’s national culture” (Gibney 2004, 18).

Several scholars have discussed the concept, meaning and consequences of sovereignty in a climate of increased suspicion towards foreigners, in particular in terms of security after 9/11 (Kolinsky 1981; Soysal 1994; Freeman 1995; Sassen 1996; Joppke 1997, 1998; Zolberg 1989; Guiraudon 2001; Guiraudon and Joppke 2002; Koslowsky 2001; Dauvergne 2004; Hollifield 2000). At the same time, they have tried to ascertain the willingness of politicians and bureaucrats to reassert and display state power. This is sovereignty’s dual nature: “a tool for the renationalizing of political discourse and ... the object of government policy and practice” (Sassen 1996, 60).

It could be argued that states have a moral duty to help those in need but are tested on a daily basis by international human rights regime constraints, according to which signatory member states have a responsibility towards asylum seekers, especially under the principle of *non-refoulement* contained in the 1951 Geneva Convention (Sassen 1996; Gibney 2004). According to the *non-refoulement* principle, people cannot be returned or repatriated to countries where their lives may be “threatened on account of ... race, religion, nationality, membership of a particular social group or political opinion” (UNHCR 1951, 32). Hyndman and Mountz (2011) argue that nation states in order to re-assert their sovereignty, have been using a new strategy to keep at bay unwanted arrivals through the use of what the authors call ‘*neo-refoulement*’ as a “geographically based strategy of preventing the possibility of asylum through a new form of forced return different from *non-refoulement*” (*ibid*, 250). ‘*Neo-refoulement*’ means that states have sought “legal and extra-legal geographies of exclusion” to stop asylum seekers as well as other unwanted migrants” to transit countries or regions of origin *before* they reach the sovereign territory in

which they could make a claim” (*ibid*). However, the recent (October 2013) catastrophe off the coast of Lampedusa vividly demonstrates the limitations of this approach.

The degree of sympathy, coupled with a moral obligation of a nation-state towards a targeted group, may facilitate the creation of asylum policies to receive and welcome refugees (Zolberg *et al.* 1989b; Gibney 2004). This happened in the aftermath of World War II as the Geneva Convention was drawn up, in the atmosphere of the Cold War. This positive behaviour towards refugees symbolised an anti-communist campaign from Western European countries against the ex-Soviet bloc as well as a humanitarian call. On the other hand, leaving the Eastern Bloc states was not an easy task, at least until the Soviet Union collapsed (Schuster 2000). Ideally, states should be willing and able to unite impartialist and partialist approaches into one so as to combine theory and practice. This ideal blend, according to Gibney, should be ethical and practical at the same time and would give rise to ‘humanitarianism’ or a ‘humanitarian principle’ (Gibney 2004, 259) which cares for the human community. The humanitarian principle would only provide for those individuals with greater needs, therefore maintaining low costs “as a way of keeping the sacrifices required of citizens at a minimum to reduce the likelihood of backlash” (*ibid*, 234). In practice, the low costs will reduce the chances of criticism. In contrast, elevated costs are associated with lengthy asylum procedure or the resettlement of refugees that involves housing, education, social security and health provision. Therefore, humanitarianism, although “viewed as the core virtue in immigration and refugee law” (Dauvergne 1999, 620), is not necessarily a synonym for equality and justice at all costs. It simply “provides a stand-in for justice while reinforcing the boundary between an ‘us’ group and a ‘them’ group”. In contrast to justice, it is

grounded in inequality ... [it] is not a standard of obligation, as justice would be, but rather of charity. Humanitarianism defines us as good when we are able to meet the standard, and justifiable when we are not ... it does not provide principled guidance about whom to admit when (*ibid* 620).

In an ideal world, the choice between being humanitarian and being just would not exist. States would be selflessly and simultaneously humanitarian and just, thus allowing asylum seekers to enter their territories without questioning even if they are economic migrants in disguise who, nevertheless, are trying to escape poverty and seek a better life. In the real world, the humanitarian principle is not entirely just but it is the closest thing to justice. Many Western

liberal states pride themselves on being humanitarian but “[d]epending on subjective perceptions of state capacity, the obligation is minimal, entailing actions that can be taken with no risk or loss” (*ibid*, 620). So the reception of asylum seekers is determined by a state’s perception of the asylum issue in terms of capability, that is, as long as they are not a burden on the state economy – and arguably a threat to domestic stability as theorised by the first hypothesis.

In summary, this section has highlighted how nation-states are concerned firstly with the wellbeing of their own citizens but are also called to provide protection for asylum seekers. This behaviour is because of the conventions and treaties they have signed and ratified and possibly also a moral duty. Simultaneously however, there has been a race to the bottom in terms of right of entry at least since the end of the Cold War. Most states have become so anxious about the arrival of new asylum seekers that they have endeavoured to stop them before they reach safety or have provided them with refuge but with minimal economic and public support. However, states display different behaviours in the way they treat refugees and asylum seekers.

The next section analyses in greater depth the possible reasons behind the seemingly different behaviours of states and the creation of different asylum policies. One way to look at this is to consider the literature on the welfare state.

### **2.2.2 The welfare state**

Generally, welfare states decide who their members are and, based on some important criteria such as citizenship, nationality and residency, determine who will gain access to welfare benefits. Depending on the nature of nation-states and their welfare systems, welfare provisions are available to refugees and asylum seekers but generally, to a lesser extent than the state’s citizens (Bloch and Schuster 2002). Asylum seekers can be perceived as a threat to states’ economic systems and citizens’ standard of living (Richmond 1993; Bloch 2000; Bloch and Schuster 2002).

In order to understand how welfare arrangements may affect states’ asylum policies, a typology of the nature of welfare states is required. A good starting point is Esping-Andersen’s



*The Three Worlds of Welfare Capitalism* (1990) – considered to be the first and most useful typology of welfare states. The author affirms that factors determining the nature of welfare-state regimes are: the “nature of class mobilization; class-political coalition structures; historical legacy of regime institutionalisation” (*ibid* 29). The basis of Esping-Andersen’s work is that different types of state have different types of welfare. Differences between welfare systems are based on diverse basic principles on which welfare states’ policies are originated. In other words, according to a country’s historical and welfare development, policies will be created through “their peculiar public-private sector mix” (Esping-Andersen 1990, 3). The author distinguished three major types of welfare state, which he then associated with differences in their historical development (see also Freeman 1995, 2006). The three types are: liberal<sup>17</sup>, conservative<sup>18</sup> or corporatist and social democratic<sup>19</sup>. Only the first two will be discussed here as they can be applied in turn to the United Kingdom and Italy. In reality, the author considers the UK neither completely social democratic nor liberal (together with New Zealand and Ireland) and uses as main examples the USA and Germany. However, to aid understanding and for the relevance of this thesis, the UK has been aligned to liberal states. In the liberal welfare state the market assumes a very important role and there is means-tested assistance so that the state helps only the “certifiably needy without leading the rest (the workers) to choose welfare instead of work” (Esping-Andersen 1990, 43). The situation is complicated in the case of asylum seekers. With the aim of deterring their entry, the UK has implemented a series of asylum policies, passed by both Conservative and Labour governments, with strict rules with regard to asylum seekers’ rights to benefits (Bloch and Schuster 2002; Sales, 2002; Morris 2007). There has been a restriction of welfare provisions available to them, including access to the labour market, in order to discourage their entry in the first place but also as a means to control them (Düvell and Jordan 2002; Morris 2007). In practice, it would seem the UK is not so liberal when it comes to asylum seekers.

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<sup>17</sup> Examples of liberal states in Esping Andersen’s work (1990, 74) are: US, Canada, Switzerland, Australia and Japan.

<sup>18</sup> Examples of conservative states (*ibid*) are: Italy, France, Austria, Germany and Belgium.

<sup>19</sup> The social democratic country used as the main example is Sweden (although the author extends the concept to Norway, Denmark, Finland and the Netherlands) where the welfare state is stretched out to include the new middle classes as there is “equality of the highest standards, not an equality of minimal needs” (Esping-Andersen 1990, 27) so services can be accessed by everybody and de-commodification is high.

The conservative welfare state, exemplified by Italy is primarily concerned with the safeguarding of class and status, and it is non-interventionist with underdeveloped family services. The position of the Catholic Church is very important with respect to the preservation of family unity and values. Italy has a poor welfare system generally and especially in terms of family policies so that Italian families themselves have a key role “for most welfare matters” (Sciortino 2004, 115). This lack of state-sponsored welfare for Italians explains why the demand for migrant labour to look after elderly people and children in Italy is very high (*ibid*; Barone and Mocetti 2010). Lacking welfare provided by their families, asylum seekers are mainly looked after by the Church and other charitable organisations (Sigona 2005b).

The work of Esping-Andersen has been studied by many scholars who have both accepted and criticised his typology. For instance, some critics<sup>20</sup> point to the author’s overlooking of Mediterranean countries and gender roles but also the misclassification of countries. For example, some authors believe the UK should fit into an ‘Anglo-Saxon’ system whereby the welfare state is seen as a “work-enforcing mechanism” (Leibfried 1992, 127; Ferrera 1993 quoted by Arts and Gelissen 2002). Bonoli (1997) for example, breaks with Esping-Andersen’s classification because he prefers to distinguish between ‘who’ gets welfare and ‘how’ much the welfare state gives. In Bonoli’s ‘universalist welfare states classification’, the UK figures among the mixed states where emphasis is “on government tax-financed provision” (*ibid*).

In the case of Mediterranean countries, some scholars believe it was a mistake to incorporate Italy within the Conservative countries where in fact it should be incorporated together with Spain, Greece and Portugal in a ‘Southern’ or ‘Latin Rim’ (Katrougalos -1996-cited by Arts and Gelissen 2002). For Bonoli (1997), Italy instead displays characteristics of both Southern European welfare systems (for example the dependence on family) and “high expenditure on contributory earnings-related pensions” (*ibid*, 362). Therefore, Italy is not set into one category but it is in between pure and mixed occupational welfare states that are

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<sup>20</sup> See Ferragina and Seeleib-Kaiser (2011) for a detailed contribution to Esping-Andersen’s work. They took into consideration 23 different studies on the welfare state based on Esping-Andersen explanation. According to these studies, Italy has been characterised either as Christian-democratic (12 different classifications), liberal (cited by Scruggs and Allan 2006), or Mediterranean (cited by Bonoli 1997; Gallie and Paugam 2000; Obinger and Wagschal 2001; Saint-Arnaud and Bernard 2003; Soede *et al*, 2004; Castles and Obinger 2008). The UK has been typified as social-democratic (cited by Bambra 2005), Christian-democratic (cited by Bambra 2004), Liberal (18 classifications), radical (cited by Castles and Mitchell 1992) and finally as a hybrid (cited by Ragin 1994; Obinger and Wagschal 1998) (*ibid* 589-590).

“related to contributory social insurance which is the main form of welfare provision in continental European countries” (*ibid*, 356).

Based on a continuum of three criteria<sup>21</sup>, Ferragina and Seeleib-Kaiser (2011) believe that Italy should belong to the Christian-democratic type, as Esping-Andersen suggested, together with what they call a “secondary Mediterranean component” (*ibid*, 595). The UK is placed among the liberal states.

Geddes *et al.* (2004) placed Italy in a fourth group called the Southern European group together with Portugal, Spain and Greece and connected it to migration policy. The main characteristics of the Southern European group include “irregular labour market; weakness of state institutions; importance of informal institutions; the importance of family and family ties as a social assistance mechanism” (Geddes *et al.* 2004, 8). The authors came to the conclusion that irregular immigration in Italy and the employment of illegal immigrants were fairly accepted. Furthermore, the government was more concerned with the “regularisation of the illegal workforce. The focus of Italian migration policies therefore is on questions concerning stay and labour conditions of the foreigner who is already in the host country, i.e. topics of integration, legalisation, equal treatment, etc” (Geddes *et al.* 2004, 4; see also Boswell 2007). Geddes *et al.* (2004) deal with immigration mainly from an economic point of view and do not factor in asylum. However, their work and that of other scholars inform this investigation by showing that societies, although influenced by their historical and political background, are not fixed entities but change over time. This is due to the fact that “typologies are based on data collected at different points in time” (Ferragina and Seeleib-Keiser 2011, 587). This is the natural response to other changes that happen nationally and internationally over time. For example, this can be seen in the change in state attitudes towards asylum seekers and refugees between the pre- and post-Cold War eras as pointed out in the section dedicated to the nature of the state.

Despite the fact that the agencies of the state make policies governing the entry and stay of asylum seekers and decide on the welfare benefits available to them, scholars have pointed out

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<sup>21</sup> The criteria are: “(1) the number of times each country has been classified in the same group; (2) the positioning of the seven pure countries; and (3) the presence of countries with a high secondary component” (Ferragina and Seeleib-Kaiser 2011, 594).

that states have experienced a loss of power due to both international (e.g. international human rights law) and domestic (e.g. party politics and the increasing influence of other actors) constraints (Hollifield 2000; Joppke 1998). On the other hand, Sassen (1996) points out that state sovereignty ('government') has not been eroded by globalisation and supranational organisations but has been transformed and decentred ('governance') so that "it is now located in a multiplicity of institutional arenas: the new emergent transnational private legal regimes, new supranational organizations, and the various international human rights codes" (*ibid*, 29; see also Guiraudon 2001).

The next section focuses on the state's tendency to devolve powers to other actors who have vested interests in many different fields and actively engage with governments. This interaction broadens the decision-making process potentially leading to a weakening of the power of central government thus causing a shift from 'government' to 'governance'. This part is related to the third hypothesis.

### **2.3 GOVERNANCE**

In recent years there has been growing interest in 'governance', including 'multi-level governance' (especially in relation to EU studies), as opposed to 'government'. There are several definitions of governance, most of them agreeing that it is the involvement of different actors in the policy-making process. The most comprehensive description is the one used by UNESCAP (United Nations Economic and Social Commission for Asia and the Pacific 2008). Their definition underlines that governance is "the process of decision-making" and that "formal and informal actors" are involved in this process through "formal and informal structures" (*ibid*).

There is now an extensive literature on governance that encompasses a wide range of definitions and applications, across all domains of policy making. For example, one of the earliest attempts to define governance is that by Rosenau and Czempiel (1992). Governance, they write,

refers to activities backed by shared goals that may or may not derive from legal and formally prescribed responsibilities and that do not necessarily rely on police powers to overcome defiance and attain compliance (*ibid*, 4).

In practice, while governments still exist and still exercise sovereignty in different ways, they have deferred authority “to subnational collectivities” (*ibid*, 3) that perform activities instead of governments. However, their definition is generic and “has relatively little to say about who or what makes decisions” (Biersteker 2009, 439).

The notion of governance has been deeply criticised by some authors. For example, Jessop (1998) defines governance from a political economy point of view. He talks about ‘heterarchic (self-organisation) governance’ and analyses why there has been a newly found interest in the concept of governance and if there is “a link between conceptual interest in governance and social change” (*ibid*, 4). The rise of governance, therefore, is due to “secular shifts in political economy which have made heterarchy more significant than markets or hierarchies for economic, political, and social coordination” (*ibid*, 6). However, contrary to a market that has “has a procedural rationality” and a government that “has a substantive rationality”, heterarchic governance is based on “reflexive rationality” (*ibid*, 9). This means that in order to be successful it relies on continued “dialogue to generate and exchange more information” (*ibid*). So governance can be seen “as a solution to market and/or state failure” (*ibid*, 12). On the other hand, governance can also be due to the “same complexity [of social life] that generates the demand for new governance mechanisms” (Jessop 2003, 2). A similar view is that of McGrew (2000, 142) who emphasises how “the infrastructure of global governance has evolved into a complex and multi-layered system which has no single centre of authority’. Power is now shared among public and private organizations at local, national and international level. Finally, Walters (2004) in his critique of the notion of governance, highlights its “conceptual ambiguity” (*ibid*, 42) and antipolitical nature. He suggests the use of other narratives that may complete the generic use of the term.

While there is a range of perspectives on governance, a common theme across studies of governance is the issue of alliances, arrangements or networks between state, international and non-state actors towards the realisation of particular policy goals. This consideration guides the approach adopted here in relation to asylum policy. In particular, how relevant might such alliances or networks be in a field where 'the state' is expected to exercise its sovereignty?

Because of the involvement of different actors in the policy arena, governance also entails “a change in the meaning of government, referring to a *new* process of governing; or a *changed* condition of ordered rule; or the *new* method by which society is governed” (Rhodes 1996, 652-653). Rhodes’ definition highlights the changing nature of the “hierarchical, centralized state” (Greenaway *et al.* 2007, 717; see also Jessop 2003) into a more fragmented one. The ‘government’, intended as a hierarchical establishment, has ceded space to ‘governance’, a web of networks made up of state and non-state actors working together. This means that local, regional, national, international and supranational bodies and institutions belonging to both the public and private sectors come together to tackle a specific issue. They might share the same ideas and beliefs or have completely different opinions and each one will exert influence on the others. This new type of organisation is characterised by “interdependence, a segmented executive, policy networks, governance and hollowing out” (Rhodes 1997) and can be termed as ‘differentiated polity’. So the new state is pulled in different directions by “several interdependent actors” (Rhodes 1996, 658) going beyond the state and blurring the boundaries between state and civil society. As such, the state is perceived to be no longer separated from civil society. The end result is a new way of making policy through the creation of “self organising, interorganisational networks” (*ibid*, 652) which are alternate governing structures not accountable to the state. This tendency has developed across several and very different sectors of society as well as policy: “international relations (global governance), development policy (good governance), European Union studies (multilevel or European governance), finance and management (corporate governance), and at many levels of public policy (e.g., urban governance)” (Walters 2004, 28; Jessop 1998; Greenaway *et al.* 2007; Călușer and Sălăgean, 2007).

The case of migration and asylum policy-making is different from other policy sectors because of the perceived threat that asylum represents for governments, as specified in the previous sections of this chapter. Certainly, nation-states may be subject to domestic and external constraints. However, there are two schools of thought: those who believe that a state’s sovereignty is lost because of the delegation of powers upwards to transnational bodies, downwards to regions and sub-regions and finally outwards to the private sector (Guiraudon

2001); and those who instead believe that although power has been delegated, nation-states still maintain control over certain matters, including asylum and migration. Furthermore, being a relatively new subject, little literature exists about the interests of actors in multilevel governance related to immigration (Geddes *et al.* 2004) and especially asylum. As Lahav and Guiraudon (2007, 8) argue, “[l]ittle attention has been given ... to the variety of actors and venues where immigration policy is shaped, elaborated and implemented” (see also Somerville and Wallace Goodman 2010). This is due to an irregular development of multi-level governance in Europe because of disparities that “seem to mirror aspects of the national policy-making structure or machinery” (Zincone and Caponio 2004, 2). This multi-level governance may constrain states in making decisions about asylum and broader migration policy. The next two sections analyse the extent of these constraints.

### **2.3.1 Domestic constraints: federalism and clientelistic politics**

States may face the strong lobbying of highly organised interest groups that Freeman (1995, 2001) calls ‘clientelistic politics’ (see also Sassen 1996; Joppke 1998; Cornelius and Tsuda 2004; Boswell 2007; Hollifield 2000). As much as receiving countries can still decide who and how many individuals can enter their territory, the simple presence of a growing number of pro-immigrant and pro-human rights lobbies means that the state is restrained in its decisions.

Sassen (1996, 98) argues that the presence of other actors “reduce the autonomy of the state in immigration policy making and multiply the sectors within the state that are addressing immigration policy, thereby multiplying the opportunities for conflicts within the state”. Joppke (1997) seems to share the same concerns as he writes about “the rule of law, divided powers, federalism, or the autonomous functioning of societal subsystems” (*ibid.*, 292), all factors that hinder sovereignty. This last point is particularly relevant in the case of employers and businesses which increasingly request foreign workers and highly skilled migrants and families that rely greatly on immigrants as carers and domestic helpers. They create a ‘clientelistic politics’, which Freeman (1995, 886) describes as “a form of bilateral influence in which small and well organized groups intensely interested in a policy develop close working relationships with those officials responsible for it ... Client politics is strongly oriented toward expansive

immigration policies”. Lahav and Guiraudon (2007) have highlighted a weakness in Freeman’s model. They believe that client politics is not really representative of the European system of policy-making. In Europe, contrary to the United States, “immigration becomes a salient issue in public opinion and partisan politics, and no longer a matter for bureaucrats and employers to discuss discreetly” (*ibid*, 13). Furthermore, Dwyer (2005) stresses that even though nation-states might have lost power because of the delegation to other stakeholders, they still retain influence and authority when it comes to policies related to the entry and welfare of asylum seekers and refugees as well as decision-making procedures (Souter<sup>22</sup> 2011). We can see more and more collaboration between local authorities (for health, housing or education issues) and wider civil society including employers’ associations, trade unions, NGOs, community groups, faith based organisations, advocacy groups. This collaboration does translate into networking but governments still retain much of their power in the coordination of these networks and in the making of asylum policies.

By signing the Refugee Convention, states perform a sovereign act, but the Convention itself is not a limit to state sovereignty. This is because state policy makers are the ones who decide who and how many ‘deserve’ their protection through quotas, safe third countries lists, transit processing centres and also bilateral agreements with sending countries. There is a paradox: whereas on one side, states require and admit the free flow of people (mainly highly skilled economic migrants) and goods through their respective borders, on the other hand they close the borders to unskilled migrants and refugees as they wish, arrogating to themselves “the right to refuse entry ... as inherent in the concept of sovereignty” (Richmond 1993, 15; see also Boswell 2007). This paradox highlights or creates another problem, what authors have called the ‘gap hypotheses’. Castles (2003), for example, argues that policy aims may differ from policy outcomes. This is because politicians do not always admit their real intentions and their policy objectives. There is, therefore, a ‘gap’ between what restrictionist migration policies say

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<sup>22</sup> The author focuses on the ‘culture of disbelief’ showed by the Home Office in the UK and exposed by British refugee organisations. The issue with this exposure is that it lacks objectivity while work by academics lacks in depth. Souter therefore aims at strengthening the view of refugee agencies by adding an extra dimension, that of a ‘culture of denial’. This denial is understood as “prior refusal to engage with the facts of the case” and “refusal despite belief” (*ibid*. 55-56). In brief, Home Office case workers may be influenced by the culture permeating the Home Office as often they deny claims despite belief in the stories told by asylum seekers.



and their outcome as migrants “rights to leave, to entry or to stay in a country depend preponderantly on their economic usefulness according to market rules” (Oliveri, 2012, 796; see also Sassen 1996; Joppke 1998; Cornelius and Tsuda 2004<sup>23</sup>; Cornelius and Rosenblum 2005; Zincone 2006a). According to Geddes (2008) this ‘gap’ is considered the norm across Europe and liberal states generally. Boswell takes this notion a step forward by looking at the constraints that liberal welfare states face and in particular “which interests and norms the state feels compelled to take into account in formulating policy” (Boswell 2007, 95). One of the criteria she analyses is that the state may even “tolerate or discretely introduce liberal policies” when these produce “wealth accumulation” thus creating “legitimacy through its positive economic impact” (*ibid*, 90). It is like a “‘malintegration’ or gap between proclaimed, restrictive migration policy and the *de facto* toleration or covert implementation of more liberal measures” (*ibid*, 93). ‘Malintegration’ becomes a sort of planned tactic whereby a state gives the impression of agreeing and dealing with interest groups’ conflicting demands without being accused of taking sides (Held, D. and Krieger, J., 1984, cited by Boswell 2007, 17-18).

In conclusion, domestic constraints may restrict the power of governments with regard to asylum and migration policy-making. This is due to the pressure exercised by the interests represented of employers and families. However, it was also pointed out (Marsh *et al* 2003; Lavenex 2006) that increasing cooperation between government and civil society has strengthened government in its task of coordinating other stakeholders. In practice, the state still has the power to decide who enters its territory. This highlights another issue, that of the existence of a ‘gap’ between politicians’ rhetoric and policies’ outcome. The gap can be part of a government’s tactics to deal with the demands of interest groups.

### **2.3.2 External constraints**

The European Union has been considered a “new order of multi-layered governance” (Greenaway *et al.* 2007, 717) involving local, national and supra-national governments, actors

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<sup>23</sup> The authors identify other possible gaps: a gap between the numbers of immigrants entering the country and the number expected with quotas; a gap round the time migrants are allowed to stay (overstayers); a gap due to the types of immigrants that are different from those expected; a gap in statistics on illegal immigrants; a gap in public opinion surveys due to the fact that the public is not homogeneous but it is formed by individuals with different interests and knowledge (Cornelius and Tsuda 2004).

and interests interacting with each other (Daly 2003). Marsh *et al.* (2003) claim that the delegation of powers to Brussels is not synonymous with the loss of power for the nation-state. The authors argue that EU membership has in fact increased states' autonomy. For example, Lavenex (2006) argues that the control of immigration first shifted "upwards to the intergovernmental sphere... then to supranational governance" and finally "outwards towards the realm of EU foreign relations" (*ibid* 329). She explains that these shifts have been made purposefully in an effort to extend the state's borders, security and control. In short, she believes this represents a way for officials to avoid all the domestic obstacles and constraints presented by organised interests within the state itself. Furthermore, she concludes that this foreign policy is not something new but "the continuation of the established policy frame in an altered geopolitical context" (*ibid* 330). So, although states are becoming progressively more resolute in wanting to maintain their sovereignty, especially in terms of entry and expulsion, it could also be argued that external delegation of powers is not a problem *per se*. On the contrary, it is described as a necessity due to changes in the outside world and a solution to internal struggles and challenges. Indeed, an increased "visibility at the border" (Guiraudon and Joppke 2001, 12) is obvious. States have constructed fences, invested in security forces at the borders, and delegated control – also called "remote control" (*ibid*, 12) or 'policing at a distance' (Bigo and Guild 2003) – to other transnational parties like airline companies<sup>24</sup> and security experts. States have also signed bilateral agreements with sending countries. Finally, they have surrendered "some of [their] authority to local actors<sup>25</sup> only to increase their capacity to control movement" (Guiraudon and Joppke 2001, 15).

In conclusion, governance entails the existence of several actors from various sectors. They may exert influence on the policy-making process from a national and international point of view, potentially limiting the government's power to create policy freely but also potentially allowing state actors to be insulated from certain internal political pressures. Nevertheless, "politicians, civil servants, trade union leaders" have nevertheless an "impact in designing policy" (Hudson and Lowe 2004, 8). As such, they form the micro-level of the policy process as

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<sup>24</sup> As per the Immigration and Asylum Act 1999 (c. 33) and NIA Act 2002, Schedule 8.

<sup>25</sup> For example, private companies and/or charities that operate removal and detention centres.

will be seen in Chapters 6 and 7. Furthermore, “how policies come to be made, who puts them on the policy agenda, and the structure of the institutional arrangements in which policy is defined” (*ibid*, 9) form the meso-level of the policy process. The micro- and especially the meso-levels are relevant for the next part of the chapter, which focuses on the formal or informal interactions developed by actors. The next section concentrates on the fourth hypothesis and explains the role of policy networks and their impact on the policy-making process, how they operate and their power balance. In short: “who rules?, how do they rule?, in whose interest do they rule?” (Rhodes 1997, 10).

## **2.4 POLICY NETWORKS**

As with governance, 'network' has become a key word for social, economic and political analysis over the course of the last 30 years, as globalisation has increasingly been debated (see for example Castells on 'network society' 1996). The term is also central to the 'actor-network theory' developed by Bruno Latour (1996, 2005) and others (Law 1992) who see an actor-network as comprising a mix of human and non-human elements from which agency emerges, and Peck (2004, 397) who explains that due to the recent developments in terms of expansion of multilateral and global networking, the

understandings of state spatiality, as the clean lines that were once imagined to exist between, say, the national state and the offshore world, bureaucracy and civil society, and the local and the global have become increasingly blurred and porous.

Here, the focus is on networks as a feature of governance arrangements, that is a set “of formal and informal institutional linkages between governmental and other actors structured around shared interests in public policymaking and implementation” (Rhodes 2007, 1244). Policy networks are relevant to this analysis because they illustrate the increasingly pluralistic world of policy-making due to the growing number of actors allowed in the policy arena (Smith 1997). In practice, these networks bring together two different worlds: that of the formal structures where power is believed to lie, such as the parliament, the political parties and the core executive, and that of more informal structures such as civil society.

The aim of this section is to develop a conceptual framework to answer the research questions in subsequent chapters related to the role of policy networks, the distribution of power and influence within the networks and, finally, the relationship between central government and other stakeholders.

The literature on the meso-level of policy-making grew in the 1990s starting with Rhodes (1990; see also Marsh and Rhodes 1992). They felt the need to contrast macro-level theories that pay “little attention to mediating processes” (Evans and Davies 1999, 363) and micro-level theories that instead “tend to ignore the impact of broader structural factors” (*ibid*). Studying the meso-level of policy making as a midpoint allows an examination of how different interests influence each other to create policy and, at the same time, it connects the micro and macro levels. The meso-level specifically takes into consideration policy networks. Policy networks are important because they reveal the deployment of power between groups in a given policy sector. Rhodes (2007), for example, speaks of the ‘power potential’ of people as well as organisations, and argues that policy-making may be explained through the investigation of ‘who is in what position’. Furthermore, policy network theory states that “relationships between groups and government vary between policy areas” (Marsh and Rhodes 1992, 4).

Described as a “fashionable catch-word” (Börzel 1998, 253) the concept of policy networks dates back to the 1970s and was used interchangeably with ‘policy communities’. Richardson and Jordan (1979) were the first scholars to introduce these two terms into British politics and “fractured the standard evaluation of pressure group/government relations as a bilateral bargain, extending analysis into domains where the state/society distinction is not so hard-edged” (Dowding 1994, 59). However, studies on the topic thrived in the 1990s especially thanks to the work of Rhodes and Marsh who presented it as an alternative to the ‘Westminster model’. This model is characterised by a “unitary state, parliamentary sovereignty, strong cabinet government, ministerial accountability, majority party control of the executive, and institutionalized opposition” (Rhodes 2007, 1249).

Although policy networks have become “the dominant ‘model’ for analysing the policy process in Western Europe” (Richardson, 1996, 4), there is “no single policy network approach

in public policy” (Skogstad 2005, 2)<sup>26</sup>. Marsh and Rhodes (1992) state that “literature on policy networks has varied disciplinary origins, proliferating terminology, mutually exclusive definitions and, especially, varying levels of analysis” (*ibid*, 19). Nevertheless, it is possible to distinguish between two main approaches or schools: a German-Dutch school<sup>27</sup> that emphasises horizontal interpersonal relationships and an Anglo-American school that instead believes in both structural linkages between public and private actors and personal relations. This second approach is the one that informs this thesis as it looks at the meso- and micro-levels in terms of power relations between public and private actors in the process of policy-making.

The Anglo-American perspective, or what Börzel (1998) calls the ‘interest intermediation school’, is characterized by non-hierarchical interactions between public and private actors (Dowding 1995; Hecló 1978; Marsh and Rhodes 1992; Rhodes 1992, 1994, 1996, 1997, 2007; Richardson 1996)<sup>28</sup>. This position has a micro- and a meso- viewpoint with two further approaches: one that highlights structural and sectoral relationships between organizations (see for example Rhodes 1990, 1992, 1994, 1996, 1997, and 2007) and one that emphasises more personal interaction between individual participants (Wilks and Wright 1987)<sup>29</sup>.

Marsh and Rhodes (1992) make a further distinction between the American and the British literature. With the first, the notion of sub-government emerges, highlighting “a few privileged groups with close relations with governments” (*ibid*, 6) that exclude any other group from the policy-making process. The emphasis is on the micro-level as the actors’ personal relationships

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<sup>26</sup> There exists a vast and disparate literature on policy networks in different countries and across different disciplines (from sociology to economy, from technology to political science and organisational studies and these are just a few examples). Different terminology is also used: policy networks (Marsh and Rhodes 1992), which can be used interchangeably with policy communities (Skogstad 2005), issue networks (Hecló 1978), governance networks (Klijn and Skelcher 2007), epistemic communities (Haas 1989), advocacy coalition framework (Sabatier 1999; Sabatier and Jenkins-Smith 1993). They all have one feature in common: the actors’ interactions to influence policy-making and/or policy outcome.

<sup>27</sup> The German-Dutch literature (Börzel 1998; Klijn and Skelcher 2007; Mayntz 1993) focuses on the meso- and macro- levels. What matters in this approach is the non-hierarchical coordination between the two parts that Börzel (1998) calls the ‘governance school’ as opposed to the ‘interest intermediation school’. In generic terms, the ‘governance school’ relates to “all kinds of relations between public and private actors” (Börzel 1998, 255).

<sup>28</sup> This list of names belonging to the two schools does not intend to be inclusive of all the authors who have contributed to the literature but only those that are widely recognised and quoted more often and that consequently, have been studied for the purpose of this thesis.

<sup>29</sup> The authors distinguish three different types of networks: 1) the ‘policy universe’ formed by a “large population of actors and potential actors [who] share a common interest in industrial policy, and may contribute to the policy process on a regular basis (Wilks and Wright 1987, 296); 2) ‘policy communities’, in which actors and potential actors “exchange resources in order to balance and optimize their mutual relationships” (*ibid*, 296); and 3) ‘policy networks’ that are the ‘linking process, the outcome of those exchanges, within a policy community or between a number of policy communities” (*ibid*, 297).

are the key and not the institutions' structural linkages. Within the British literature, there are two main approaches: a micro-level analysis (as with the American school) and the Rhodes' meso-level analysis that takes into consideration structural relationships between the government and interest groups rather than interpersonal ones and focuses on the analysis of intergovernmental linkages "structured around shared interests" (Rhodes 2007, 1244).

One of the main characteristics of policy networks is self-organisation. They are independent from the state but at the same time they are interdependent as they rely on each other's resources (Smith 1997). The fact that they are not accountable to the state weakens the state's core executive potentially causing the 'hollowing-out' of the state (Rhodes 1997, 2007). This is because the executive comes to rely more and more on other actors and agencies to provide information and, especially, deliver services such as those provided by NGOs, such as the Refugee Council and Caritas. The unitary state has therefore become fragmented and limited in its scope<sup>30</sup>. Policy networks can be considered as "a third governing structure" (Rhodes 1997, 665) which adds to the markets and hierarchies and where "power is structured in a few competing élites" (Rhodes 2007, 1250).

There are three major issues arising from the self-organisation of policy networks: fragmentation and steering are the first two as there are now different organizations involved in providing the same services, thus weakening "coordination" (Rhodes 1994, 147). Accountability is the third because networks "restrict who contributes to policy-making" causing their work to be "invisible to the parliamentary and public eye" (*ibid*, 147). Furthermore, the power of these few selected groups lies in the fact that they specialize in different areas while the state, in order to function, becomes dependent on their specialized knowledge. However, if the government is the dominant leader within the partnership, i.e. it creates and controls the network's access, there will be an asymmetric relationship (Smith 1997).

Summing up, networks vary according to five key dimensions: the constellation of interests based on service, economic function, territory or client group; membership i.e. whether

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<sup>30</sup> For example, the reform of the health care system in Britain brought growing competition between various service providers and the hospitals thus creating "a patchwork quilt of organizations" (Rhodes 1994, 142).

members belong to private or public groups; vertical interdependence, that is the dependency of the policy network on actors that are above or below it; horizontal interdependence in terms of interconnections; and finally the distribution of resources – if any – that members can exchange (Rhodes 1992b). Following on from this, Rhodes identifies a continuum of five different types of policy networks in order of integration and power dependency. This ranges from highly integrated policy communities characterized by stable relationships, restricted membership, and high interdependence to loosely integrated issue networks with less stable relationships, open fluctuating membership and limited interdependence. According to the model, the more integrated the network will be less approachable but more successful in shaping policies. These types can be seen in table 2.2 below.

**Table 2.2**

| <b>Type of network</b>                 | <b>Characteristics of network</b>   |
|--|---|
| Policy community/territorial community | Stability, highly restricted membership, vertical interdependence, limited horizontal articulation                                |
| Professional network                   | Stability, highly restricted membership, vertical interdependence, limited horizontal articulation, serves interest of profession |
| Intergovernmental network              | Limited membership, limited vertical interdependence, extensive horizontal articulation   |
| Producer network                       | Fluctuating membership, limited vertical interdependence, serves interest of producer   |
| Issue network                          | Unstable, large number of members, limited vertical interdependence   |

The 'Rhodes model' in Marsh and Rhodes (1992), 14.

At one end of the continuum, are the highly integrated ‘policy communities’ that have stable relationships and are independent from other policy networks. Examples of this type of network are the fire service and education (Rhodes 1997) while at the lower end of the continuum there are the loosely integrated ‘issue networks’. The two authors later realised that “while it is easy to see why the policy community and issue network are at the ends of the continuum, the locations of other types of network are less obvious” (Marsh and Rhodes 1992, 21). As such, a new and simpler typology was suggested. This new typology, shown in table 2.3 below, focuses only on the “distinction between policy communities and issue networks ... at the end points on a continuum” (*ibid*, 186).

**Table 2.3 Policy Community and Issue network**

| <b>Dimension</b>  | <b>Policy community</b>   | <b>Issue network</b>   |
|---|---|--|
| <b>Membership:</b>  |   |  |
| a) Participants   | Very limited number, some groups consciously excluded   | Large number   |
| a) Type of interest   | Economic and/or professional interests dominate   | Encompasses a large range of affected interests  |
| <b>Integration</b>  |   |  |
| a) Frequency of interaction                                       | Frequent, high-quality, interaction of all groups on all matters related to policy issue  | Contacts fluctuate in intensity and quality  |
| b) Continuity   | Membership, values and outcomes persistent over time  | Access fluctuates over time  |
| c) Consensus  | All participants share basic values and accept the legitimacy of the outcome  | A measure of agreement exists, but conflict is ever-present  |
| <b>Resources:</b>   |   |  |
| a) Distribution of resources – within network                     | All participants have resources, basic relationship is an exchange relationship   | Some participants may have resources, but they are limited, and basic relationship is consultative |
| b) Distribution of resources – within participating organisations | Hierarchical; leaders can deliver members   | Varied and variable distribution and capacity to regulate members                                  |
| <b>Power</b>  | There is a balance of power among members; Although one group may dominate, it must be a positive-sum game if community is to exist | Unequal powers, reflecting unequal resources and unequal access. It is a zero-sum game             |

Source: Marsh and Rhodes (1992, 187).



### 2.4.1 Issue networks

Issue networks apply to asylum policy-making because networks have formed around the difficult issue of asylum. They highlight structural differences between NGOs and the government on the issue and the unequal powers displayed by the actors within the networks.

The notion of issue networks was first developed and introduced by Heclo in 1978 in response to the 'iron triangle' notion formed by "a stable set of participants coalesced to control fairly narrow public programs which are in the direct economic interests of each party to the alliance" (*ibid*, 102). However, in an increasingly pluralistic society, as more public policies were created as a consequence of great political changes within American society and more groups with an issue at stake organised to address these changes, Heclo's interests converged upon a web of people whose "influence provokes and guides the exercise of power" (*ibid*). He argues that the main characteristics of an issue network are as follows:

- 1) The number of participants is very large and they have "quite variable degrees of mutual commitment or of dependence on others in their environment" (*ibid*, 102);
- 2) They are "a shared knowledge group" (*ibid*, 103) as they have similar knowledge of a particular policy issue. However, sharing the same information does not automatically mean having the same aim or indeed agreeing on the issue. As such, they may not be a group with a "shared-action" or a "shared-belief" (*ibid*, 104). Issue networks are built and formed around a specific issue, like asylum.

Following Heclo's theory, issue networks in Rhodes' continuum "are characterised by a large number of participants with a limited degree of interdependence" (Marsh and Rhodes 1992, 19). They also have very little and unequal power due to poor resources and possibly knowledge. This lack of resources in turn results in unstable, fluctuating membership both in terms of frequency and intensity, as well as permanent conflict that limit their interaction to mere consultation rather than real negotiations (Rhodes 1997). Finally, their *raison d'être* seems to be open criticism of government policies. Hence, they normally operate in a highly conflictual environment and are consequently less likely to be able to have a bearing on the policy-making process and bring about change.

#### 2.4.2 Strengths and weaknesses of the Rhodes' model

Rhodes' model of policy networks is significant because it proposes a new interpretation of the 'Westminster model' which has been substituted by the governance of a differentiated polity. As with any theoretical model, it has been subjected to criticisms by various authors. Amongst the principal critics of policy networks in general is Dowding (1994; see also 1995 and 2001). He frames the policy networks concept as no more than a mere metaphorical description due to its failure to explain policy outcomes and the functioning of networks. He also questions and actually defines as "simply otiose" (*ibid*, 64) the debate on the levels of analysis. He believes that too much emphasis is given to the micro- and meso-levels to the detriment of "a much higher plane of abstraction" (*ibid*) which would add further generalization to the model. Finally, Dowding suggests that putting more emphasis on the role of the agents rather than conceptualising networks from a largely structural viewpoint, would be more beneficial in terms of explaining actions.

Marsh and Rhodes (1992) acknowledge that policy change is due to the work of policy networks, together with other factors and components and, in particular, four exogenous changes: economic, ideological, knowledge and institutional. But they also recognise that "actors in the network shape and construct their 'world', choosing whether or not and how to respond" and that "consensus within networks is the product not of one-off negotiations but of a continuing process of re-negotiation" (*ibid*, 259). In a later work, Rhodes (2007) underlines that policy network analysis does not explain either change over time or "the role of ideas in change" (*ibid*, 1251) due to the limits to participation in the policy process. He in practice recognizes that actors do indeed have a bigger role in policy change and policy outcomes than he had originally suggested.

This thesis is not concerned with policy outcomes *per se*. Rather, what is relevant here is how networks constrained the work of the government in creating asylum policy. The findings show that in the UK and Italian cases, the government was the dominant leader. The core executive was found to be strong and in control despite the need, at times, of specialised knowledge. In the UK the government sought information from the Refugee Council on the establishment of accommodation centres and in Italy, the Ministry of Interior cooperated very

closely with the UNHCR on the two asylum articles. The findings therefore, agree with and corroborate some of the criticisms of Rhodes's thesis that the British state is hollowing-out and that the Westminster model has been replaced by a differentiated polity. There is fragmentation but coordination is strong and this is not equivalent to a loss of power.

Holliday (2000) believes that although 'core actors' (or the core executive and the Ministry of Interior) may depend on the resources and power offered by 'non-core actors' (such as NGOs and other pro-asylum and immigration organisations), they can still enforce a "considerable 'steer'" (*ibid*, 172) on networks. Holliday emphasises that this steering should not be interpreted as 'control' but as 'coordination'. Finally, he concludes that although the core executive may not be in control of every single phase of a certain domestic policy at all times, it can account for "many successes alongside the failures" (*ibid*, 172).

Another key point is that the model devised by Rhodes is not empirical. As such, the issue networks identified in the two countries presented different characteristics from each other. For example, the Italian issue network, in contrast to that in the UK, was characterised by instability and differences of views on some aspects of the law.

Finally, Rhodes underestimates the importance of how actors interact with each other within the network. Because the Italian government was not interested in the consultation process with NGOs and charities, these bodies came to rely heavily on the UNHCR as the principle interlocutor of the Ministry of Interior on all aspects of asylum and their political intermediaries on all aspects related to labour migration. In other words, the UNHCR became the key link between the groups and the Ministry. On the other hand, Rhodes' approach recognises the influence of non-state actors represented by the private and voluntary sector. This has been key especially in the case of the Italian legislation, the aim of which was to regulate labour migration before asylum. As such, the presence of private employers and businesses was relevant during the policy-making process.

One implication of investigating policy networks in this way that is mainly from a 'top-down' perspective is that it focuses attention on individuals, groups and organisations that are already active in the policy arena and thus already relatively privileged. This can have the effect of overlooking and understating the experiences and agency of migrants and asylum seekers

themselves, agency that they exercise in a variety of ways such as hunger strikes, demonstrations and riots. Oliveri (2012, 798) argues that migrants may also have an important role in shaping legislation. Their mobilisations through riots, hunger and workers strikes, marches can be understood as an act of “unexpected rupture of the established political patterns, through acts of self-identification, self-organization and self-representation”. These mobilisations have turned migrants seen as “‘strangers’ (*stranieri*), ‘non-EU people’ (*extra-comunitari*) or ‘illegals’ (*clandestini*)” (*ibid*, 799) into activist citizens who become political. They are therefore a step closer to citizenship and as such more likely to influence policy outcomes. On the other hand, the author also clarifies that despite rallies and workers strikes “nothing really changed” (*ibid*, 798) in Italy in terms of policy outcomes even when the centre-left was in power. The reason why migrants and asylum seekers were not included in the sample of people to be interviewed for this thesis therefore was due to the limited power migrants and asylum seekers currently have at parliamentary level and because the aim of the thesis was to understand the policy process rather than policy outcomes.

But who are the actors in these case studies? What is their role? How do they interact? The next section seeks to address these questions.

### **2.4.3 Actors**

Previous sections in the thesis have dealt with the state from the point of view of welfare and its role in relation to asylum seekers. This part of the thesis is concerned with actors within the state and beyond it. In an increasingly pluralistic society, the state has become a heterogeneous and multi-levelled entity. It “is no longer the sovereign authority. It becomes just one participant among others in the pluralistic guidance system and contributes its own distinctive resources to the negotiation process” (Jessop 2003, 6). More specifically, for the purpose of this research, state actors consist of the government (that also includes the Ministry of Interior for the Italian case and the Home Office in the UK case) and the political parties. Scholars have devoted little attention to the influence of political parties on migration policy. Triadafilopoulos and Zaslove (2006, 171) argue that this is “a curious development, given parties’ central role in representing competing societal preferences and [...] translating programs into public policy”. The reason for

this choice might be due to a ‘hidden consensus’ as moderate right and left wing parties prefer not to talk about migration as a political issue in order to avoid tension. The hidden consensus can be linked to what Rancière (1999) and Žižek (1999) refer to as post-politics, that is, the lack of debate on important political matters, a depoliticisation of society. There may be debates as Gill *et al.* (2012, 509) explains, on effective border control “but without ever opening the debate to whether any border controls at all are desirable”. Furthermore, Mouffe (2005) observes that one of the consequences of the suppression of political conflict is the emergence of right-wing groups and right-wing populist discourse. Their success is due to the fact that they communicate “real democratic demands which are not taken into account by traditional parties” (*ibid*, 71). Radical right wing parties for example, constantly voice their discontent against the immigration policy of a given country but they seldom get many votes (Freeman 2006; Triadafilopoulos and Zaslove 2006). The British National Party (BNP) in the United Kingdom is evidently an example of this. The Italian equivalent of the BNP, the *Lega Nord*<sup>31</sup> is a different matter because, from a secessionist movement, it became one of the main allies of the centre-right government.

Non-state actors can be agglomerated under the term ‘civil society’, referred to as the “arena of uncoerced collective action around shared interests, purposes and values” encompassing “a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power” (London School of Economics 2004). They include NGOs, charities and pro-asylum/immigration groups, the UNHCR, the Church, trade unions and professional and business associations. Non-state actors have also been described as both “heroes and villains” (Josselin and Wallace 2001, 1) according to different political views. Idealists see NGOs as challenging the state’s authority while globalization enthusiasts believe that NGOs are there to “build networks across borders” (*ibid*, 1). Finally, the hard-line realists think NGOs are potential revolutionaries or conceal the interests of the states. Both realists and

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<sup>31</sup> The Northern League’s members are well known for their propaganda against immigrants, especially those of Islamic faith. There have been several regrettable occurrences where former Mayors in the North have inflamed the masses with their racist comments. For example, the public prosecutor’s office of Venice opened an investigation into the former Mayor of Treviso, Giancarlo Gentilini, for instigation of racist hatred. However, on other occasions the NL have claimed not to be racist. It is a fact though that they have used migration as bait to obtain votes in the North.

idealists, although holding different positions, agree that non-state actors may influence the state's decisions. This influence usually happens through networks that comprise non-state actors which lobby politicians in order to achieve a certain result.

Generally, stakeholders have interests not only in implementing the decisions but also in helping to shape them in order to protect their own or their party's or group's interests. As such, policies often come to be made through the interaction of actors who, in order to protect their interests, look for the most cost-effective means (i.e. maximising their benefits and minimising their costs) to accomplish their specific target without reflecting on the possible outcomes (Zincone and Caponio 2004). An example is the Council Directive 2001/55/EC on minimum standards to give temporary protection in case of a mass influx of displaced persons that coincidentally the Italian and Maltese governments are particularly interested in and are urging the European Commission to make it active (World Socialist Web Site 2011; see also ECRE's website). The recent decision of the Italian government to give temporary protection permits to Tunisian migrants is part of their efforts to involve the other European member states to help out with this "human tsunami" (Corriere della Sera 2011). However, this is a way of shifting the issue somewhere else rather than finding a solution<sup>32</sup>.

## **2.5 CONCLUSION**

This chapter has developed a theoretical framework based on the first four hypotheses laid out in the introductory chapter of the thesis. Firstly, the chapter focused on asylum and migration theories in view of the fact that migration is a complex and multifaceted issue. It has been shown that asylum is often regarded as a subset of migration, making the issue blurred, more contentious and difficult to understand. Governments have to deal with these difficulties in order to create asylum policies. However, they may have different attitudes and behaviours

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<sup>32</sup> Besides, the government is fully aware that the aim of most of these migrants is to reach France and to a lesser extent Germany where they already have family and friends. France has closed its southern borders to prevent entry by train while Germany threatened to do the same (Frenzen 2011) breaching the Schengen Treaty while accusing Italy of being in violation of EU law. Italy has a very strict visa policy contrary to Germany whose more liberal policy on visas is seen as the "soft underbelly of the Fortress Europe" (Finotelli and Sciortino 2009, 131). As such, in Italy, many overstayers have actually come into the Schengen area thanks to visas issued by the German state.

towards asylum seekers compared with other migrants, especially if under the influence of the tabloid media and public opinion. Policies will therefore differ.

Secondly, the analysis has reviewed the nature of the state. Liberal theorists argue that states, created by the *demos* for the *demos*, have a duty towards their citizens but also have a moral duty towards asylum seekers. However, nation-states consider asylum as a threat to their economy as they could represent a drain on public expenditure, but also to their national identity and even security, especially after 9/11. States have, therefore, implemented stricter policies and security measures in an effort to control migration and to deter unwanted arrivals.

The third aspect is that ‘government’ – perceived as a strong, unitary element – has become ‘governance’ through a delegation of powers to other state and also non-state actors. Some authors have interpreted this as a fragmentation or a ‘hollowing-out’ of the state. Others believe that the state is still powerful or that this fragmentation has not weakened the state but simply changed it. Furthermore, states may face constraints from an international perspective because of the EU and other transnational and supranational actors and, on the domestic front, from the growing number of pro-asylum, pro-immigration and pro-human rights pressure groups. When it comes to asylum and migration policies though, states display their power in determining who stays and who has to go. Governance has been described as a new way of making policy because of a whole new dimension: that of policy and issue networks. This is the last part of the theoretical model. These networks represent the so called meso-level of the policy process, i.e. the level that connects the macro- and micro-levels of policy-making. In other words, understanding these networks reveals how policies come to be made through the formal and informal interactions between state and non-state actors. Issue networks are particularly relevant to understanding how asylum policy is made and how they reflect the power relations between the different actors.

This chapter has introduced the core theoretical approaches that will inform the empirical chapters that follow. In particular, Chapters 4 and 5 present the context in which asylum and migration policies were shaped in Italy and the UK. Chapters 6 and 7 present an analysis of parliamentary debates and interviews held with key actors to understand how policy was formed. Chapter 8 compares the two countries in terms of the nature of the state, issue networks

and the different levels of policy-making. Finally, the last chapter concludes the thesis by arguing the validity of this study.



# CHAPTER 3

## METHODOLOGY

This chapter outlines the methods used to validate the research problem and test its hypotheses. To understand how asylum policy proposals become policy decisions in different states – that may perceive asylum differently – four hypotheses and consequent research questions were outlined in Chapter 1. In order to answer the research questions, different types of material and sources were collected and analysed. Although the thesis has followed mainly a qualitative approach, multiple or mixed strategies (Burgess 1984; Douglas 1976) were also relevant. For example, asylum statistics provided details of trends in the two countries (asylum applications, decisions, outcomes of the applications and top 5 sending countries). In 2002, asylum was one of the most important issues for the UK government but it was not for the Italian one. The statistical data are used to compare the differences in scale between the two countries and to inform the first two hypotheses: asylum as an issue because perceived as a threat; and the consequent manner in which it is dealt with by states.

This chapter is divided into two main sections. The first part relates to data collection and contains information on the documents used to carry out the analysis and the interviews made (such as the location and the selection of the participants). The second part concentrates on the analysis. The focus is the relevance of comparative analysis for this thesis, how the analysis of the documents was carried out and why and, finally, the difficulties encountered during the analysis of the documents and the fieldwork and how they were dealt with.

### 3.1 DATA COLLECTION

The analysis of the documentary sources and interviews may be divided in three parts. The first step involved content analysis of media articles of the time and reports written by NGOs and charities to identify the main issues of the two laws under study. The thorough examination of parts within the parliamentary debates concerned with these issues followed. This analysis was particularly time consuming especially in the case of the very detailed Hansard records. However, it was important not only to understand how the process evolved over a few months,

but also to identify key actors who could be interviewed. Thirdly, in-depth interviews followed to allow the build-up of a narrative account of the policy-making process, while considering the perspectives and interests of different actors. The strategy behind the analysis of the parliamentary debates therefore was not to carry out discourse analysis. The interest of the thesis did not lie in understanding how a particular MP or political party would treat the issue of asylum or how their ideas or behaviour evolved over time. The aim was to expand the understanding of the policy process and the involvement of networks within this process. Finally, all data was evaluated via in-depth analysis.

### **3.1.1 Documents**

The most important collection of documents related directly to the legislations under analysis (the 2002 Nationality, Asylum and Immigration Act and law 189/2002 also known as ‘Bossi-Fini’) and comprised the UK and Italian official reports in the form of printed transcripts of parliamentary debates. The Official Report in the UK is also referred to as Hansard. It is the nearest to a word-by-word account. As the Official Report website states

though not strictly verbatim, [it] is substantially the verbatim report, with repetitions and redundancies omitted and with obvious mistakes corrected, but which on the other hand leaves out nothing that adds to the meaning of the speech or illustrates the argument (UK Parliament n.d.).

It is a detailed and independent record of the proceedings. Although the House of Commons and House of Lords have separate reports, the rules regarding the way in which they are transcribed are the same.

In Italy the official reports are referred to as *Resoconti Parlamentari*. As in the UK they are cleaned of repetitions and mistakes. Differently from the UK though, some of the reports exist only in form of a summary (*resoconto sommario*) while others are available in full (*resoconto stenografico*). Verbatim reports of parliamentary debates are available online (including Standing Committees and Select Committees for both countries).

Other documents included the main EU Directives (2000/596/EC; 2001/55/EC; 2003/9/EC; 2003/86/EC; 2004/83/EC; 2005/85/EC) and other governmental documents, briefings by NGOs and charities, journals, newspapers, surveys and blogs. In particular, journals, used to identify

the main literature in both countries were mostly available online; newspapers<sup>33</sup> and online blogs were used to read politicians statements and citizens' comments. With regard to people's feelings towards migration and asylum, polls and surveys were also collected and analysed. This information was available online at the *Istituto Nazionale di Statistica* (ISTAT) and Ipsos *Italia* for Italy and Ipsos MORI for the UK.

Although all of the above documents were important, it was the parliamentary debates in both countries that embodied the main source of the study. Firstly, they represented an important step in understanding all the different stages of the parliamentary process and the steps in the asylum policy process. Secondly, the debates specify the political party affiliation and the way MPs vote on a certain issue. This detail was important because often an MP would criticise the government's line but ultimately would vote along party lines. Finally and most importantly, the debates were employed extensively to identify the names of those actors essential in the making of the two legislations as well as the details of the arguments. They indicated informal interactions, people's attitudes and change of attitudes and could be used to identify the key issues for governments and the political parties. To identify stakeholder roles was necessary because of their importance to issue networks and their roles in influencing policy.

The identification of key actors was also obtained through the analysis of media articles of the time and during the course of the interviews when suggestions were made for other potential interviewees.

### **3.1.2 Interviews: objectives, sampling and location**

The interviews to the main stakeholders were a key aspect in the development of the analysis<sup>34</sup>. They enabled deeper insight into the role of the existing networks in the making of the policy and therefore relate particularly to hypotheses 3 (the 'governance' of policy networks) and 4 (networks have different levels of power). The interviews sought to understand policy-makers' attitudes towards asylum and towards pro-asylum advocacy groups (and *vice-versa*), how

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<sup>33</sup> The main sources for media articles in the UK were the BBC website and The Guardian; in Italy they were *La Repubblica*, *Il Corriere della Sera*, *La Padania*, and *La Stampa*.

<sup>34</sup> See Appendices 1, 2, 3 and 4 for the list of interviewees in Italy and in the UK.

individual parts of the network interacted with each other, their influence and power, relationships, and lobbying.

The participants were politicians, civil servants and representatives from the most influential national and international non-governmental organisations, including the UNHCR, charities, trade unions, employers' organisations and Think Tanks, all of which played a role in the making of the legislations under examination. They did not constitute a random sample but a deliberate or 'purposeful selection' of individuals or 'élites'<sup>35</sup> who had considerable influence on the policy process at parliamentary level and policies outcomes and might be more "at ease and talk freely with the researcher such that a great deal can be learned about the research question" (Baxter and Eyles 1997, 513; see also Maxwell 2005). The main goals were to achieve: "representativeness or typicality of the settings, individuals or activities selected" and "to illuminate the reasons for differences between settings and individuals" (Baxter and Eyles 1997, 89-90). Because the main setting in this case was the parliament, it made sense to interview the most representative actors in the arena, those who had the most direct knowledge of the policy making process.

In total, 41 people were interviewed in two separate interview rounds. During the first round in 2008, 12 people were able to participate in the UK<sup>36</sup> (mainly from NGOs but also two civil servants and one MP) and 13 in Italy<sup>37</sup> (from NGOs and two civil servants). In the second round in 2011, 7 people took part in the interviews in the UK<sup>38</sup> and 9 in Italy<sup>39</sup> (in both cases these were policy-makers, civil servants, and one Italian charity worker).

The majority of the interviews in the UK were held in London in October 2008 and then again between January and March 2011. In Italy most interviews were held in Rome, seat of the government and many NGO offices. There were two exceptions. One was the interview held with Gianfranco Schiavone, responsible of the refugee office of the Italian Consortium of Solidarity (ICS) based in Trieste, Northern Italy. Mr Schiavone was interviewed the first time in

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<sup>35</sup> Politicians are defined as 'élite' a) because they have a certain degree of control on migration policies due to an interest (stake) or their background; and b) "by their exclusivity" (Desmond 2004, 264).

<sup>36</sup> In total, 23 people were contacted.

<sup>37</sup> In total, 27 people were contacted.

<sup>38</sup> In total, 19 people were contacted.

<sup>39</sup> In total, 20 people were contacted.

December 2008 and a second time to clarify some aspects which emerged during the analysis of some documents in February 2012. In both occasions the interviews happened over the telephone due to the impracticality of a trip to Trieste. The second exception was in the case of migration expert Sergio Briguglio who works and lives in Frascati, not far from Rome. The interview was face-to-face.

The interviews were semi-structured as they allow more flexibility for the respondents increasing “validity of the responses” (Aberbach and Rockman 2002, 674; Peabody *et al.* 1990).

Overall, dates for meetings were set usually within one or two days in Italy and two to three weeks in the UK. In the UK people replied on both occasions either directly or through their secretary. Refusals were mainly due to lack of time or detailed knowledge. One MP in the UK declined on account of his retirement while another one thought he did not have much to say despite his repeated interventions as recorded in Hansard. In Italy instead, not all the potential interviewees replied while those who did, were mostly able to meet up.

On average, a good rapport with the interviewees was established. This enabled more depth in the questioning and also resulted in the participants giving access to other interviewees, creating the so called snowballing effect (Richards 1996). The interviewees were asked at the beginning of the interview whether they would prefer to remain anonymous. Five interviewees (two in Italy and three in the UK) out of 41 preferred not to be named. Finally, one of my anonymous informants asked to see the transcripts before including anything in the thesis. Unfortunately, this interviewee was not at the given e-mail address anymore and could not be traced. Nevertheless, parts of the interview were included because they were informative and I felt they would not rebound on the person. Furthermore, anonymity was maintained.

The aim of the interviews was to uncover the role played by state and non-state actors in influencing the policy process.

### *3.1.2.1 Interviews in 2008*

In the first round of interviews in 2008, a discussion guide for pro-asylum/immigration groups and one for MPs and civil servants were developed. As piloting was not possible, great care was

taken in developing the survey. As such, the discussion guide was bespoke to the agencies being interviewed and no issues were encountered when using it.

For the first group of interviewees, the initial questions were of a more generic nature and related to the following key themes: interests and concerns for the laws then under discussion, existing networks and the nature of their interactions, compromise, power, lobbying and influence of the mass-media and of the EU on the government.

For the second group of interviewees (MPs and civil servants), the rationale for the discussion was slightly different. Starting again with broad questions about their interest and basis of the legislation, the interviews then moved to the type of sources they used to gather their information, and the networks they belonged to. The third part related to their influence, power and compromise. Finally, as in the first case, questions on the influence of the mass-media and the EU were asked.

The interviewees belonging to NGOs and charities were contacted in the first instance by e-mail. Generic or person's specific e-mail addresses are available on the contacts pages of the organisations. Some answered readily and provided the e-mail address of the right individual to contact or their telephone numbers, others did not. In this case a second e-mail was necessary as a follow-up.

### *3.1.2.2 Interviews in 2011*

The second set of interviews in 2011 was to include policy-makers who were not contacted in the first instance. This second round was delayed because it was first necessary to have a good knowledge of the key issues confronted and how they were dealt with and to identify the key politicians who took part in the debates. Only after a thorough examination, interviews followed. The politicians were chosen according to their role during the debates of the two laws. As such, some specific questions were asked towards the end of the interviews.

A second round of interviews was also necessary in the case of Italy. First the parliamentary debates were analysed and then the key issues and the key politicians and other significant actors were identified. The interviews in this case however, were over the phone and happened between January and February 2011.

No question was asked about the politician's personal take on migration as this was clear by reading the parliamentary debates and the media articles.

The approach employed to contact the 'élite' policy-makers in this second round of interviews was different from that used to contact people in 2008. Several issues have been recognised while conducting interviews with élites. One of these is the accessibility of people who hold a privileged position in society. To gain access is not an impossible task but there are some precautions and expedients to take. First, an official letter<sup>40</sup> with the logo of the university was sent to the 'gate keepers' (Peabody *et al.* 1990) followed by phone calls. To the Italian policy-makers an e-mail containing a brief presentation and the official letter sent as an attachment were sent. The reason for these two different methods (letters in the UK and e-mails in Italy) was due to logistics: to avoid letters arriving too late or being lost in the process. The letters did not include detailed information but only the "general purpose" (Aberbach and Rockman 2002) of the study. They underlined at the same time, the importance of the selected individuals in bringing "unique and even essential expertise to the topic" (Delaney 2007, 212; Richards 1996; Lilleker 2003). The importance of keeping the letter interesting but general was mainly due to the fact that asylum and immigration may be considered sensitive topics.

## **3.2 DATA ANALYSIS**

### **3.2.1 Comparative analysis**

The importance of comparative analysis is well-known in policy studies: it is "an instrument to verify or falsify relationships between two phenomena" (Pennings *et al.* 2006) or "among variables" (Lijphart 1971). Comparing two (or more) countries and their political system maximises understanding in the way they have developed and why.

In the case of this thesis, asylum policy is used as the mean to understand the policy process of the Italian and UK governments. The policy process depends on the location, history, and political developments of the UK and Italy but also the existence of networks and the way in which they interact to create policy.

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<sup>40</sup> Examples of the letters sent are contained in Appendices 8, 9 and 10.

Finally, in order to establish and compare the scale of the asylum population in the two countries and how it might affect the governments' views, a brief analysis of the statistical information on the asylum trends available for Italy and the United Kingdom from 1995 to the time of writing was included. The main sources were the UNHCR Statistical Yearbook and the OECD SOPEMI annual reports for Italy and the UK (Salt, 2009). These were used to establish the main differences between Italy and the UK with regard to asylum applications, refugee status determination, granted exceptional leave, humanitarian protection, or discretionary leave and countries of origin. The statistical information is in Chapters 4 and 5.

### **3.2.2 Document analysis**

In the analysis of the UK and Italian parliamentary debates, the first step was to identify the names of policy makers and associations that had an input in the discussion of the bill. The people and associations who appeared more often because of their interventions and interests were then contacted for the interviews. The second step was to detect the issues that had a major impact during the discussion, thus showing the relevance of a particular topic for the government and the political parties in the majority and the opposition. An example is the discussion on the establishment of accommodation centres in the UK that took up most of the time devoted to the debates, and the regularisation of illegal migrants in Italy that caused frictions within the majority.

### **3.2.3 Analysis of interviews**

A software package called Transana was used to code the interviews. It allows the researcher to analyse audio data, assign keywords and explore relationships between applied keywords. The applied keywords related to hypotheses three and four that deal with network analysis and especially policy networks. The keywords centred on topics such as alliances, compromise, influence (of the associations, the Church, the mass-media, and the EU), lobby, nature of interaction and networks. The resulting keywords were then compared to establish similarities and differences in the role of the networks, their *modus operandi*, the power balance and the



relationship between central government and the pro-asylum/immigration groups but also the interactions within the groups. This was done for both countries.

### **3.3 ISSUES WITH THE ANALYSIS OF THE DOCUMENTS AND THE FIELDWORK**

The main problems were encountered with the Italian parliamentary debates. Whereas Hansard in the UK was clear and complete, some Italian official reports only exist in summary form for both chambers, thus making the investigation more difficult. In the Senate they are divided into three main categories: debates within the first standing Committee for Constitutional Affairs (*Trattazione in Commissione*), debates within different standing committees that consider points in common to a particular bill (*Trattazione in Consultiva*) and finally, debates on the Floor of the House (*Trattazione in Assemblea*). In the first two instances – *Trattazione in Commissione* and *Trattazione in Consultiva* – debates are only available in a form of summary (*resoconto sommario*), that is a synthesis of the speakers' speeches. In the last case instead – *Trattazione in Assemblea* – debates are normally recorded word by word because it is a public session. The full stenographic reports (*resoconti stenografici*) therefore, exist only in the last case. At this stage there is not much debate going on because the available time is mainly dedicated to voting on the amendments. The initial proposals to the bill as a whole are discussed in the earlier stages in the Cabinet, before the official presentation in one of the two Chambers. This means that it is not possible to access the debates from beginning to end, making impossible the task of knowing exactly when and why each amendment was proposed and the consequent reactions. This has the effect of making the Italian policy-making process non-transparent. This problem was overcome as far as possible through the analysis of other material and sources. These were the media articles of the time reporting the discussion in Parliament, briefings and e-mail exchange<sup>41</sup> between charities, NGOs, and experts, and finally the interviews. The latter in particular, served the purpose to triangulate and confirm the evidence found and also to clarify

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<sup>41</sup> The access to the e-mails and briefings was possible thanks to the efforts made by Sergio Briguglio – one of the interviewees and external expert on most migration matters including asylum – to maintain a website dating back to 1992. This website contains articles and e-mail messages on everything related to immigration and asylum. It also contains information on the legislation.

some other aspects missing from the debates. These rules are included in article 33 of the Senate Rules (Senato 1971).

The Chamber of Deputies follows roughly the same formula. There are debates within the first standing Committee for Constitutional Affairs, debates within different Committees and finally, debates within the Assembly. As for the Senate, only the debates on the Floor of the House are public according to article 63.1 of the Chamber of Deputies Rules (Camera dei Deputati 1971) and as such, exist in full. The others only exist as a summary. The debates were nevertheless still a useful starting point to understand the differences and the dynamics at work between the majority and the opposition.

The availability of interviewees varied. Some policy-makers did not respond to the requests sent or refused to take part because of their current positions in government or because of the difficult situation of the government at the time of contact. However, this last point is only relevant for the Italian case. At the time, there were some important issues the Berlusconi government was dealing with. These were the imminent trial of the Prime Minister<sup>42</sup> and other political disagreements that caused some friction within the ruling coalition and lead some of the Prime Minister's closest supporters to leave the coalition; and finally the dire economic situation of the country that ultimately led to the resignation of Berlusconi and the fall of the government. On average, however, the participants were ready and happy to take part to the interviews both in person and over the phone despite the fact that they needed to recollect information dating back to 2002. Some interviewees just needed reminding of crucial points about the law to juggle their memory. Asking people to recollect what has happened years before poses both a challenge because they may not remember but also the benefit of having time for reflection. In terms of memory, Richards (1996) mentions that at times, the memory of ex-politicians can be problematic as they "often encounter pathological difficulties in distinguishing the truth, so set have their minds become by long experience of partisan thought" (Seldon 1988 quoted in Richards 1996, 201). In some cases on the other hand, the passage of time gave respondents time to reflect on what had transpired then and since. This may have provided a more thoughtful response but it might also mean that an attempt was made to justify

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<sup>42</sup> In relation to the so-called 'Rubygate scandal'.

actions taken in light of subsequent circumstances. Mediation was therefore central and not only because part of the sample was constituted by politicians experienced in the art of interviewing. For example, when interviewing David Blunkett I felt at times that he was rehearsing a part (e.g. repeating something he had said many times before – as former Home Secretary – about the situation of asylum in 2002). Only towards the end of the interview, when he was asked if he would have done something differently, his expression changed as he perhaps realised that some things could have been done in other ways. The interview with Lord Dubbs had instead a whole different feel. As a former refugee himself and former head of the Refugee Council, he seemed to be speaking from a personal point of view and out of personal experience. Each interviewee had a story to tell which was either influenced by their current or previous position or personal circumstances. One way to deal with this issue of mediation is reflexivity (Baxter and Eyles 1997; Rice 2009). Reflexivity is important “to recognise the different power relationships that exist between” interviewer and interviewees (Flowerdrew and Martin 2005, 113) especially in the case of elite interviewing. As a result, several people who held different positions and perspectives were interviewed about the same set of events, it is possible to evaluate and weight their accounts against each other and documentary sources. Furthermore, discussion guides were created in Italian and English and reflected the research questions. They were tailored according to the interviewees’ expertise and the part they played in the making of the policy. Consent to record interviews was obtained in all cases.

Civil servants could be a good alternative if politicians cannot remember or are not available. In the UK, the issue was that “the Home Office has no institutional memory” (interview with Home Office official<sup>43</sup>) as civil servants tend to move to new positions often. In fact, only three civil servants who were working at the time were reached. As they are deemed to be good observers, they were able to recollect the general atmosphere within the Home Office as the NIA bill was under way, including the gossips. For example, there were rumours that the locations of accommodation centres were not chosen randomly or based on availability but purposefully in wealthy, conservative areas. This was perhaps a party political reaction to the dispersal system implemented with the 1999 Act. According to this, asylum seekers were

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<sup>43</sup> Interview date: 9<sup>th</sup> October 2008.

dispersed in poor and disadvantaged areas of the countries, mainly in Labour constituencies. This caused resentment and violence in the local communities.

For the Italian case, the prefects were an essential source of knowledge and information as they followed very closely the development of the Bossi-Fini.

### **3.4 CONCLUSION**

The chapter has highlighted the methodological framework adopted that has allowed the analysis to be carried out. As such, a mix of methods – quantitative data as a background to the research, collection of different sources of data, comparative analysis and coding of interviews – was key to the thesis and helped frame the research questions.

The methodology proved thorough despite some difficulties. These were mainly related to working on two countries with different political systems and historical trajectories as well as ethics and consequent governments' behaviour towards asylum.

The following two chapters concentrate on the two countries' historical and political developments in terms of immigration and asylum legislation.

# CHAPTER 4

## HISTORICAL AND CONTEXTUAL BACKGROUND IN THE UNITED KINGDOM

The aim of this chapter is to set the historical and political context that led to the creation of the 2002 Nationality Immigration and Asylum (NIA) Act. As a “very hot button” issue (interview with Dr Metcalfe<sup>44</sup>), asylum has been subjected to a huge campaign of politicisation as well as de-politicisation through the years (interview with Professor Guild<sup>45</sup>). The topic has been used to win votes as both Labour and Tory have seen an “electoral advantage in taking a particularly strong line against asylum seekers” (interview with Dr Metcalfe) depicted as a threat to the state’s unity and its welfare system. It has also been put in a corner when it was becoming too uncomfortable to talk about it (Freeman 1995; Perlmutter 2000) and the subject was switched to the economic benefits of highly-skilled migration.

The chapter concentrates firstly on the historical developments in terms of immigration and asylum legislation<sup>46</sup> following a chronological order culminating in the 2002 NIA Act. The inclusion of the legislation history is important to understand, firstly, the then climate surrounding asylum and how it was perceived to be a threat to the nation-state’s identity, interests and sovereignty by politicians. Secondly, it provides a context to compare the attitude of the two countries under study towards asylum. The nature of the state to a considerable extent determines how asylum is dealt with by the government.

The second part discusses the difficulties of UK governments in dealing with asylum (hence the need to create new asylum legislation every three years) and their relationship to the nature of the welfare state. The rise in numbers, the huge backlog of claims never dealt with by the Tories and a more than hostile right-wing media – whose harsh criticism against the new government’s inability to deal with ‘bogus’ asylum seekers fuelled public opinion fears – urged the Labour government to pass new legislation in 1999. However, because the situation in the eyes of the government did not improve, it promised to overhaul the asylum system with a new

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<sup>44</sup> Justice. Interview date: 1<sup>st</sup> October 2008.

<sup>45</sup> Interview date: 9<sup>th</sup> October 2008.

<sup>46</sup> See Appendix 11 for the list of main asylum legislation developments in the UK.

White Paper in 2001 followed by new legislation in 2002, the NIA Act. Furthermore, the then Prime Minister Tony Blair vowed to take asylum matters into his own hands in order to reduce radically the number of asylum claims. This part of the chapter contains also the examination of the most controversial issues<sup>47</sup> within the NIA Act and denounced by NGOs and charities but also by those local communities that felt ‘threatened’ by the government’s plans to build accommodation centres in their small urban and rural (but often wealthy) areas. This section concludes with a brief comparison of the 1996, 1999 and 2002 Acts, showing a continuity of restrictive policies between Conservatives and Labour.

The third part of the chapter discusses the political aspects related to the development of the asylum debate. It examines factors that shaped the policy of those years, such as the role of the media in influencing public opinion and possibly policy, and the gap between politicians’ rhetoric which favoured restrictions and actions which accepted asylum seekers anyway. This discrepancy shows a tension between domestic policies on the one hand – geared towards the preservation of the British nation-state and the protection of its citizens – and on the other hand the duty to safeguard asylum seekers according to the conventions and treaties signed and ratified by the UK.

#### **4.1 HISTORICAL DEVELOPMENTS IN LEGISLATION: A CONVERGENCE OF TRADITIONS**

From the 1905 Aliens Act to the 2009 Borders, Citizenship and Immigration Act, the aim of immigration legislation has been to constrain the stay of immigrants and especially the entry of asylum seekers. The focus of these bills was on immigration, given the colonial links with the Commonwealth countries. The UK had already become an immigration country after the Second World War with the first immigration legislation dating 1962. The Commonwealth Immigrants Act was brought in mainly to reduce immigration from the Commonwealth (Bloch 2000; Coleman, Compton and Salt 2002).

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<sup>47</sup> The establishment of accommodation centres, the education of children in these centres, termination of support, non-suspensive appeals and detention.

It was in the 1950s that “immigration for permanent settlement” (Coleman, Compton and Salt 2002, 501) became high on the government’s political agenda due to the arrival of West Indians. In 1964 the issue became a key electoral point (Bloch 2000) as Asians became the main settlers (Coleman, Compton and Salt 2002). By the late 1970s migration became the subject of political rhetoric against migrants (Boswell 2005a) due to the significant increase of net immigration in the early 1970s (Hatton 2005; Dobson *et al.* 2009).

In the 1980s, public concern grew due to the rising unemployment and also partly to the “political and economic decline and the drastic economic restructuring and welfare state reforms” that Britain was then experiencing (Boswell 2005, 57). As the numbers of asylum seekers increased towards the end of the 1980s<sup>48</sup> and throughout the 1990s<sup>49</sup>, they became an “obvious target for anti-immigrant sentiment” (*ibid*; Bloch 2000; Menz 2008) especially on the part of right-wing tabloids. Consequently, the policy agenda shifted from immigration to asylum. Asylum seekers were represented as a new threat to the unity and welfare of the nation state. The most important migration issue by far for the then Conservative government was to stop the perceived abuse of the asylum system by claimants accused of using the UK’s generous welfare provisions. As a result, the first ever asylum legislation – the 1993 Asylum and Immigration Appeals Act – was passed. The aim of this Act was, on one side, to increase the use of pre-entry controls such as taking fingerprints and introducing carrier sanctions and, on the other, to speed up the asylum application process for ‘manifestly unfounded’ asylum claims. Three years down the line the 1996 Asylum and Immigration Act introduced the ‘white list’ concept and, more controversially, it withdrew the right to claim benefits for people who claimed asylum in-country rather than at port of entry. Both acts were passed by a Conservative government. Throughout their 18 years in opposition, the Labour party had criticised harshly their rival’s asylum policy but with the 1996 Act, their stance against the Conservatives became more moderate. They agreed with the Tory government that it was important to differentiate between ‘good’ and ‘bad’, between genuine and bogus asylum seekers (Bloch 2000). As a result, the 1999 Immigration and Asylum Act passed by

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<sup>48</sup> An increase of 191% compared to the previous year: in 1988 there were 3,998 asylum claims and in 1989 the number went up to 11,640 (Migration Policy Institute, n.d).

<sup>49</sup> From 24,605 applications in 1992 they went up to 84,132 in 2002 (Migration Policy Institute, n.d; Salt 2011).

Labour built upon the previous two acts both in the field of pre-entry controls and welfare support. The Act introduced food vouchers in an effort to take asylum seekers out “of the social security system completely” (*ibid*, 39) and a compulsory dispersal system was implemented<sup>50</sup>.

Somerville (2007) divides the first ten years of Labour government into two main asylum and immigration phases. The first, between 1997 and 2001 was “reactive”, as the aim was “to reduce asylum flows and clear asylum backlogs” (*ibid*, 20). Labour had inherited a huge backlog of asylum applications that at one point – in January 2000 – reached the peak of 100,000 claims (Travis 2000). The second phase, from 2001 and 2007, was ‘proactive’. Labour’s strategy changed during their second term in power due to four factors: the backlog; the racial attacks against asylum seekers in poor parts of the North of England after the implementation of the dispersal system under the 1999 Act; the repeated criticisms on the part of the tabloid media; and finally the steep increase in asylum applications. The number of asylum seekers had reached new heights, with 71,160 applications in 1999 and 80,135 the following year “13 per cent more than in 1999” (Home Office 2002, 50) as showed in table 4.1 below (Information Centre about Asylum and Refugees 2009; Salt 2011).

In 2002 there was a new record of 84,132 applications. However, the number almost halved the following year. The sharp fall of asylum applications had already started in October 2002 and it intensified at the beginning of the following year (National Audit Office 2004). The Home Office ascribed it to a series of new measures implemented between 2002 and 2003<sup>51</sup> including some of the 2002 NIA Act procedures. The introduction of non-suspensive appeals as well as of a list of safe countries, and the implementation in January 2003 of section 55, further restricted access to support for those asylum seekers who did not apply “as soon as reasonably practicable”. On the other hand, this decline in numbers was also recorded in other 13 countries in Western

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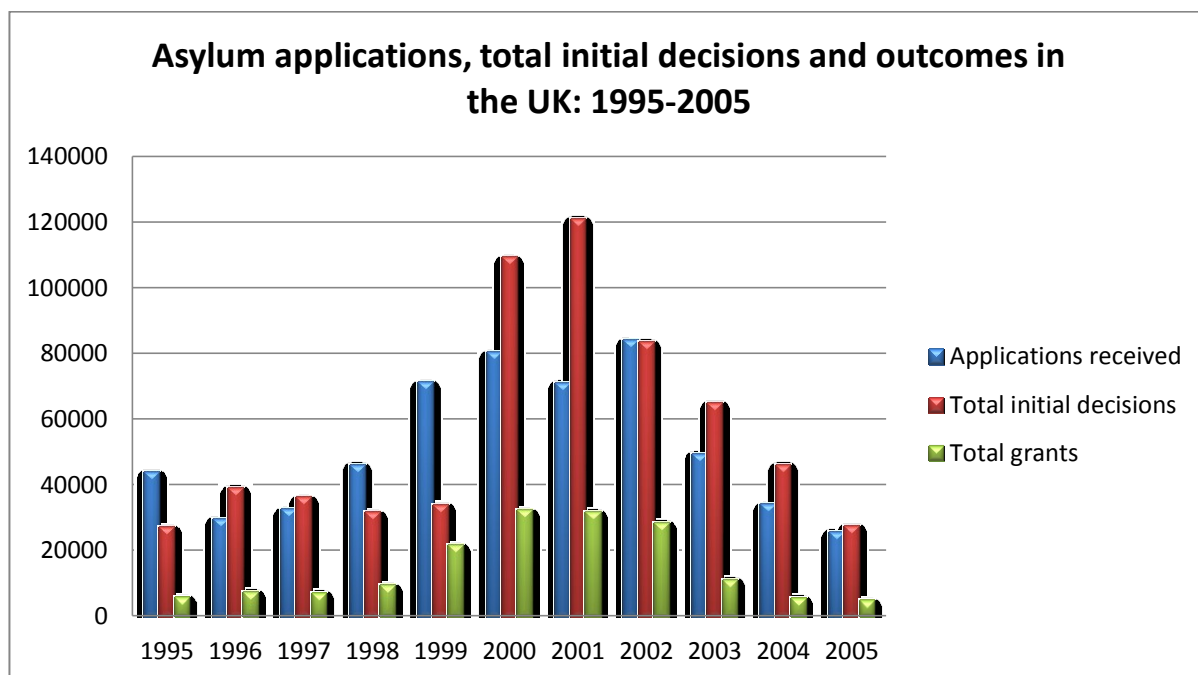
<sup>50</sup> This is still running. Many asylum seekers have been sent to parts of England according to house availability. Most of these parts (mainly in North West and North East of England) are deprived, poor working-class densely lived areas and tensions due to racism and lack of services are common and widespread. Asylum agencies have criticised the scheme as it exposes vulnerable people to abuse while limiting their access to better developed services in the London area or closer to their community (BBC 2001b; Burnett 2011).

<sup>51</sup> In particular, these included the closure of Sangatte, new visa requirements for Jamaicans and Zimbabweans, juxtaposed border controls, fast track procedures to deal with applications and detention, the use of new technologies to detect people hidden in lorries and freights and finally the extension for Direct Airside Transit Visas<sup>51</sup> (National Audit Office 2004).



Europe suggesting a common trend (although the fall of applications in the other states was not as big as that registered in the UK) (*ibid*).

**Figure 4.1**



Source: Salt 2011 (115-119).

Notes:

(1) The applications, initial decisions and grants exclude dependants.

(2) The total grants include applicants recognised as refugees and granted asylum and applicants not recognised as refugees but granted exceptional leave, humanitarian protection, or discretionary leave.

The government, afraid that they would lose support, had to be seen to react proactively to tackle public concerns related to the increased numbers of claims and the continuous attacks of the tabloid media. As Nick Pearce recollected during the interview<sup>52</sup>, at the time:

there was a very, very high level of public or at least media concern ... which fed into the political arena and made the Prime Minister and the Home Secretary both very concerned ... firstly, to show that the asylum and immigration system could be properly managed but it wasn't out of control, that it wasn't open to widespread irregularity or abuse ... ; and secondly, that in particular the asylum claims which were believed to be unfounded, should be as fast as possible reduced and the Prime Minister set a target at that time of a 50% reduction in the claims. So that was the immediate background to the [2002 NIA] Act.

Their focus shifted to the beneficial impacts of immigration and “the contribution the migrants were able to make ... in the interest of economic growth” (interview with Home Office

<sup>52</sup> Former Special Adviser to Blunkett and Head of the Policy Unit. Interview date: 8<sup>th</sup> February 2011.

Official 2<sup>53</sup>) and as part of the government's 'modernisation' (Powell 2008) approach rather than just concentrating on asylum. Labour electoral manifesto highlighted the "positive contribution to British society" made by foreigners (Labour's manifesto 2001, 34). It stressed that asylum was not "an alternative route to immigration" (*ibid*) and highlighted the positive steps taken by the government to reduce the backlog. This was the main shift from the Conservative party's perception of migration being marginal to the UK economy (Schuster and Solomos 2004). On one side there was Labour's intention to expand the immigration of foreign professionals to help the British economy, while promoting "an informed and grown-up debate ... to combat some of the negative, biased, inaccurate reporting in the press about the impact of migration" (interview with Home Office Official 2). On the other hand, the government believed that low-skilled economic migrants were abusing the asylum system rather than following a legal entry route, and "that closer control of the entry of low-skilled workers would stem the number of people entering illegally" (The Guardian 2009a). High-skilled migration was therefore seen as a potential benefit for the UK economy if managed correctly (Flynn 2003). It was a way of controlling the arrival of "desirable" (Schuster and Solomos 2004, 279) and "deserving" (Sales 2005, 448) highly-skilled migrants while limiting or discouraging the "undesirable" (Schuster and Solomos 2004, 279) and "undeserving" (Sales 2005, 448) asylum seekers who were perceived as a threat. Asylum seekers were barred from taking up employment, and their entitlement to welfare benefits was further curtailed. This phase was followed in 2001 by the Home Secretary's (David Blunkett) announcement of a set of new asylum and immigration measures that would make the UK asylum system fairer. Consequently, the White Paper "Secure borders, safe heavens: integration with diversity in modern Britain" was published in February 2002. It was published in the aftermath of 9/11 showing "that while unauthorised migration is linked to security concerns, it is also framed in the context of crime and border control" (Somerville 2007, 49). Illegal migration and, yet again, the theme of asylum, were identified and understood as a threat to security.

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<sup>53</sup> Interview date: 21<sup>st</sup> October 2008.

In the same year, the Prime Minister declared that he was going to take the asylum matter in his own hands and a new bill was put on the agenda because the “act of legislating was as important, if not more important, than the context of the legislation” (interview with Hussain<sup>54</sup>).

#### **4.1.1 The White Paper: Secure Borders, Safe Haven: Integration with Diversity in Modern Britain**

The aim of the White Paper was to overhaul radically the asylum system and it emphasised “the control and the removal of unsuccessful asylum applicants” (Refugee Council 2002a, 2). The idea of ‘managed migration’ started to emerge as the White Paper outlined various new measures for the management “of flows of people from entry into the UK through work-related routes or the asylum system, to settlement and the acquisition of citizenship” (Home Office 2002, 23). It also sent out the government’s “clear message” that “allowing asylum seekers to stay simply because the UK is their country of preference” (*ibid*, 48) was not an option while economic routes were open for those wanting to come to the UK to work rather than abusing the asylum route.

The measures introduced by the White Paper<sup>55</sup>, designed to stop illegal immigrants, badly affected asylum seekers too – just as happened with the Bossi-Fini law in Italy. It soon became apparent that the UK government was “anxious to portray itself as taking an even tougher line on asylum” (Refugee Council 2002b, 8). For example, according to Justice<sup>56</sup>, the White Paper did not mention anything that would improve the asylum determination process that is “the way in which they [asylum seekers] put forward their claims for asylum and how they are determined” (Justice 2002, 38). The goal of the government was to prevent asylum seekers from entering the country in the first instance whilst having a faster process with speedier removals for those who did manage to come in but whose claims were unsuccessful.

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<sup>54</sup> Refugee Council’s former Parliamentary Officer. Interview date: 10<sup>th</sup> October 2008.

<sup>55</sup> The main reforms proposed by the White Paper concerned: the resettlement programme; a managed system of induction, accommodation, reporting and removal centres; the introduction of an Application Registration Card (ARC); the phasing out of voucher support; assisting unaccompanied asylum seeking children; the streamlining of the appeals system; the increase in the number of removals (Home Office 2002, 52).

<sup>56</sup> Justice is an all-party law reform and human rights organisation and the UK section of the International Commission of Jurists. They aim to improve the British legal system through lobbying, research, education and intervention in the courts.

The policy was contentious. The Joint Council for the Welfare of Immigrants<sup>57</sup> (JCWI) expressed concern over the fact that many measures included in the White Paper reinforced the idea that asylum seekers were not genuine by implementing measures that did not respect human rights. At the same time, the organisation denounced the fact that some of the measures were already in place, thus “raising doubts as to the value of the consultation process” (JCWI 2002, n.p.). These measures were the repeal of part III of the 1999 Act relating to the automatic right to a bail hearing, the increase in the rate of removals of failed asylum seekers, and the detention of families for longer periods.

The government’s aim was to regain the support of the public by showing that it was tough on asylum, hence not tolerating abuse. At the same time, they aimed to ‘hide’ the problem through the establishment of special accommodation centres for asylum seekers – as part of the dispersal system – thus barring them from making ties with the host society. The ‘safe haven’ was “eclipsed by the agenda of securing borders” (Sales 2005, 459).

The reforms that caused more concern among the main refugee organisations<sup>58</sup> were: the trialling of accommodation centres; changes in the support system; asylum appeals; and increased detention times not simply for removal<sup>59</sup> purposes but also for families with children “for longer than just a few days” for the “reasonable belief that they would abscond” (Home Office 2002, 67). These specific provisions were re-presented in the NIA bill the following year and are the focus of the next section.

This first part of the chapter has highlighted that asylum was perceived as a threat by both Conservative and Labour governments. In the case of Labour, the threat was represented by the increased number of asylum applicants – while the government was still trying to clear the

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<sup>57</sup> They campaign for justice in immigration, nationality and refugee law and policy through strategic casework, media, information dissemination, training and publication.

<sup>58</sup> Amnesty International (AI), Immigration Centre about Asylum and Refugees (ICAR), Immigration Advisory Service (IAS), Immigration Law Practitioners’ Association (ILPA), Joint Council for the Welfare of Immigrants (JCWI), Justice, Liberty, Oxfam, Refugee Action, Refugee Council (RC), Save the Children, UNHCR. These are just the most prominent ones that were often cited in the parliamentary debates and/or are well known for their pro-asylum advocacy work and provision of services. There are however, hundreds of other associations and community organisations. The Refugees in Effective and Active Partnership’s (REAP) database counts 748 refugee services and resources only in London at the time of writing (Reap n.d.).

<sup>59</sup> The UK has increased deportations’ numbers since 2000 that is when asylum became highly charged with political meaning. They justified “the deportation of failed asylum seekers” as “a necessary act to preserve the integrity of a system created to provide protection for genuine refugees” (Gibney 2008, 146; see also Malmberg 2004).

backlog – thus burdening the state treasury and increasing the security risk. Both elements caused public concern and attracted criticism from the tabloid media. As a result, during their second term in government, the party’s proactive stance against asylum became particularly compelling as new tough measures were fulfilled through the publication of a new White Paper and consequently of a new bill that became the 2002 NIA Act.

## **4.2 THE 2002 NATIONALITY, IMMIGRATION AND ASYLUM ACT’S MAIN AREAS OF CONTENTION**

### **4.2.1 The ‘end-to-end system’: accommodation centres, termination of support, non-suspensive appeals and detention**

Described by the then Minister of State for Immigration, Citizenship and Counter Terrorism, Beverley Hughes, as: “the most radical and far reaching reform of the United Kingdom’s immigration, asylum and nationality systems for many years” (Stevens 2004, 1), the 2002 NIA Act was first introduced on 12<sup>th</sup> April 2002 in the House of Commons. The timetable was:

| House of Commons               |  |
|--------------------------------|--|
| Introduction and first reading | 12 <sup>th</sup> April 2002  |
| Second Reading                 | 24 <sup>th</sup> April 2002 – two weeks after First Reading as customary |
| Standing Committee E           | From 30 <sup>th</sup> April to the 21 <sup>st</sup> May 2002             |
| Report Stage                   | 11 <sup>th</sup> June 2002   |
| Report and Third Reading       | 12 <sup>th</sup> June 2002   |

| House of Lords  |   |
|-----------------|---|
| First Reading   | 13 <sup>th</sup> June 2002                              |
| Second Reading  | 24 <sup>th</sup> June 2002                              |
| Committee Stage | From 8 <sup>th</sup> July to 29 <sup>th</sup> July 2002 |
| Report Stage    | 9 <sup>th</sup> and 10 <sup>th</sup> October 2002       |
| Re-commitment   | 17 <sup>th</sup> October 2002                           |
| Report Stage    | 24 <sup>th</sup> October 2002                           |
| Third Reading   | 31 <sup>st</sup> October 2002                           |

Royal Assent was given on 7<sup>th</sup> November 2002.

Many of the measures tackled and discussed during the making of the bill were originally introduced by the White Paper. The same objectives were confirmed and expanded by the bill whose main goal was that of establishing an effective ‘end-to-end system’ of induction, accommodation, detention and removal of people. This was supposed to happen through the establishment and trial of special centres aimed at speeding up the asylum process while tackling the real or perceived abuse of the asylum system through the end of the support system for some categories of asylum seekers. The parts of the bill<sup>60</sup> that are analysed in depth in Chapter 6 are therefore linked to the above issues and in particular:

- size and locations of accommodation centres
- length of time asylum seekers should spend in these centres
- education of asylum seeking children within the centres
- support available for asylum seekers conditional on regular reporting while living in the accommodation centres
- support of failed asylum seekers
- detention
- streamlining of the appeals’ system

These topics relate to part 2 of the bill on accommodation centres; part 3 on support; part 4 on detention and removal; and finally part 5 on asylum appeals. These issues were highlighted by pro-asylum organisations as being particularly problematic. Here they provide the basis for analysing how the government confronted them in Parliament in order to make policy.

Regardless of the many criticisms and concerns these measures generated with regard to human rights, especially from NGOs, the topic that took up most of the time in parliamentary debates was the trialling of new “progressive” accommodation centres “in the sense that [they] would have speeded the process” (interview with Blunkett<sup>61</sup>). However, they were not considered detention centres, as asylum seekers would “be able to come and go” (Home Office 2002, 57) conditional on specific residential requirements such as reporting on a regular basis. This was deemed necessary to allow closer contact between asylum seekers and the relevant

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<sup>60</sup> The bill is in 8 parts and also covers immigration and citizenship.

<sup>61</sup> Interview date: 17<sup>th</sup> January 2011.

authorities, reducing decision times, decreasing the chances of illegal working and financial and housing fraud, and reducing tension within the host communities. Accommodation in the centres would be available only to a small number of asylum seekers eligible for support and if they refused to go to the allocated centres, they would also lose any help from the government (Home Office 2002).

The centres were an old idea first presented by the Tories when in government but highly criticised by Labour at the time. This change of direction in Labour's policy shows that the role of party politics is sensitive to the issue and to the time it takes place. Zincone (2006b, 2) talks about "electoral panic syndrome" according to which centre-left parties – who normally lean towards a more open approach on immigration issues - become more sensitive towards a public opinion usually averse to new waves of migrants. This behaviour may continue even after the elections "to comply with the electoral promises" (*ibid*, 15). As with the Italian case during the passage of the centre-left Turco-Napolitano law in 1998, the UK Labour party aligned itself with the Tories' restrictive asylum policy-making because they were afraid to lose support among the voting public. Although the asylum policy-making style of the two countries is different, there was nevertheless a convergence of behaviour.

The establishment of the centres touched on several contentious issues, including full-board accommodation, health care, interpretation services and education facilities on site for children who were not allowed to go to mainstream schools<sup>62</sup>. This last feature was especially criticised by the organisations and by MPs across the political spectrum. The centres aroused strong disapproval at local and Parliamentary levels, especially within the Conservative party. Because the aim of the centres was part of the government's continuing<sup>63</sup> policy to alleviate the burden on services in London and the South East (with which most PMs and Lords agreed), they had to be big enough to host up to 750 people in remote rural areas in owned government sites. The two elements of size and location caught the attention of many and herein lay the controversy. The chosen rural areas happened to be in affluent middle class Conservative constituencies although during the interview, Blunkett said that "it wasn't a deliberate plan to do it". The

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<sup>62</sup> Apart from some special cases: children with special needs or children particularly talented.

<sup>63</sup> The previous 1999 Asylum and Immigration Act introduced the dispersal system on a 'no-choice' basis (Burnett 2011).

centres attracted the criticisms of local authorities, people living in those areas and the Conservative Party as it was thought that the situation was in fact affecting “only opposition members” since no building was “proposed in a Labour-held constituency” (Tony Baldry MP, 2002, vol. 373, col. 733). On the other hand, the dispersal of some asylum seekers also took place in Labour areas, “in disadvantaged communities next to other disadvantaged people” (interview with Pearce) causing tensions among these communities too. The perception was that the Labour party did not want to alienate further their own voters in the already affected working class communities and chose instead wealthy Conservative communities without the risk of losing votes. The difficulty according to Nick Pearce, was that people coming from those communities were not given the opportunity to say whether they agreed with the dispersal system or if they “wanted dispersal” (interview) in their areas. This created “a contrast in the political voice available to different communities about this” (*ibid*), i.e. those from affluent middle class in rural areas and those from more disadvantaged working class areas, especially in the North of England and some parts of London. As a result, a strong opposition to the government’s plan was born through what has been coined as ‘NIMBY<sup>64</sup>’ (Not In My Backyard) protests in the form of “locally organized campaigns opposing a locally unwanted land use, whether an industrial installation, human service facility or new housing<sup>65</sup>” (Hubbard 2005a, 54). In 2002 the Rushcliffe Borough Council, the Cherwell District Council, and the Wychavon District Council wrote a joint report<sup>66</sup> against accommodation centres in the following three locations: Ministry of Defence land at Bicester in Oxfordshire, Newton’s former RAF site and Throckmorton, in Worcestershire. The case of the councils against accommodation centres in rural locations was on the grounds of practicality and planning issues. Some of these points concerned the large size of the centres, integration and education of asylum seekers but also local public concerns for crime, access to health services and employment just to name a few (ICAR 2002). The protests flagged up by the local residents

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<sup>64</sup> “a significant manifestation of ‘environmental racism’ – the series of structures, institutions and practices which may not be intentionally or maliciously racist, but which serve to maintain the privileged status of white spaces” (Hubbard 2005a, 52).

<sup>65</sup> “while protestors rarely made explicit reference to issues of race or colour the representation of asylum seekers as feckless, culpable and dangerous clearly identified them as a group that threatened the privileges associated with living in a white, sexually ordered rural environment” (Hubbard 2005b, 63).

<sup>66</sup> The report was entitled *Accommodation centres in rural locations: the case against*.



prompted the government to call for an enquiry in Bicester, the first centre to be built. The strong opposition stretched out the planning process, affecting the start of work on site that slipped “by 14 months, and so raised costs<sup>67</sup>” (National Audit Office 2007a). In the end, due to recurring failures to find an appropriate site, the plan for building accommodation centres was eventually dropped by the government in 2005<sup>68</sup>. Furthermore, as Pearce said, the Treasury “was prepared to pay only for the pilot of four of them [centres] which was tiny compared to what David wanted” (interview). Eventually Tony Blair, who had initially sustained the idea of the centres, took his support away; after all he was mainly interested in stopping people claiming asylum and at the same time to remove them quickly as “he was less bothered about what happens during the duration of their claim” (interview with Pearce). This particular detail indicates that the real issue for the government was not so much the well-being of asylum seekers, rather, their removal from the country in accordance with public opinion and the need to win another general election. The accommodation centres project was finally scrapped in 2007 essentially because of the high costs incurred, the falling numbers of asylum applicants and the improvement in processing asylum claims (BBC 2007; NAO 2007b).

The main asylum organisations, stakeholders in the decision process, did not agree with the government on various aspects concerning the centres, notably location, size and services. From a rather different perspective, they were concerned about the well-being of asylum seekers. They would not benefit from residing in those centres because of the distance from urban areas and their established communities making integration in the isolated rural areas very difficult. For example, the education of children within the centres and away from mainstream education was regarded as discriminatory<sup>69</sup> and counterproductive for a successful integration, likely to

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<sup>67</sup> By the end of March 2007, the Home Office stated that about £33.7 million had been spent on the project as a whole. Of these £33.7 million, £28 million were spent only on Bicester while £29.1 million had been recorded as a financial loss (NAO 2007b).

<sup>68</sup> The government’s project was flawed from the beginning because the HO did not signed the contract for the site without first obtaining planning permissions (Planning permission for Bicester was obtained only in November 2004 that is well over two years after the start of the project in May 2002 (NAO 2007b).

<sup>69</sup> For example, Justice in a briefing to the House of Lords in June 2002, raised a question in terms of discrimination against the education of children in accommodation centres under articles 14 of the European Convention of Human Rights; articles 2.1 and 2.2 of the Convention on the Rights of the Child and articles 2 and 13 of the International Covenant on Economic Social and Cultural Rights.

foment hostility, and isolation towards increasingly ostracised asylum seekers (Refugee Council 2002c).

The second and by far the most controversial aspect for the NGOs, because of its highly detrimental impact on asylum seekers, was the decision to remove support in three cases. The first one concerned those asylum seekers who did not take up the government's 'offer' to reside in an accommodation centre. The deal was that asylum seekers within the centres had to follow residence requirements, such as reporting on a regular basis. In case of non-compliance, i.e. if they left or breached the rules by, for example, not reporting on time, support would be discontinued. The second case affected people who did not apply for asylum 'as soon as reasonably practicable' upon arrival in the United Kingdom<sup>70</sup> (also known as 'Section 55: Late claim for asylum: refusal of support'). The third case related to asylum seekers who would not co-operate with the authorities, or would not give "a clear and coherent account of how they came to the UK" or "about their circumstances" ('Section 57: Application for support: false or incomplete information') (Refugee Council 2003, 1).

But it was Section 55, which removed all benefit entitlements<sup>71</sup> from in-country applicants, that was considered to be especially difficult. It was announced by the former Home Secretary only on 7<sup>th</sup> October 2002 (Blunkett 2002) that is, less than a month before the bill was due to receive Royal Assent. Pearce admitted that Section 55 was "hammered out weeks before the Labour party conference<sup>72</sup> and during it" (interview). This shows the pressure the party was under as they came up with last minute "blunt instrument[s]" (interview with Pearce) to deal with the perceived asylum crisis. The consequence of this late introduction was that, unlike the accommodation centres, it did not attract much debate. Furthermore, it was heavily criticised and condemned by refugee and human rights organisations that were warning of the dangers of destitution. Because asylum seekers were "not legitimate members of the community" and as

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<sup>70</sup> On 17 December 2003 during the Second Reading of the Asylum and Immigration Bill, the Home Secretary announced that new arrivals would be expected to claim asylum within 72 hours (Amnesty International 2004a, 10).

<sup>71</sup> It has been evaluated that "almost 30 per cent of all asylum applications" in the first year "were referred for a decision to refuse support" (Refugee Action 2006, 25).

<sup>72</sup> The Conference happened between 29<sup>th</sup> September and 4<sup>th</sup> October 2002; the bill received Royal Assent on 7<sup>th</sup> November 2002.

such were perceived not to contribute to society, they were not “legitimate receivers of welfare state benefits” (Geddes 2003, 40).

Because of its controversial nature, section 55 was challenged several times in court cases since its coming into force on 8<sup>th</sup> January 2003. In May 2004 the English Court of Appeal ruled that the denial of protection was a denial of their human rights and in breach of Article 3 of the European Convention on Human Rights. The new procedure, effective from June 2004, held the National Asylum Support Service (NASS) responsible for support to all asylum seekers unless they had other ways of supporting themselves (Refugee Council 2002d; Save the Children n.d.). However, section 55 has not been in use since 2005 following a House of Lords ruling that “denying support in this way could breach the prohibition on inhuman and degrading treatment in the HRA” (Liberty 2010, 7). The question related to section 55 highlights the tension that existed between domestic policies and international agreements. Whereas domestic policies tend to protect national citizens, international conventions such as the European Convention of Human Rights (ECHR) have the duty to defend other subjects such as asylum seekers.

The third issue was that of appeals contained in Part 5<sup>73</sup> of the bill. This topic was another last minute addition as it was announced together with the above support related provisions in October 2002. It introduced the concept of ‘clearly unfounded’<sup>74</sup> applications if the country of origin was deemed to be safe with the subsequent removal to a safe-third country. Following from this, a ‘white list’ of ten safe countries that were about to join the European Union at the time<sup>75</sup> was also presented. This provision had the consequent effect of denying in-country right of appeal, also known as non-suspensive appeals. Non-suspensive appeals could be applied to failed asylum seekers coming from any of the safe ten EU accession countries but could also be applied to any other asylum applicant (Refugee Council 2002c).

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<sup>73</sup> Part 5 also dealt with the introduction of the Statutory Review process (a “paper-based examination made by a single judge in the High Court determining whether the law has been correctly applied” (Refugee Council n.d.) as an alternative to the Judicial Review for those who were refused the leave to appeal to the Immigration Appeal Tribunal (IAT). Judicial Review was condemned as it led “to layer upon layer of delay” (Blunkett, HC Deb 11 June 2002, vol. 387, col.797).

<sup>74</sup> Section 94.

<sup>75</sup> The ten EU accession states were: the Republic of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia (RC 2002c). They were removed in 2004. The current white list is made of: Albania, Bolivia, Bosnia-Herzegovina, Brazil, Ecuador, Gambia (men only), Ghana (men only), India, Jamaica, Kenya (men only), Liberia (men only), Macedonia, Mali (men only), Mauritius, Moldova, Mongolia, Montenegro, Malawi (men only), Nigeria (men only), Peru, Serbia, Kosovo, South Africa, Sierra Leone (men only), and Ukraine (Home Office 2011).

The final aspect was that of detention, discussed in part 4 of the bill. Detention has always been (and still is) a contentious and sensitive issue, a “national scandal” (Refugee Council 1998) in particular with regard to families and children<sup>76</sup>. Although UK governments use detention to prevent “asylum seekers from absconding and disappearing into the community” (Bail for Immigration Detainees 2002, 3), the fact that they often detain someone “on an administrative decision without having committed a criminal offence” (Neil Gerrard MP<sup>77</sup>, HC Deb 14 May 2002, vol. 384, col.253) sends out the message that asylum is a crime. Back in 2002 the numbers of asylum seekers detained “for arbitrary reasons and for indefinite periods without any external scrutiny” (Refugee Council 2002a, 14) was on the increase<sup>78</sup>.

In conclusion, the 2002 NIA Act worsened considerably the situation of asylum seekers. It introduced new harsher measures, tightened old ones, re-introduced procedures, such as the white list, that had been previously scrapped and even re-cycled old ideas like the establishment of accommodation centres which had been originally presented by the Conservative government years before and opposed by Labour. Compared to the previous three asylum Acts, the new law did not introduce any revolutionary ideas. Rather, it continued the trend of exclusion and stigmatization of the asylum seeking population which started in the mid-1990s.

#### **4.2.2 Continuity in the face of Labour party political strategies: race relations, welfare and crisis**

Despite the Labour government’s aim to create discontinuity with the Tories’ administrations, mainly in terms of highly skilled labour migration (Schuster and Solomos 2004; Somerville 2007), the preceding section has highlighted that the 2002 NIA Act presented several similarities and continuities with the previous asylum Act produced by the Conservatives. This shows “a bi-partisan consensus on the ‘asylum problem’” (Bommes and Geddes 2002, 135). It has been observed in fact, that rather than a discontinuity between Tory and Labour’s asylum

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<sup>76</sup> The current coalition government has promised to scrap the detention of children and so far the Home Office has announced the end of detention for families of failed asylum seekers at the Dungavel Immigration Removal Centre in Scotland (Home Office 2010).

<sup>77</sup> Former MP for Walthamstow.

<sup>78</sup> The Home Office has produced detention statistics since 1995. However, there are no statistics showing the overall time spent in detention. Rather, they are produced in quarterly snapshots which do not give the full picture. An asylum seeker could in fact be detained for under three months thus not entering in the quarterly statistics (ICAR 2007).

policies, there has been continuation (Bloch 2000; Flynn 2003; Schuster and Solomos 2004; Bloch and Schuster 2005; Morris 2007). To start with, both Conservative and Labour administrations insisted on fair, fast and firm immigration controls allegedly to preserve good race relations (Bloch 2000, 39). The fact that Labour stressed the importance of good race relations while at the same time implementing restrictive asylum policies and using anti-asylum rhetoric was deceptive<sup>79</sup>. The public's concerns towards the asylum seeking population in fact increased over time rather than diminished. For example, it was argued by Schuster and Welch (2005) that widespread detention of asylum seekers indicated that they were criminal and, as such, dangerous to society (see also Bosworth 2008). In practice, politicians have reinforced the sense that this category of people is a threat to society – as specified in the first of the thesis' hypotheses – and therefore its stability.

The second common aspect that indicates continuity was that the reduction of welfare support was believed to deter asylum migration (Bloch and Schuster 2005). Asylum seekers rely on the few welfare benefits available to them because they are not allowed to work<sup>80</sup>, *de facto* removing the warranty of obtaining social rights through their working status. Despite being labelled as a liberal welfare state (Esping-Andersen 1990), the UK's policy towards asylum seekers' welfare entitlements has been less than generous. Since 1996 both Conservative and Labour governments cut these entitlements, whereby benefits were "30% lower than standard benefits" (Casciani 2003). Besides, asylum seekers were not entitled to council housing<sup>81</sup>. For example, the 1996 Act removed "the entitlement of work permit holders to child benefit and a range of other non-work related benefits" (Sales 2002, 460) but benefits were also removed for in-country applicants and those who applied against a negative decisions (Still Human Still Here 2009). The 1999 Act barred all non-EEA nationals with conditional leave to remain from non-contributory benefits (Sales 2002) while support would be discontinued in certain cases, such as

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<sup>79</sup> Sales (2002) for example, points out that the Race Relations (Amendment Act) 2000 extended the anti-discrimination measures to the public sector. However, officials deciding on asylum case were excluded as they could determine an asylum claim based on the claimant's country of origin.

<sup>80</sup> Asylum seekers are still not allowed to work at the time of writing unless they have been waiting for more than 12 months for an initial decision to be made by the Home Office. They are also not allowed to work if their asylum claim has been refused unless an asylum-based further submission has been outstanding for more than 12 months (UK Border Agency 2012).

<sup>81</sup> However, some people believe that "asylum seekers can 'jump the queue'" because the National Asylum Support Service (NASS) buys available properties meaning that asylum seekers "may end up living on or near council estates" (Casciani 2003).

absence from the accommodation or misconduct leading to eviction (Still Human Still Here 2009). The same Act aimed to prevent more asylum seekers entering the UK by enforcing a series of harsh measures such as the introduction of vouchers instead of cash, dispersal away from the south-east, detention and easier removals (1999 Act). The 2002 Act went even further by introducing section 55 that withdrew and refused all entitlements to applicants who did not apply ‘as soon as reasonably practicable’ while leaving them in extreme poverty in many cases.

The aim of the government to decrease the numbers of claims, is not reflected in the statistics reported in Figure 4.1 above. In 1999 there were 71,160 claims and in 2000 these went up to 80,315. Furthermore, the total grants also increased as they amounted to 21,420 in 1999 and 32,195 in 2000. In conclusion, the harsher measures introduced in 1999 had no or little impact on the numbers of asylum applications. These were on the rise due to occurrences external to the UK’s perceived generous welfare system such as an escalation in conflicts or worsening of the political situation in different countries as table 4.1 below shows. The table also indicates a general decrease from 2003. This was due for example, to the end of the war in Yugoslavia and Iraq, the peace process in Sri Lanka and the imposition of visas on Zimbabwe (National Audit Office 2004; Spencer 2007).

**Table 4.1 Asylum applicants during the year – main origin**

| <b>Origin</b>      | <b>1999</b> | <b>2000</b> | <b>2001</b> | <b>2002</b> | <b>2003</b> | <b>2004</b> |
|--------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>Iraq</b>        | 1,800       | 7,475       | 6,705       | 14,570      | 4,020       | 1,888*      |
| <b>Zimbabwe</b>    | 230         | 1,010       | 2,115       | 7,655       | 3,290       | 2,500       |
| <b>Afghanistan</b> | 3,975       | 5,555       | 9,000       | 7,205       | 2,280*      | 1,585*      |
| <b>Somalia</b>     | 7,495       | 5,020       | 6,465       | 6,540       | 5,090       | 3,295       |
| <b>China</b>       | 2,625       | 4,000       | 2,390       | 3,675       | 3,450       | 2,410       |
| <b>Yugoslavia*</b> | 11,465      | 6,070       | 3,280       | -           | -           | -           |
| <b>Sri Lanka*</b>  | 5,130       | 6,395       | 5,510       | 3,130       | 705         | 394         |

Source: UNHCR 2002a; Migration Policy Institute n.d.\*

Notes: The data available for Yugoslavia for 2002, 2003 and 2004 is divided by country. In 2002, 2,265 people from Serbia and Montenegro applied for asylum and 310 were from Macedonia. In 2003, 815 were from Serbia and Montenegro, 62 from Macedonia, 14 from Croatia, and 34 from Bosnia and Herzegovina. In 2004, there were 386 applicants from Serbia and Montenegro, 13 from Macedonia, 10 from Croatia and 26 from Bosnia and Herzegovina.

This section of the chapter has stressed the perceived nature of asylum for UK governments. Despite the different origins, the focus of the Acts since 1993, but especially since 1996, was to establish progressively more stringent provisions to deal with asylum in the hope of discouraging people from coming into the country. The threat of asylum had to be kept at bay by reinforcing national sovereignty (Gibney 2004). Therefore, the emphasis was on external border control to restrict the entry of asylum seekers and, once in the country, to limit their access to welfare allegedly in order to maintain good race relations (Bloch 2000; Bommers and Geddes 2002; Spencer 2007), but also security (Boswell 2007; Chakrabarti 2005; Huysmans 2006; Somerville 2007).

The final section discusses why the Labour government needed to present a further bill on asylum and immigration in 2002 only after three years the last one was passed. Thus, it takes into consideration the background to the new legislation, the pressure of the media and the weight of public opinion on policy makers' decisions. This part also considers the governing mode of the UK government. This is in relation to the third hypothesis that considers the shift from 'government' to 'governance'. The strength of the core executive in taking decisions proved that at least in terms of asylum, the government was not at all hollowed-out. Rather, it was very much in control according to the 'Westminster model' notion and despite pressures from civil society and the international community. Finally, the chapter reflects on the fact that notwithstanding the increasing illiberal stance and rhetoric against asylum seekers, the British liberal state still accepts migrants because it is caught between a duty to protect its national boundaries and to give protection according to international conventions.

#### **4.3 DISCUSSION AND CONCLUSIONS. ROLE OF THE MEDIA AND THE 'WESTMINISTER MODEL'**

This section explains first why the government felt the need to introduce new asylum legislation only three years after the last one was passed and second how the treatment of asylum reflects the governing style of the British state.

The 2002 NIA Act was the fourth piece of legislation affecting the United Kingdom's asylum system since 1993 and the second since Labour was elected in 1997. Since 2002 there

have been a further five<sup>82</sup> other major pieces of legislation regulating asylum and/or immigration. One has to wonder why so many in such a short time. Was it a response to negative feedback from public opinion or from the tabloid media? Was it EU pressure? Or perhaps was it an attempt by the government to reassert its power as nation-state?

Between 1999 and 2002 asylum reached its peak as a controversial political issue. A series of events caused the debate on asylum to be prominent to the point that every day sensational headlines would appear on the *Daily Mail*, *The Daily Express* and the 'late' *News of the World*, thundering about invasions, growth of crime rate, HIV and terrorism (Crisp 2003; Schuster and Solomos 2004). There were three main episodes that were picked up by the media as being particularly controversial for the UK government and its inability to control migration. Firstly, in June 2000 the discovery of the bodies of 58 Chinese people in a refrigerated lorry in Dover (BBC 2000) fuelled the debate on irregular migration showing that border control and irregular migration were irremediably linked (Gibney 2000). Nation states want border controls for security reasons (especially after 9/11) as well as to protect their welfare. For asylum seekers in particular, border gates were becoming increasingly difficult to open. Secondly, in May 2001 and later on in the summer, racially motivated riots<sup>83</sup> arose violently in areas around Manchester between British Asians and white British gangs of young people. This started a political quarrel as Liberal Democrat Simon Hughes blamed William Hague, leader of the Conservatives, for his anti-asylum comments (Ward and Watt 2001). Racial problems in the area, however, were not new. On the other hand, they escalated as BNP candidates presented themselves in the run-up to the general election in Oldham near Manchester (Ward 2001). Finally, there was the issue of the Sangatte centre in Northern France. Both Pearce and Blunkett emphasized during their interviews that there were images on "British television screens very regularly at that time" (interview with Pearce) of "people hanging on the trains, jumping out of lorries" (interview with Blunkett) "coming across in the ferries in the Eurotunnel" (interview with Pearce). The UK was under a double pressure to solve the problem: from the media and from France, although this

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<sup>82</sup> 2004 Asylum and Immigration Act; 2006 Immigration Asylum and Nationality; UK Borders Act 2007; Criminal Justice and Immigration Act 2008; Borders, Citizenship and Immigration Act 2009.

<sup>83</sup> Known as Oldham riots. Others followed in the summer of the same year on different areas such as Leeds, Bradford and Burnley.



pressure was perhaps reciprocal as the UK wanted the Sangatte camp closed as soon as possible. As a result, David Blunkett and his French counterpart, the then Minister of Interior Nicolas Sarkozy, held a few official *rendez-vous* on the situation of the Sangatte refugee camp. According to Blunkett the UK “was seen as an attractive proposition” (interview) for two main reasons. On one side, its “benign economy, low unemployment, low inflation, low interest [rates]” meant that the UK “was seen [by irregular migrants] as an alternative route to legal open migration through the work permit system” (*ibid*). On the other hand, there were “the conflicts that were driving genuine asylum Iraq, Afghanistan, conflicts in Africa” (*ibid*). These elements acted as a ‘pull-factor’ for those migrants trying to enter the Channel tunnel illegally in order to make their way into the UK (BBC 2001a; Flynn 2003; Schuster and Solomos 2004). The “*qui-pro-quo*” was for the French to close Sangatte and for the British “to take 900 of the inmates” (interview with Blunkett). Besides, the Home Office on 23<sup>rd</sup> July 2002 announced the abolition of the permission to work for asylum seekers<sup>84</sup>. This was done despite the Refugee Council’s statement that previous Home Office research had highlighted the modest knowledge asylum seekers’ had of UK asylum and immigration policy (Refugee Council 2002a, 8; Refugee Council 2005). The abolition of the permission to work was not contained in the Act itself but the Sangatte saga had an impact on other restrictive reforms brought in by the law, such as juxtaposed controls<sup>85</sup>, the refusal for support<sup>86</sup>, and the introduction of a white list of safe countries<sup>87</sup>. The former Home Secretary said he could not ignore these episodes and especially could not risk losing the support of the party’s voters. So the government set out to form new law. Therefore, the bill was also partially a stand against the media’s attacks on the government

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<sup>84</sup> This is not part of the 2002 NIA Act.

<sup>85</sup> Section 141: EEA ports: juxtaposed controls: “This section provides for a power that would allow the UK to operate immigration and other frontier controls at an EEA ferry port (such as Calais), for the purposes of giving effect to an international agreement. In addition, it would allow the Secretary of State to make any necessary legislative arrangements to accommodate French immigration control in UK ports (such as Dover)” (NIA Act explanatory notes 2002c).

<sup>86</sup> Section 55: Late claim for asylum: refusal of support: Restricts “access to support provided to asylum seekers ... in cases where the Secretary of State is not satisfied that a person has made his asylum application as soon as reasonably practicable after his arrival in the United Kingdom. Section 55 is intended to put the burden of proof on the asylum seeker claiming support” (*ibid*).

<sup>87</sup> Section 94: Appeal from within the United Kingdom: unfounded human rights or asylum claim: “Subsection (3) provides that if the asylum or human rights claimant is entitled to reside in any of the States listed in subsection (4) then the claim shall be certified unless the Secretary of State is satisfied that it is not clearly unfounded. The States listed are all “EU accession states”: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia” (*ibid*).

about its inability to control immigration satisfactorily and served as Blunkett said, to give “a signal to people throughout the world that the United Kingdom is not a soft touch” (White Paper 2002). It was essentially a way to uphold the nation’s power and control over its borders. Yet, the outcome was not what Labour had hoped for, as the anti-migration speeches used by the media but also by the same policy-makers<sup>88</sup> served to increase public concerns about asylum, thus playing to the British National Party’s (BNP) agenda.

#### **4.3.1 The role of the media in shaping public opinion and policy**

Considering that “[i]n 2002 ... there were sixty odd front pages ... nearly 25%” covering asylum news (interview with Home Office official 1), it would be safe to affirm that the media or better “the Daily Mail” (interview with Shaw<sup>89</sup>), had a huge impact on the decisions of a government that was “scared of the reaction of the media if they were not seen to be tough” (interview with Gerrard MP<sup>90</sup>) on asylum policy. Ministers aspired to have public support “and one of the loudest voices is obviously the media” (interview with Home Office official 1). However, the relationship between the government and the mass media is a “subtle” one (interview with Flynn<sup>91</sup>) and it serves the purposes of either part according to times and topics. In practice, when it is more advantageous to the government, “they’ll make use of reactionary newspaper headlines” but when it is not, “they’re well capable of arguing against it” (*ibid*). After all, “if the Daily Mail ... had any consistent influence on political thinking of a population then we would never have had a Labour government” (*ibid*). So the belief that the government is powerless when confronted with the media and that the media dictates the nature of the debate is wrong. Besides, politicians “come with their own political manifestos too” (interview with Best<sup>92</sup>) just like the media and, as influential as they can be, they normally tend to reproduce public opinion’s views. As such, “they are telling people what they want to hear and ... people who buy the Daily Mail would probably be inclined to think that anyway” (interview with Dr

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<sup>88</sup> For example Mr Blunkett that was at the time Home Secretary used the term ‘swamping’ to describe the situation of schools and GP practices being swamped by asylum seekers (Ashley and Wintour 2002; BBC 2002).

<sup>89</sup> Amnesty International. Interview date: 10<sup>th</sup> October 2008.

<sup>90</sup> Interview date: 14<sup>th</sup> October 2008.

<sup>91</sup> Former Policy Officer at the Joint Council for the Welfare of Immigrants (JCWI). Interview date: 21<sup>st</sup> October 2008.

<sup>92</sup> Interview date: 15<sup>th</sup> October 2008.

Metcalf). The government in reality was “largely responsible” for the increased public fear of migration (interview with Best). In fact, Labour’s negative rhetoric on the conceptualisation of the ‘bogus’ asylum seeker, and on reducing the numbers of asylum claims while talking positively about labour migration instead of strengthening belief in the public in the asylum system had the opposite effect (Refugee Council 2002b). The government wanted “to reassure the public that they were dealing effectively with the asylum issue” but instead “they reinforced the public sense that this was a major problem” and “of course the public could not tell the difference” (interview with Spencer<sup>93</sup>). On the other hand, media attention to the matter could also be looked at from the perspective of performance or, better, lack of performance “against objectives, against promises” (interview with Professor Saggar<sup>94</sup>). In fact, the Labour government inherited a huge backlog of asylum cases and “the underlying problem in the Home Office was that the management of those processes was at best weak and at worst non-existent” (*ibid*). So ministers would be more interested in delivering those promises, for example by responding to the objectives of clearing backlogs, rather than taking a particular position. In this way, asylum becomes equivalent to “school attainment, hospital waiting lists ... Ministers see it very much in those terms” (*ibid*). Nevertheless, this information will eventually and inevitably appear in the tabloid media, thus reinforcing rather than just influencing people’s views on the matter.

In May 2002 Tony Blair promised to take things into his own hands<sup>95</sup> and in February 2003 he pledged to halve the number of asylum applications by September of the same year<sup>96</sup> (BBC 2003; Johnston 2002). Considering the promise made by the former Prime Minister, perhaps it is not a coincidence that in the same month of February 2003 the MORI Social Research Institute published research on behalf of Migration Watch UK on the public’s view of immigration. The findings showed that British people widely supported tougher measures on

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<sup>93</sup> Currently Deputy Director at COMPAS, she was at the time seconded into the Cabinet office. Interview date: 27<sup>th</sup> October 2008.

<sup>94</sup> Professor Saggar between 2001 and 2003 was a Senior Policy Advisor in the Prime Minister’s Strategy Unit. Interview date: 29<sup>th</sup> October 2008.

<sup>95</sup> On this occasion, a confidential action plan passed to The Guardian talked about sending Royal Navy warships to the Mediterranean to intercept traffickers and using the RAF transport planes to do bulk deportations (Milne and Travis 2002). These provisions were never implemented.

<sup>96</sup> Home Office statistics show that in 2003 there were 49,405 asylum applicants while the previous year there were 84,130 (ICAR 2009; Salt 2011).

asylum seekers and immigrants, while seven out of ten people believed that Britain was a 'soft touch'. Hence, the government had little credibility as on this evidence 85% of people did not believe that immigration was under control. However, the MORI research concluded that although media coverage may be responsible for the public's "general anxiety" (Ipsos MORI 2003) and that the public lacked "direct local experience" on the issue, it was also true that they could not tell whether newspapers had indeed influenced the people's views because

[r]eaders of newspapers most outspoken on this issue tend to be themselves most critical, but of course, that in itself does not tell us whether they read those titles because they reflect their views on asylum/migration, or that their views have been influenced by their newspaper of choice (Ipsos Mori 2003).

Furthermore, a public opinion poll published in June 2002 showed British people's knowledge of asylum seekers and refugees as well as their perception of the media coverage on the issue. Respondents overestimated significantly the numbers of asylum seekers in the UK believing that 23% of the world's asylum seekers were in the country while in reality at the time the real number amounted to only 1.98%<sup>97</sup>. Some 85% of respondents associated negative terms in the media such as the infamous expressions 'bogus' and 'illegal immigrant', with asylum seekers (Ipsos MORI 2002).

Although normally the public buy a newspaper according to their political views and/or purely for "entertainment" reasons (interview with Flynn), arguably the subject of asylum seekers is a double-edged weapon. The assumption is that although policy-makers may be blamed for the constant 'feeding' of negative rhetoric for the sake of appealing to the public and thus retaining votes, it is also true that they were caught between two powerful poles. They were responding to a media that were not only displaying their opinions, but they were also looking for sensationalist news. In this way, they constructed media myths which contained dangerous factual inaccuracies and "prevailing images" (Cohen 1994, 89) of asylum seekers, so that the public who read these tabloids were presented with only a partial and often biased picture.

It is undeniable that the government took full charge and responsibility to tackle even if opportunistically, the concerns of the media and the public thus emphasizing "a top-down view

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<sup>97</sup>People's perceptions have not changed over time as a poll published by the British Red Cross in 2009 confirmed the general attitude of prejudice and over-estimation of the real numbers of asylum seekers in the country (British Red Cross 2009; Milmo 2009).

of democracy based on the idea that the ‘government knows best’ (Marsh, Richards and Smith 2003, 308) following the British political tradition of the ‘Westminster model’.

#### 4.3.2 The ‘Westminster model’

Commentators have argued that Labour’s pragmatic approach to policy-making caused an increasing shift from ‘government’ to ‘governance’ (Rhodes 1994; Richards and Smith 2002), that is, the government of civil society with “the state there being minimal” (Badie and Birnbaum 1983, 121). The third hypothesis of this thesis emphasises just this while the research questions point to the role of networks in order to understand whether this shift did in effect happen also in the case of asylum policy.

Rhodes (1997, 2007) calls the growing presence of non-political actors who have an interest at stake the ‘Differentiated Polity’. As such, they compete with the government making the British political system fragmented and pluralistic. For example, in March 1999 the White Paper entitled *Modernising Government* was published and the words ‘reform’ and ‘renewal’ were two key words used to improve policies through the development of

new relationships between Whitehall, the devolved administrations, local government and the voluntary and private sectors; consulting outside experts, those who implement policy and those affected by it early in the policy making process so we can develop policies that are deliverable from the start (Cabinet Office 1999, 16).

The involvement of stakeholders outside the government has allegedly become the norm rather than the exception. In his re-interpretation of the so called ‘Westminster model’ (Gamble 1990) – characterized by a strong core executive, unity and parliamentary sovereignty – Rhodes (1997, 2007) emphasizes that the devolution of powers has caused Westminster to be replaced by a multitude of policy networks perceived as “empirical manifestation of governance” (Tomlinson 2010, 1045). In this ‘Differentiated Polity’, British policy-making is characterized by “functional and institutional specialisation and the fragmentation of policies and politics” (Rhodes 1997, 7). Accordingly, the state is no longer the “inflexible and monolithic” (Marsh, Richards and Smith 2003, 306; see also Smith 1999) entity but it has become disjointed into a disharmonious whole of separate bodies each of which specializes in different policy areas. Such an idea challenges the ‘Westminster model’ because it replaces ‘government’ with ‘governance’

where networks, with their informal authority, are the new form of government. Policy networks hollow-out the state hence creating the “disUnited Kingdom” (Rhodes 2007, 1249). Undeniably, government of the UK has endured many changes. These are the increasing privatisation of previously state run services, a new layer of government that is the European Union and the consequent appearance of transnational policy networks, the transformation of government departments, the strengthening of local government, and finally, “a growing trend towards multi-organisational forms of policy implementation” (Gray 2000, 284; Rhodes 1994). Furthermore, referenda on devolution in Scotland, Wales and Northern Ireland in the 1990s were successful to the point that the UK conveyed varying levels of power to the national Parliament in Scotland, the national Assembly in Wales and the national Assembly in Northern Ireland (UK Parliament n.d.b). Rhodes (1994) has argued that these changes have made the British nation-state a ‘hollow state’ and whose central administration functions have been eroded. New actors have emerged and because of this, ‘governance’ has substituted the old notion of government. Even asylum support services were devolved “to the nine English regions and the devolved administrations of Scotland and Wales, bringing in local governance to a greater degree” (Somerville 2007, 77). This move was followed by the creation of the New Asylum Model<sup>98</sup> (NAM) supplemented by ‘juxtaposed controls’ in Paris and Calais as well as increased border controls (*ibid*). On the other hand, while there has been “extensive devolution ...to the three peripheral nations ... England remains under central control” (Keating 2009, 4) so that “power is both transferred and retained” but Westminster remains sovereign (*ibid*, 15) with a “relatively free hand in determining the direction of reform” (Taylor-Gooby and Larsen 2004, 55). This central control is certainly the case with asylum policies and even more so in the case of the 2002 NIA Act under analysis. With regard to the European Union, the “European policy-making frameworks were quite largely immaterial” (interview with Pearce) as the UK could opt-in or opt-out<sup>99</sup> from EU

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<sup>98</sup> The New Asylum Model’s aim was “to introduce a faster, more tightly managed asylum process with an emphasis on rapid integration or removal. The Home Office began implementing the NAM in May 2005” (Refugee Council 2007, 1).

<sup>99</sup> The UK has opted-out from the Common European Asylum System established during the Tampere summit in 1999 and from the Economic and Monetary Union (EMU).

directives according to their needs<sup>100</sup>. Although Brussels pushes member states to cooperate on the harmonisation of asylum policy “most European states were engaged in a sort of competitive race to the bottom, they essentially pursued their national strategies whilst signing up ... coordination was risible” (*ibid*). Besides, the relationship between the Home Office and the EU has always been ambivalent with the former “concerned with limiting EU competence, maintaining sovereignty and protecting national interests” (Marsh, Richards and Smith 2003, 230).

The control displayed by the government was also a feature visible *vis-à-vis* the pro-asylum advocacy groups. Despite the accessibility of the government to hold meetings, the influence of these groups was minimal as showed in Chapter 6. Further, within the core executive, the Policy Unit (PU) became gradually more proactive (Holliday 2000) in the creation of domestic policies. As such, two more divisions were created: the Prime Minister’s Strategy Unit (PMSU) – “the Prime Minister private think tank” (interview with Professor Sagar) – and the Prime Minister’s Delivery Unit (PMDU). The former was an élite group within the Cabinet Office, created by Tony Blair in 2002 “to look ahead at the way policy would develop” (Blair 2010, 339). It had three key roles:

- 1) “to carry out strategy reviews and provide policy advice in accordance with the Prime Minister's policy priorities
- 2) to support government departments in developing effective strategies and policies - including helping them to build their strategic capability
- 3) to identify and effectively disseminate thinking on emerging issues and challenges for the UK Government e.g. through occasional strategic audits” (Cabinet Office 2007).

The Unit would cooperate with other departments within the government but also external stakeholders “on a broad range of domestic policy, published through a range of outputs

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<sup>100</sup> With the Treaty of Tampere in 2004 things have slightly changed as the Qualified Majority Voting (QMV) removes national vetoes on asylum and immigration issues (Fitchew 2008). However, in 2010 the Home Office decided to opt-out from the revised Procedures and Qualification Directives of the Common European Asylum System (CEAS) setting minimum standards for the treatment of asylum claims. This directive would undermine the fast-track process set up by the UK but also the definition of ‘safe third country’ and ‘safe country of origin’ and would limit the States’ authority to decide on “manifestly unfounded” cases (Travis 2010; Refugee Council 2010).

including Green and White Papers” (*ibid*). The PMDU was established by Michael Barber in 2001 “to ensure the delivery of the Prime Minister's top public service priority outcomes<sup>101</sup> by 2005” (Cabinet Office 2005). It was

a relatively small organisation, staffed by civil servants but also outsiders ...and other private sector companies, whose job was to track the delivery of key government priorities. It would focus like a laser on an issue, draw up a plan to resolve it working with the department concerned, and then performance-manage it to solutions. It would get first-class data which it would use for stocktakes that I took personally with the minister, their key staff and mine, every month or so. The unit would present a progress report and any necessary action would be authorised. We reduced drastically the number of unfounded asylum cases that way (Blair 2010, 338-339).

One of the government’s key priorities at the time was asylum. Weekly submissions to Blair on the course of the bill in Parliament were the norm, while stocktakes happened monthly or even fortnightly. The stocktakes became the way in which the Prime Minister “would get all these actors ... from the central government” to “look at the issue they were facing [in] the immigration system and would try and solve them” (interview with Home Office Official 2). Allegedly, this is how section 55 and the white list came to be. A relatively small group of people united to face concerns over in-country applicants (that would apply in-country just to be able to claim benefits) and the influx of Eastern Europeans.

In conclusion, when it comes to asylum the idea that the core of the government is fragmented cannot be endorsed. Politicians would govern “in a relatively autonomous way” (Statham and Geddes, 2006, 266) thus making asylum policy definitely top-down as well as “closed and elitist” (Marsh, Richards and Smith 2003, 313).

The question at this point is why, despite the negative rhetoric from the part of the government and the increasing illiberal stance against asylum seekers displayed through stricter policies, the British nation-state continued to accept ‘unwanted’ immigration. The conclusions gather the main points discussed so far in this chapter and close with the idea that the British nation-state is constrained by its dual nature of nation and it is caught between its domestic duty to protect its boundaries and citizens and the moral obligation to help those who need it (Benhabib 2004).

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<sup>101</sup> Education, crime, asylum, and transport.



#### 4.4 CONCLUSION

The chapter has highlighted the UK long tradition of immigration and laws regulating immigration. Asylum policy is younger but quickly developed into a hot political issue. The chapter has addressed the research questions set out in the introduction and that relate to the first, second and, partially, the third hypotheses. The last is fully confronted in Chapter 6 that analyses the policy process that led to the formation of the 2002 NIA Act.

The first hypothesis sees asylum as a difficult issue for states because it is perceived as a threat. The literature review has highlighted Esping-Andersen's (1990) typology of welfare states. In this typology the UK was regarded as generally 'liberal'. It may be that this is the case in other areas of policy making. However, contrary to the typology the thesis has not found the UK to be liberal with respect to asylum, reflected in increasing restrictions on welfare entitlements for asylum seekers and refugees. This was because the debate on asylum had reached new heights of controversy between 1999 and 2001 and the government needed to demonstrate control. Claimant numbers had been exceptionally high and the media started to blame the government for its inability to control the phenomenon. At the same time, the tabloids were also feeding and stimulating public opinion's fear of asylum seekers, seen as 'undeserving', 'bogus' and 'scavengers'. Asylum seekers were perceived as a threat to security, sovereignty and race relations, a burden to hide and remove quickly by the media, the public and consequently by governments. Labour felt the pressure and used the media's accusations, possibly to its advantage. How did the government counter this pressure? The response of the party was to prove to the public and the media that they could take charge of the situation by further tightening the UK's territorial sovereignty through visa restrictions, extensive external border control and destitution. The 2002 NIA Act therefore shows an increasingly stricter stance towards asylum seeker in the effort to discourage people from coming in the first place. It continued the Tories' asylum policy, especially in terms of restricting welfare benefits and, at the same time, increasing detention as well as fast-tracking removals. The Act illustrates that successive governments have been concerned about the redistribution of resources and their policies have come to mirror this new progressively authoritarian position. On the other hand, labour migration was perceived differently from asylum. In this case, there was a shift from the

Tories' way of thinking on labour migration. Whereas the Tories tolerated this type of migration, Labour 'management' of migration was endorsed. Highly-skilled migrants useful to the economy were now welcomed while low-skilled migration was limited and asylum seekers deterred. This new pro-skilled migrant rhetoric served two purposes: on one side, to respond to the economic needs of the country and on the other, to take distances from the uncomfortable asylum debate while exalting the value of highly-skilled migrants.

The 2002 NIA Act caused much debate within NGOs and with a portion of the public concerned with the government's plan to have accommodation centres in their wealthy rural areas. However, other more pressing changes were those related to section 55 that would further threaten the welfare of in-country claimants, the re-introduction of the white list and an increased use of detention.

The advocacy groups were consulted but their influence was minimal. They did not initiate networks specifically for the bill but intensified their contacts with each other and the policy-makers. The core executive was strong and united, thus reinforcing the idea of the 'Westminster model'. The Act was in fact created by a small group of people in obedience to the Prime Minister's will to tackle what was perceived as a crisis and a threat. In conclusion, the British state showed in those years great determination to control and govern asylum quite successfully. This indicates that the core of the government was far from being 'hollowed-out' (Rhodes 1994, 1996; Gray 2000).

This section is in line with the research questions that aim to answer how different kinds of states respond to asylum but also to hypothesis 3 that deals with the shift from 'government' to 'governance'.

These last aspects, concerning the role, influence and power of networks at NGO and government level are the focus of Chapter 6. Its aim is to analyse the policy process that lead to the creation of the 2002 NIA Act while answering the research questions stemmed from the hypotheses related to governance and power.

The next chapter analyses the same contexts within the Italian state.

## CHAPTER 5

### HISTORICAL AND CONTEXTUAL BACKGROUND IN ITALY

As with Chapter 4, this part of the thesis provides the historical and political background prior to the making of law 189/2002 – the so-called ‘Bossi-Fini’. This section examines the development of immigration policies preceding the Bossi-Fini, the unsuccessful efforts of civil society to create asylum policy and the politics involved in these events. The aim of this analysis is to provide a better understanding of the country’s attitude towards asylum and labour migration. The chapter focuses on the research questions associated with hypotheses 1, 2, and 4. Firstly, why the government in 2002 perceived asylum differently from illegal labour migration, and why – nevertheless – both asylum and illegal labour migration represented a threat. Secondly, how the Italian state responded to this threat. Finally, it establishes the role of policy networks and their relationship with the government.

The first part of the chapter explains why asylum was not a priority for the country<sup>102</sup>, compared with labour migration and especially illegal migration. This explanation is important because it allows comparison with the UK where asylum, perceived as a threat, represented a very important political issue. As a result, the two nation states responded to asylum differently. This section investigates also the Italian Constitution which contains an article on the right to sanctuary in Italy. However, this article has never been ratified in law and its application goes back to one single occasion.

The second part contains an excursus of the legislations from 1986 until 2002. Earlier policies, preceding the Bossi-Fini, dated only from the end of the 1980s and the beginning of the 1990s and regulated mainly labour migration. This regulation was due to the widespread black economy and the rise of violence and robberies, especially in northern richer regions of the country, mainly linked to illegal migrants from Albania (Rusconi 2010).

The third section of the chapter looks at the origins and main aspects of the Bossi-Fini and the controversies raised by advocacy groups. This is in view of the analysis of the formulation

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<sup>102</sup> Until the ratification of the EU Directives into Italian legislation.

of the legislation contained in Chapter 7 that deals with the role, influence, and power relations of policy networks and the government as per hypotheses three and four.

The final section of the chapter considers party politics involved in the legislations until 2002 – and especially the Bossi-Fini. The weight of political parties in setting the agendas, the continuity of their policies whether it is a centre-right or centre-left government, the gap between their rhetoric and policy outcomes and the inclusion of other actors are central to the thesis aims.

## **5.1 HISTORICAL DEVELOPMENTS IN LEGISLATION**

### **5.1.1 Asylum as an issue**

To date, Italy is the only Western European country that does not have substantive asylum legislation. Successive Italian governments failed or were not interested in creating specific asylum legislation because it was not a priority. Rather, governments preferred to incorporate into Italian legislation the six European Directives<sup>103</sup> on asylum. They thought the Directives were enough, given the Italian circumstances and the asylum situation. There are several possible explanations as to why asylum was not a priority for the Italian state:

1) The arrival of asylum seekers is recent history. Italy became a country of asylum only in 1989. Christopher Hein (2010) – Director of the Italian Refugee Council (CIR) – explains that before this date, most refugees would not stay in the country to live permanently but only for the time necessary to deal with their resettlement in a third country. This trend started after

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<sup>103</sup> Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof implemented with legislative decree 7 April 2003, n. 85 (85/2003); Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers in Member States implemented with legislative decree 30<sup>th</sup> May 2005, n.140 (140/2005); Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification implemented with legislative decree 8 January 2007, n. 5 (5/2007); Council Directive 2003/109/EC of 25 November 2003 Concerning the Status of Third-Country Nationals Who are Long-Term Residents implemented with legislative decree 8 January 2007, n. 3 (3/2007); Council Directive 2004/83/EC (so called Qualification Directive) of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted implemented with legislative decree 19 November 2007, n. 251 (251/2007); Council Directive 2005/85/EC of 1 December 2005 (so called Procedure Directive) on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status implemented with legislative decree 28 January 2008, n. 25 (25/2008).

World War II when over 100,000 refugees arrived in Italy but were resettled in more traditional immigration countries such as Australia, Canada, New Zealand, and the United States. Estimates say that about 220,000 refugees were resettled from the end of the war until the fall of the Berlin Wall. The motivation behind the resettlement was that Italy was not deemed able to look after these people in the long term for economic, political and social reasons (Hein 2010). This resettlement program ended with the fall of the Berlin Wall in 1989, a time when the EU considered Italy politically mature and rich enough to cater for the new refugees (*ibid*). As such, *ad hoc* provisions regulated asylum. However, the situation was about to change. In the 1990s the country was unprepared to deal with the influx of people from former Yugoslavia, Somalia<sup>104</sup>, and Albania, followed by Kurds and Kosovans in the late 90s (Vincenzi 2000) and later Eritreans, Iraqis<sup>105</sup>, Kurds, and Turks (Sigona 2005a) (See table 5.1 below for a breakdown of countries of origin). Consequently, there was a surge of asylum claims especially between 1998 and 1999 as table 5.1 below illustrates (Colombo and Sciortino 2004; Hatton 2009; UNHCR 2012). Despite the increased relevance of the issue however, asylum did not figure as a high priority given the still low numbers of asylum claims. Regardless of the pressures at both supranational (by other European member states and international NGOs) and national level (by pro-migrant groups), governments of different political inclinations never really deemed it necessary to have specific asylum legislation. Even when centre-left coalitions were in power (historically, they are usually more inclined towards the needs of migrants than centre-right coalitions), they failed to legislate for two main reasons: lack of agreement between the parties and/or lack of time.

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<sup>104</sup> Although because of the colonial ties, the first movements from Somalia date back to the 1960s. These movements intensified in the 1980s and especially after 1991 when the state collapsed (Mezzetti and Guglielmo 2009).

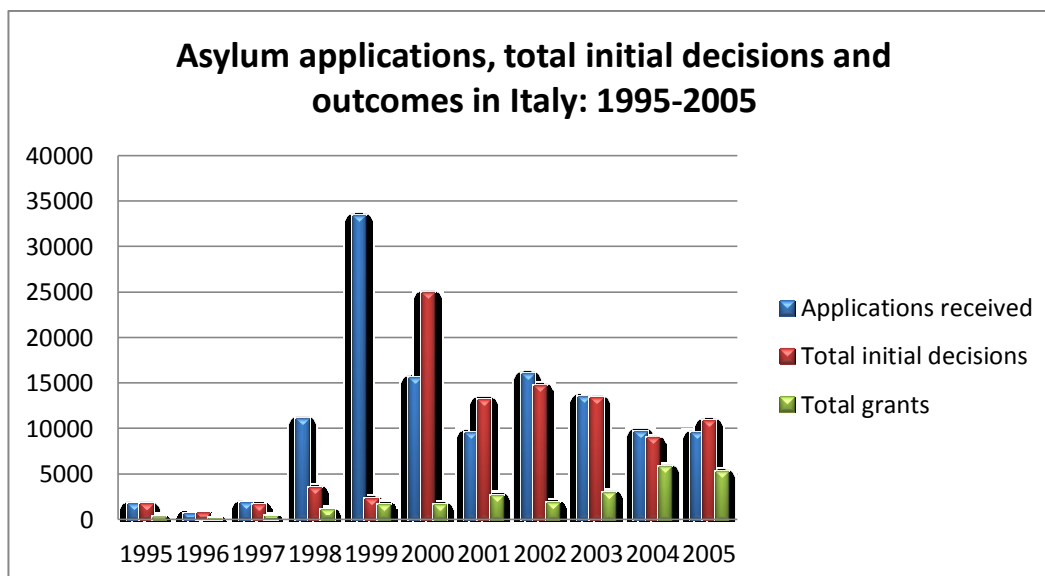
<sup>105</sup> There were 3,362 asylum applicants in 1998 compared to the previous year when only 336 people lodged an asylum claim (UNHCR 2002b, 345).

**Table 5.1 Asylum applicants during the year – main origin**

| Origins                      | 1995 | 1996 | 1997 | 1998  | 1999  | 2000  | 2001  | 2002  | 2003  | 2004  | 2005  |
|------------------------------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|
| <b>Serbia and Montenegro</b> | 52   | 15   | 21   | 4,557 | 4,851 | 2,417 | 1,526 | 1,769 | 1,510 | 1,991 | 1,704 |
| <b>Eritrea</b>               | -    | -    | -    | -     | 13    | 33    | 276   | 927   | 1,230 | 831   | 1,313 |
| <b>Somalia*</b>              | 18   | -    | 8    | 27    | 11    | 69    | 145   | 601   | 1,743 | -     | -     |
| <b>Turkey</b>                | 71   | 17   | 85   | 1,790 | 517   | 4,062 | 1,690 | 519   | -     | -     | -     |
| <b>Iraq</b>                  | 181  | 151  | 336  | 3,362 | 1,838 | 6,082 | 1,985 | 1,170 | -     | -     | -     |

Sources: UNHCR 2005 and for Somalia UNHCR 2003. This latest data for Somalia raises doubts in terms of its reliability given the rise of conflicts in the 1990s. See section 5.2 of this chapter.

**Figure 5.1**



Source: UNHCR 2012

Notes:

(1) The applications, initial decisions, and grants exclude dependants.

(2) The total grants include applicants recognised as refugees and granted asylum and applicants not recognised as refugees but granted exceptional leave, humanitarian protection, or discretionary leave.

2) Italy prioritised labour migration over asylum for two reasons. Firstly, because of the “sizeable structural economic demand for foreign labour” (Sciortino 2009, 3) compared to other European countries. Employers value high- and low-skilled labour migration as an essential part

of the Italian economy due to labour and skill shortages (Menz 2008) in the first three sectors<sup>106</sup> of economy. Secondly, because of the low numbers of asylum claims. This is for three main reasons:

- (i) overall, governments prefer to give humanitarian and subsidiary protection<sup>107</sup> as established by the EU Directives rather than refugee status;
- (ii) through amnesties people “can regularise their situation rather than apply for refugee status” (Hall, 2000);
- (iii) migrants used Italy as a way to reach other asylum destinations, most notably Germany, Switzerland, France and the UK (*ibid*).

3) Immigration is still a ‘recent’ phenomenon. A “high level” (FIDH, 2007, 4) emigration country for more than a century, Italy became an immigration country only in the late 1970s<sup>108</sup> and net immigration increased rapidly in the 1980s and 1990s. Commonly, studies of migration flows associate the 1973 oil crisis as the official marker of modern migrant movements. Between 1973 and 1984 France, Switzerland, and Germany took steps to reduce further labour immigration. Part of these movements were diverted towards Italy and other Southern European countries as a backup choice or as a transit stop en route to their intended original destination<sup>109</sup>. Legal migration to Italy, however, grew before the oil crisis and the closure of the borders of the other EU countries (between 1970 and 1974) while during the oil crisis, legal migration stayed stable. It was only with the first amnesty, established by law 943/86 that “the first appreciable increase in the number of legal immigrants actually occurs” (Colombo and Sciortino 2004, 54). Further amnesties continued this trend, as the number of residence permits intensified. Colombo’s and Sciortino’s (2004) conclusion is that illegal immigration increased due to the amnesties;

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<sup>106</sup> Primary sector: agriculture, farming, fishing and mining; secondary sector: industry, building industry and artisanship; tertiary sector: ‘services’ (i.e. complementary services to the primary and secondary sector), finance and tourism.

<sup>107</sup> Even before the EU Directives however, work permits on humanitarian grounds were given to “many refugees, particularly from Somalia and the former Yugoslavia” (Hall 2000). This relieved “them of the need to apply for asylum” (*ibid*).

<sup>108</sup> Even the concept of migratory flows did not exist until recently with the result that data was incomplete or missing (Bernard 2007).

<sup>109</sup> Immigration in Italy started well before 1973: between 1861 and the First World War, Italy’s liberal migration policies would allow refugees<sup>109</sup> and economic migrants<sup>109</sup> to settle in the country (Colombo and Sciortino 2004).

4) Finally, the right to asylum is enshrined in Article 10 of the Italian Constitution. However, a Parliamentary law has never enforced<sup>110</sup> this article and it has been used in only one instance<sup>111</sup>. Article 10 states:

*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 secondo le condizioni stabilite dalla legge* (Italian Constitution, article 10, subparagraph 3).

This article states that any foreigner has the right to asylum if there is an effective impediment of democratic freedoms that the Italian Constitution instead guarantees. This liberal approach would explain why the Italian Parliament has never applied the article. If applied literally, it would set a precedent and open the chance to enter Italian territory to many more people than the government would have been able and willing to take care of. Prefect Compagnucci<sup>112</sup> made an example in the interview:

in China, there is no freedom of expression. Freedom of expression is one of the elements of our Constitution. Clearly, any Chinese person who entered Italy and said "I cannot write my newspaper" had to be, according to article 10 of the Constitution, considered a political refugee. And this was ... unthinkable (5.1).

The creation of the Constitution coincides with the aftermath of the Second World War at a time when there was heightened sensitivity towards political refugees, especially those who had to leave Italy because of their dissent to the Fascist regime. As a result, the Constituent Fathers wanted to give a strong political message as they drafted the Constitution. They wanted to "indicate Italy as a country ... of shelter, reception" (5.2) (interview with Compagnucci). At a time when the country needed help for reconstruction, it was presented as a place for refuge. The Constitution talks about asylum in the most generic terms and does not account for refugee

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<sup>110</sup> In 1997, the Court of Appeal sentenced that an ordinary judge may decide whether to grant asylum according to the Constitution's article. Sentence n. 4674/97, 12th December 1996 : "*l'art.10, terzo comma, Cost., attribuisce direttamente allo straniero il quale si trovi nella situazione descritta da tale norma un vero e proprio diritto soggettivo all'ottenimento dell'asilo*" (CIR 2006). The sentence would make asylum seekers particularly vulnerable to the discretionary will of the judge (Vassallo 2001).

<sup>111</sup> Apart from the most notable case of Abdullah Öcalan a Kurdish militant leader and founder of the Kurdistan Workers' Party (PKK). This is "an extreme-left nationalist group that launched a war against the Turkish government in order to set up an independent Kurdish state along Marxist lines" (Witschi 2005). Öcalan originally fled Turkey in 1980 and lived in exile in Syria until the Syrian government extradited him under Turkish pressure. It was at this point that he went to Italy and sought asylum. Again under the pressure from the Turkish government, the Italian government took time to take any decision with regards to the asylum case. In the meantime Öcalan left. He was found in Kenya and sent back to Turkey where he remains in prison. Two months after he had left Italy, the Italian government granted him asylum (interview with Compagnucci; O'Toole 2000).

<sup>112</sup> Telephone interview date: 18<sup>th</sup> February 2011.



status. This makes article 10 very broad and incompatible with the current Italian situation whereby political parties (especially those on the right) feel they may have “to open the doors to everybody” (5.3) (interview with Compagnucci).

The 1951 Geneva Convention and the 1967 Protocol determine refugee status. Law n. 722/1954 ratified the Convention while law 95/1970<sup>113</sup> ratified the protocol.

The above section has highlighted that asylum was not a priority for successive governments for several reasons. From the recent entry of Italy on the asylum scene, to the low numbers of asylum claims, to article 10 of the Constitution because considered to be too generous, governments have prioritised the country’s needs by creating policies in favour of labour migration. However, due to Italy’s porous borders as well as widespread irregular market for labour, the issues of illegal entry and security are now high on the government’s agenda. Asylum as a government issue did not materialise until 1990 after the fall of the Berlin Wall, and only under the pressure of other European countries, as the next section highlights.

The following part focuses on the historical developments of migration and asylum legislation provisions in the country<sup>114</sup>. This is important to understand the importance of party-politics in Italy and the politicians’ attitudes towards labour migration and asylum perceived to be a threat to sovereignty, security, and national identity. Ultimately, this background will provide further insight to carry out the comparison between Italy and the UK.

### **5.1.2 Immigration legislation from 1986 until 2002 and the first (unsuccessful) attempts to create specific asylum legislation**

Before 1986 – date of the first Italian immigration legislation<sup>115</sup>, the only laws that regulated the entry of foreigners were “the fascist decrees of June 18, 1931 (n. 773<sup>116</sup>) and May 6, 1940 (n. 635)” (Perlmutter 2000, 7) mainly in relation to public order and administrative police.

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<sup>113</sup> Because of the existence of article 10, pertaining asylum only, and the Geneva Convention, pertaining refugee status, the Court of Appeal with sentence n.25028, 25<sup>th</sup> November 2005, clarified that the mixing of these two categories goes to the advantage of the Geneva Convention because it is the only law that the Italian legal order has accepted. Furthermore, the Court established that the legal importance of the right to asylum in article 10 is only equal to the issuing of a temporary residence permit. This permit is given while the Central Commission analyses the asylum claim (Migranti-press 2006). Article 10, comma 3 of the Constitution becomes therefore less important than the Geneva Convention.

<sup>114</sup> See Appendix 12 for the summary of the legislation in Italy.

<sup>115</sup> Statute n. 943 of 30 December 1986.

Towards the end of the 1980s with Italy becoming a country of immigration rather than emigration (Finotelli and Sciortino 2009) and with numbers of illegal immigrants increasing significantly, consecutive Italian governments have had to tackle the issue and stop being impartial trend watchers. The development of policies was the natural outcome to control and regulate “the phenomenon of the increase” in numbers due to new “arrivals” (5.4) (interview with Compagnucci). Different Italian governments – leaning on the right and left of the political spectrum – have passed regularisation programmes to allow illegal migrants already on the territory to legalise their position in order to work while also setting quotas for the entry of foreign workers, thus maintaining continuity in their policies.

Law 943/86 was the result of the concern that a new influx of foreign workers could jeopardize the chances of finding a job for Italians. Therefore, the main point of the law was to protect Italian workers “against potentially ‘unfair’ competition on the labour market” (Zincone and Caponio 2005, 2; Faedda 2001; Bernard 2007; Hein 2010). It also introduced amnesties (*sanatorie*) to regularise undocumented migrants on the territory giving them the same rights as the indigenous population in terms of health care, education, and public housing. Unfortunately, this operation was not sufficient to ease the tension between immigrants and Italians with the latter becoming more and more distressed and intolerant. Additionally, what happened in 1989 in Italy changed and re-shaped the then existing situation. During the summer, some criminals murdered an asylum seeker from South Africa – Jerry Masslo – during a robbery. The refusal of his asylum claim was due to the geographical limitation provided for by the 1951 Convention according to which only European asylum seekers could get refugee status. In the past, because numbers were so low, Italy would mainly recognise asylum seekers either coming from the Soviet Bloc (Colombo and Sciortino 2004) or *ad hoc* by granting refugee status to non-Europeans depending on their circumstances<sup>117</sup>. The death of Masslo caught the attention of the mass media and made the Italians aware of all migrants’ condition. For the first time, the biggest anti-racism demonstration to-date happened (Super Amministratore 2008; Hein 2010).

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<sup>116</sup> *Testo Unico delle leggi di pubblica sicurezza* (Unified text of the laws of public security).

<sup>117</sup> For example, in 1973 the government gave asylum to Chileans and to the Vietnamese boat-people (Vincenzi 2000).

The political world caught up eventually and in February 1990 the then government passed law 39/90 also known as ‘Martelli law’<sup>118</sup>. The law had two purposes. On one side, it reformed the asylum procedure. Most importantly, for the first time, article 1 allowed entrance at the Italian borders to non-European refugees putting an end to the geographical delimitation. Article 1 is the only article of the law that still stands at the time of writing<sup>119</sup>. However, this new norm dealt only partially with asylum as only article 1 of the law contained information on refugee status. In particular, the norm was quite restrictive as it stayed within the refugee definition as outlined by the Geneva Convention (that requires persecution on an individual basis in order to grant refugee status) and did not recognise asylum as set out by article 10 of the Italian Constitution. The second aim of the law was to conform to the requirements set by other European members to enter Schengen and to reassure them that the country was capable of preventing unwanted immigrants from entering into the Schengen area. As such, the second part of the law dealt with economic migration and, in particular, quotas<sup>120</sup> to be set according to the country’s economic needs, residence permits<sup>121</sup>, expulsions<sup>122</sup>, and it introduced visa requirements and sanctions for migrant traffickers.

Dealing with asylum and economic migration within the same law started a trend that is still evident nowadays. The media and politicians alike often use a ‘crime and punishment’ type of rhetoric with the consequence of muddling asylum/refugee related issues with labour migration. This behaviour increases the confusion and the resentment of many Italians who do not have a full understanding of the problematic. However, the law had the merit to stabilise to a certain extent the situation of migrants (Gramaglia 2008).

As the number of refugees increased due to the conflicts in Somalia<sup>123</sup> and former Yugoslavia (see table 5.1), the issue of permits for humanitarian reasons followed and in 1995, Italy passed

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<sup>118</sup> See Appendix 13 for the asylum procedure according to the Martelli law.

<sup>119</sup> Article 1 was amended by the ‘Bossi-Fini’ law with articles 1-bis. - (Casi di trattenimento) - 1-ter. - (Procedura semplificata) - 1-quater. - (Commissioni territoriali) - 1-quinquies. - (Commissione nazionale per il diritto di asilo) - 1-sexies. - (Sistema di protezione per richiedenti asilo e rifugiati) - 1-septies. - (Fondo nazionale per le politiche e i servizi dell’asilo) - ) The rest of the text was abrogated and substituted by the ‘Turco-Napolitano’ (Legge Turco Napolitano) that was later amended by the Legislative Decree 25<sup>th</sup> July 1998, n.286<sup>119</sup>. The Bossi-Fini Act later modified the Consolidated Act.

<sup>120</sup> Article 2, comma 2.

<sup>121</sup> Article 4.

<sup>122</sup> Article 7 and 7bis.

<sup>123</sup> In 1991, there were 1,704 asylum applications from Somalia (Migration Policy Institute n.d.).

Legislative Decree n. 489 of 18 (also known as ‘Dini Decree’). This gave more rights to illegal immigrants such as health and education and it tackled the issue of smuggling and trafficking (Zincone and Caponio 2005).

Ultimately, in 1998 the centre-left government passed new legislation (law 40/1998 so-called ‘Turco-Napolitano’, then Consolidated Act 286/1998), aware of the inadequacy of the Martelli law in front of these changes. As with the Martelli law, the aim of this new piece of legislation was to demonstrate to other European countries that Italy too could handle the situation given the criticisms owed to country’s porous borders. It was also an effort to reassure the Italian public that the immigration situation was under control and that it did not represent a threat to security and national cohesion. This was a time, in fact, when the mass media would report increasingly news about criminal acts, especially robberies in wealthy areas, at the hand of immigrants, mainly Albanians (Rusconi 2010). These events sparked discontent among the public as well as a certain part of the political world. The law had three particular objectives<sup>124</sup>: “to contrast illegal migration and the criminal exploitation of the migratory flows; to implement policies related to limited, programmed and regulated legal entries”; and finally, “to start realistic but effective integration paths for new legal migrants and foreigners already resident regularly in Italy” (Camera dei Deputati 1997). As such, the control of external borders intensified, sanctions against the smuggling of migrants increased and temporary detention centres opened (*Centri di Permanenza Temporanea – CPT*). In terms of integration, the legislation introduced a permanent residence permit<sup>125</sup> following five years of regular permanent residence, and created a national fund for migration policies<sup>126</sup>, thus establishing cooperation between local governments and NGOs (Legge Turco Napolitano; Finotelli and Sciortino 2009). The law, however, did not deal with asylum. As the Turco-Napolitano was under discussion in 1998, *the Gruppo di Riflessione dell’Area Religiosa*, a network formed by religious

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<sup>124</sup> “*contrasto dell’immigrazione clandestina e dello sfruttamento criminale dei flussi migratori; realizzazione di una puntuale politica di ingressi legali limitati, programmati e regolati; avvio di realistici ma effettivi percorsi di integrazione per i nuovi immigrati legali e per gli stranieri già regolarmente soggiornanti in Italia*”.

<sup>125</sup> Article 7 *Carta di soggiorno*.

<sup>126</sup> Article 43 *Fondo nazionale per le politiche migratorie*.

associations<sup>127</sup>, produced “an alternative proposal” (5.5) (interview with Briguglio<sup>128</sup>). However, CIR and UNHCR put pressure on the government to remove the part related to asylum making “a limping norm since ’98 because immigration law was passed but not the asylum law” (5.6) (interview with Hein<sup>129</sup>). This was because the two organisations at the time believed that it was important to keep separate asylum and labour migration especially in view of a problem related to in-country appeals<sup>130</sup>. The issue networks that operated during the Bossi-Fini have always been in operation. However, their *modus operandi* was different. In 1998, the then centre-left government put together a commission of experts to work through the bill. The commission included civil servants and experts from various pro-migrants organisations showing a higher degree of attention towards these groups. However, “despite the Prodi government being on the left, they did not listen to the associations at all” (5.7) (interview with Briguglio).

What seemed (and still is at the time of writing) to be important for the Italian state was to combat illegal entries with any means necessary in a double effort: to ease the Italian’s fear of migrants and to show the European colleagues they were worthy partners in the fight against illegal migration. At the same time, in September 1997<sup>131</sup>, the first Commission in the Senate started the examination of one governmental bill and two parliamentary bills. A year later, in November 1998 the Senate finally approved the three bills in one unified text<sup>132</sup>. The Chamber of Deputies however, did not start the analysis of this text until July 1999. The journey of this law was long but eventually in March 2000, a modified text went back to the Senate where it also ended its course (Camera dei Deputati 2001; Vassallo 2001). “Someone ‘killed’ the Prodi government and the thing fell into disuse” (5.8) (interview with Hein). In the spring of 2001,

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<sup>127</sup> Caritas, ACLI, *Comunita' di Sant'Egidio*, *Confederazione delle Chiese Evangeliche*. This group formed on the ashes of a previous network called Pact for an anti-racist parliament (*patto per un parlamento antirazzista*). This last group stopped functioning as the first Berlusconi government was elected and they started to exclude groups associated with the Italian left. The religious group was more successful because “the moderate part of the centre-right was attentive to what the catholic world was saying” (interview with Briguglio).

<sup>128</sup> External immigration expert. Interview date: 5<sup>th</sup> November 2008.

<sup>129</sup> Christopher Hein, Director of the Italian Refugee Council. Interview date: 4<sup>th</sup> November 2008.

<sup>130</sup> The same problem presented itself while the Bossi-Fini was under discussion but in this case, the UNHCR came to an agreement with the government.

<sup>131</sup> This was during the thirteenth legislature that is while a centre-left coalition was in power.

<sup>132</sup> The objective of this bill (C.5381) was to complete – in terms of asylum – what the Turco-Napolitano law and the law decree 286/1998 had started. The bill as it was approved in the Senate in 2001, recognised the right to asylum and humanitarian protection on individual bases according to article 10 of the Italian Constitution and to the international conventions to which Italy is a signatory of (Camera dei Deputati 2001).

new parliamentary elections stopped any possible development as Berlusconi's centre right government was elected.

In 2006, the major pro-immigration organisations of the so-called third sector – that are part of the more recently formed *Tavolo Asilo* – presented a new asylum proposal to the newly appointed centre-left government<sup>133</sup>. The government was effectively ready to listen and to act as it declared the willingness to create a single asylum procedure; to abolish the detention of asylum seekers in closed centres; to reform the non-suspensive appeals system; and finally, to improve reception and integration (CIR 2007). This government though only lasted just under two years and again the law was set aside. The instability of Italian governments is indeed a problem. They do not tend to last very long and if they do, they have other priorities.

The Italian Parliament categorised by unstable coalitions is not comparable to the strong and unitary UK Parliament according to the 'Westminster model'. This is reflected in the clearer objectives set out by the UK government in dealing with asylum thus producing several pieces of asylum legislation.

Finally, in 2002 the then ruling coalition passed the 'Bossi-Fini'. Its goal was to cut down on illegal migrants while making legal migration a sought after wish. Besides, contrary to the UK, asylum in Italy was just emerging as an issue for the government. These important factors shaped the Bossi-Fini. In the law, two articles regulate the entrance and stay of asylum seekers while the rest of the law is about labour migration and tools to deter unwanted migrants, including asylum seekers. Although, two articles could not discipline the matter in its entirety, at least they served the purpose to bring some sort of attention to the issue, as well as to attempt to put some order into the field where Italy lagged well behind other EU countries.

The second part of the chapter focuses on the origins and the main points of the law.

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<sup>133</sup> Prodi's government (May 2006-May2008).

## 5.2 THE ‘BOSSI-FINI’: ORIGINS, CONTROVERSIES, AND MAIN POINTS

The bill, presented in the Cabinet (*Consiglio dei Ministri*) on 9<sup>th</sup> August 2001 and introduced in the Senate on 2<sup>nd</sup> November 2001 by Senator Boschetto<sup>134</sup>, became law 189/2002, most commonly known as ‘Bossi-Fini’ on 30<sup>th</sup> July 2002<sup>135</sup>. It developed following this timetable:

| <b>Senate (S.795)</b>   |   |
|---|---|
| Assigned to the 1 <sup>st</sup> Permanent Commission (Constitutional Affairs)   | 14 <sup>th</sup> November 2001  |
| Discussion in the above Commission ( <i>sede referente</i> )  | From 21 <sup>st</sup> November 2001 until 13 <sup>th</sup> February 2002  |
| Discussion in other Permanent Commissions ( <i>sede consultiva</i> ): 2 <sup>nd</sup> (Justice), 3 <sup>rd</sup> (External Affairs, Emigration), 5 <sup>th</sup> (Treasury), 10 <sup>th</sup> (Industry), 11 <sup>th</sup> (Labour and Welfare), G.A.E. (European Commission Affairs) | Between 27 <sup>th</sup> November 2001 and 27 <sup>th</sup> February 2002 |
| Discussion on the Floor of the House  | From 19 <sup>th</sup> until 28 <sup>th</sup> February 2002                |
| Approved  | 28 <sup>th</sup> February 2002  |

| <b>Chamber of Deputies (C.2454)</b>   |   |
|---|---|
| Transmitted from the Senate   | 1 <sup>st</sup> March 2002                                  |
| 1 <sup>st</sup> Permanent Commission (Constitutional Affairs) ( <i>sede referente</i> )   | From 20 <sup>th</sup> March until 3 <sup>rd</sup> June 2002 |
| Discussion in other Permanent Commissions ( <i>sede consultiva</i> ): 2 <sup>nd</sup> (Justice), 3 <sup>rd</sup> (External Affairs), 4 <sup>th</sup> (Defence), 5 <sup>th</sup> (Treasury), 10 <sup>th</sup> (Industry), 6 <sup>th</sup> (Finance), 7 <sup>th</sup> (Culture), 8 <sup>th</sup> (Environment), 10 <sup>th</sup> (Production Activities), 11 <sup>th</sup> (Labour), 12 <sup>th</sup> (Social Affairs), 14 <sup>th</sup> (European Union Policies). | Between 7 <sup>th</sup> May and 3 <sup>rd</sup> June 2002   |

| <b>Senate (S.795-B)</b>   |  |
|---|--|
| Transmitted from the Chamber of Deputies                                      | 4 <sup>th</sup> June 2002  |
| Assigned to the 1 <sup>st</sup> Permanent Commission (Constitutional Affairs) | 5 <sup>th</sup> June 2002  |
| Discussion in the above Commission ( <i>sede</i> )                            | 11 <sup>th</sup> , 18 <sup>th</sup> and 19 <sup>th</sup> June 2002 |

<sup>134</sup> Spokesman for the Commission. *Forza Italia* (FI) party.

<sup>135</sup> “Modifica alla normativa in materia di immigrazione e di asilo”.

|  |   |
|--|---|
| <i>referente</i> )   |   |
| Human Rights Extraordinary Commission<br>( <i>sede consultiva</i> ) and<br>5 <sup>th</sup> Commissions ( <i>sede consultiva</i> ) (Treasury) | 12 <sup>th</sup> and 13 <sup>th</sup> June 2002;<br><br>9 <sup>th</sup> July 2002 |
| Discussion on the Floor of the House   | From 20 <sup>th</sup> June until 11 <sup>th</sup> July 2002                       |
| Approved   | 11 <sup>th</sup> July 2002  |

The bill was a government initiative and the first draft presented in July 2001 did not consider asylum at all. The articles related to asylum made their first appearance a month after, in August (Briguglio 2001a). It stemmed from two other bills raised while the centre-right was in opposition, the ‘Bossi-Berlusconi’ bill and the ‘Landi-Fini’ bill. The former, written by the populist party Northern League (*Lega Nord* – LN), pictured migrants as guest workers “by linking the presence of immigrants in Italy to their employment” (Geddes 2008, 358) and its main provisions related to family reunion<sup>136</sup> and naturalisation<sup>137</sup>. The latter was a bill born within the lines of *Alleanza Nazionale* (National Alliance – AN) a former post-fascist party, and had more of a “law and order approach” (Zincone 2011, 270). Its main features included the introduction of clandestine immigration as a crime, immediate arrest and escort to the border (*ibid*). In the final version of the Bossi-Fini however, there is no crime for illegal immigration while “family reunion was still immediate for holders of renewable residence permits of at least one year” (Zincone 2006b, 31). What happened during the process – as Chapter 7 will show – was that the presence of the moderate influence of the Catholic party *Centro Cristiano Democratico - Cristiani Democratici Uniti* (CCD-CDU) had the power to mitigate and soften the harsher proposals put forward by the LN. Both these parties were part of the ruling coalition within the *Casa delle Libertà* (CDL – House of Freedoms) that also included *Forza Italia* (FI – Go Italy) led by Berlusconi and AN. LN and the CCD-CDU had several confrontations especially on the front of family reunions and the amnesty for the illegal labour force. The latter in particular was the object of heated hostilities between the two parties. In the end, they came to an agreement. As Chapter 7 illustrates, part of the deal was that this provision would not figure in the Act but be passed at a later stage.

<sup>136</sup> Migrants could apply for family reunion after three years of legal residence.

<sup>137</sup> Migrants could apply for naturalisation after ten years of legal residence.



AN avoided interfering in its aim to reposition itself “as a modern, mainstream European centre-right party” (Geddes 2008, 354) so to avoid being identified as a xenophobic party. *Forza Italia* played mainly a mediating role for three reasons. Firstly, because the *Lega* had walked out of the previous coalition government causing its fall. Secondly, as Geddes (*ibid*) highlights, immigration was perceived as a threat in terms of national identity, employment and security by FI, AN and especially LN voters. On the other hand, they shared worries with the Catholic parties “to respond to business concerns about adverse effects of draconian immigration legislation on labour supply” (Geddes 2008, 356). At the same time, the CCD-CDU had the support of the Catholic Church and the business interests to increase labour migration. This backing would explain why in the end, the LN had no choice but to please its party members as well as a small part of the electorate (excluding the businesses) with “repressive symbolic proposals” (Bale 2008, 461; Colombo and Sciortino 2003) such as the use of the Navy to send back migrants and mandatory fingerprinting of immigrants.

Despite these symbolic victories, comments from the LN, FI and AN promoted the law as “a great success” and a victory for the government (La Repubblica 2002c). It reinforced the words of Umberto Bossi, leader of the LN, who only a few months earlier railed against the left, responsible for the “invasions” with the hope “to end the nation-state” (La Repubblica 2002a). Although the LN could not stop the amnesty it was nevertheless able to send out a strong message to its supporters that they had power through a series of repressive “headline-grabbing measures” (Albertazzi and McDonnell 2005, 962; Geddes 2008) namely the taking of fingerprints of migrants and the use of the navy to intercept migrant boats and send them back. For the CCD-CDU it was also a success because the party was able to get through few but central concessions to ameliorate and soften the harshest sections of the law including the amnesty. For the left the Bossi-Fini turned out to be a “*legge manifesto*<sup>138</sup>” (manifesto law) (Sen. Villone, Atti Parlamentari, Senate Deb 19 February 2002, sitting 124), a political stance to show that the government was in control and was able to deliver and against the “inhumanity of

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<sup>138</sup> DS-U.

the ideology of the multiracial society” (5.9) (Cè MP<sup>139</sup>, Atti Parlamentari, Chamber of Deputies Deb 4 June 2002, sitting 153).

The changes that happened throughout the policy-making process of the Act and the consequent comments made by politicians show that political parties were more than simple conduits. They were a fundamental source for the formation of this piece of legislation. The political tension between different parties in Italy has always been historically acute but more so in ruling coalitions which are often characterised by intra-coalition negotiations. Ideologically different political parties and their electoral bases in fact limit internal cohesion in the coalition governments (Diamanti 2007; Fabbrini 2012). Fabbrini (2012) underlines the lack of a strong unitary party since the post-Cold War era while strong rivalry has emerged between the parties forming the centre-right or centre-left coalition. So much that “[i]n Italy, it is no longer the political parties that aggregate different interests but the latter that use the parties for promoting their specific demands” (*ibid*, 19). As in the case of the Bossi-Fini, cooperation was not easy to achieve. Because of the different interests involved, the coalition suffered a great deal. While the LN promoted its infamous anti-migrant and anti-Muslim rhetoric, the Catholic CCD-CDU supported a more lenient policy in terms of labour migration and family reunion steered by the Catholic Church, the employers’ organisations and the Italian families in need of domestic workers and carers.

The tension within the ruling coalition was also present in the opposition. The opposition was “weak and internally divided because the institution that should promote it – namely, the parliament – has been sorely weakened” (Fabbrini 2012, 21) due to the increasingly central role of the government especially following the electoral reform of 1993. This explains the inability of the opposition to counterbalance the strength of the government during the debate of the Bossi-Fini (see Chapter 7).

The part on asylum<sup>140</sup> was a later addition and it shows two different approaches. On one side, a top-down approach as the asylum articles are EU derived. The government, in effect, sought help by ‘borrowing’ some of the ideas on detention and removal from the European

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<sup>139</sup> LNP.

<sup>140</sup> See Appendix 14 for the asylum procedure according to the Bossi-Fini.

Directive then under discussion<sup>141</sup> “in cases in which it is possible to detain the asylum seeker, as well as the possibility of removal given by the accelerated procedure, after the first instance” (5.10) (*ddl* 795, 10). On the other side, a bottom-up approach because the Ministry of Interior<sup>142</sup> cooperated very closely with the UNHCR and acted under pressure from mayors and organisations that traditionally deal with the support of asylum seekers and refugees thus, *de facto* acting for the State.

The *ddl*, introduced in the *Consiglio dei Ministri* (Cabinet) on 9<sup>th</sup> August 2001, caused major objections from the Ministers who had only a few hours to look at it (Bonetti 2001a).

The approval of the proposed law with amendments in the Cabinet, including points on the detention of asylum seekers in centres, happened on 12<sup>th</sup> October. The formal introduction in the Senate instead happened on 2<sup>nd</sup> November 2001 when it became Senate Act (*Atto Senato*) or *ddl* S.795<sup>143</sup> Amendment to the provisions on the matter of immigration and asylum (*Modifica alla normativa in materia di immigrazione e asilo*) while the formal announcement was on 5<sup>th</sup> November. The time between the approval and the introduction of the bill was a worrying time for charities and organisations because kept in the dark by the government deliberately, did not know whether the bill was going to continue its legislative procedure or not (Bonetti 2001a).

As expected, the assignment of the bill to the first standing Committee for Constitutional Affairs occurred on 14<sup>th</sup> November while work began on 21<sup>st</sup> November. On 28<sup>th</sup> February 2002, it was approved in the Senate and passed on to the Chamber of Deputies on 1<sup>st</sup> March 2002. Here, its approval with changes came about on 4<sup>th</sup> June 2002. The Senate analysed it again until its final approval on 11<sup>th</sup> July 2002.

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<sup>141</sup> Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, Official Journal of the European Communities, (2001/C 62 E/16) and COM(2000) 578 final.

<sup>142</sup> In the person of two specific individuals: the then Minister of Interior Mantovano and Prefect Compagnucci who were the authors of the two articles (see Chapter 7).

<sup>143</sup> Prior to and in conjunction with this *ddl*, other four law decrees on similar topics were presented but they were eventually discussed and finally absorbed by the law decree under discussion. These were: *ddl* S.55 *Norme in difesa della cultura Italiana* (Norms in defence of the Italian culture); *ddl* S.770 *Nuove norme in materia di immigrazione* (New norms on the matter of immigration); *ddl* S.797 *Disciplina dell' ingresso degli stranieri che svolgono attivita' sportiva a titolo professionistico o comunque retribuita* (Regulation on the entry of foreigners performing sport activities at professional level or anyway compensated); and finally *ddl* S.963 *Norme in materia di ingressi dei lavoratori extracomunitari occupati nel settore dello spettacolo* (Norms on the matter of entrance for extracomunitarian workers in the sector of show business). None of these other law decrees dealt with asylum.

The Presidential Decree, DPR no. 303<sup>144</sup> of 16<sup>th</sup> September 2004, approved the regulations to carry into effect the Bossi-Fini law in relation to refugee status and the law came into effect on 21<sup>st</sup> April 2005 (Boca, Pittau and Ricci 2009).

Although the law was presented as a “great innovation” (5.11) (interview with Hein), it was in reality a “copy and paste” (5.12) (interview with Pacini<sup>145</sup>) of previous legislation and “not a law with its own thought” (5.13) (interview with Guarino<sup>146</sup>). The Bossi-Fini is nothing but a modification to the Consolidated Act that to date remains the most important Italian law regulating immigration (Zincone 2011) and article 1 of the old Martelli law with regard to asylum. The new law simply narrowed down some older provisions.

There were several controversial aspects in the Bossi-Fini given the criticism received by pro-migrant organisations, the opposition parties in Parliament as well as the reactions raised within the parties in the majority. The next section looks more in details at the main aspects of the law.

### **5.2.1 Main aspects of the bill: (many) controversies and (very little) good news**

Because the Bossi-Fini was not a new law but a reaction to the previous one passed by a centre-left government, it did not distort completely the Turco-Napolitano law. Rather, the provisions were tightened and made more severe especially with regard to labour migration. For this reason, the bill was greeted generally in two ways by the associations working for the defence of migrants: on one side, disappointment from a constitutional point of view to see an already defective norm (referring to the Turco-Napolitano) further threatened by provisions deemed to be “constitutionally censurable”(5.14) (Sen. Vallone, *Atti Parlamentari*, Senate Deb 19 February 2002, sitting 124); on the other, “substantial relief in the face of the scarce correspondence between the contents of the *ddl* and the usual propaganda of some of the majority parties” (5.15)

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<sup>144</sup> *Decreto del Presidente della Repubblica*.

<sup>145</sup> Luca Pacini, responsible for Welfare and Immigration at ANCI (the national association of Italian municipalities). Interview date: 3<sup>rd</sup> November 2008.

<sup>146</sup> Berardino Guarino, Projects' Director of the Centro Astalli-Jesuit Refugee Centre. Interview date: 4<sup>th</sup> November 2008.

(Briguglio 2001a). There were in fact also some new provisions<sup>147</sup> especially related to asylum that were an improvement to the Italian situation.

Starting with immigration, because the law was essentially an anti-immigrant norm, by far the most problematic issue for part of the majority (namely the LN) was that related to the regularisation<sup>148</sup> of the illegal workforce. The employment of illegal migrants is in fact widespread and accepted by the same employers (because of the benefits it brings to the few) (Reyneri 1998) and regularisations of the illegal workforce have been the norm (Geddes *et al.* 2004). Both factors have increased and even further encouraged illegal entries (Zincone 2011). Originally, there was not going to be any regularisation at all. Nevertheless, ‘the norm that was not meant to be’ became a reality. It comprised those migrants considered socially relevant such as domestic and care workers, who had worked and lived in Italy for at least three months. The extension of the amnesty to all the other workers without a valid resident permit occurred a few months later through a law decree after the approval of the law<sup>149</sup>. This was possible thanks to the pressure exercised by the employers’ associations but especially by the Catholic groups in the majority. The government could not turn its back to the requests made by these two categories. In the end, 702.156 requests were presented (Ministero del Lavoro e della Previdenza Sociale 2006, 21; Ministero dell’Interno 2002) and about 650.00 were accepted (Menefra 2003). To date, this has been the biggest European amnesty (Colombo and Sciortino 2003; Reyneri 2004).

The other two important issues, which created more of a steer in the civil society and the opposition, were those on the abolition of the sponsorship<sup>150</sup> programme and the introduction of

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<sup>147</sup> Article 32 Simplified Procedure (*Procedura semplificata*).

<sup>148</sup> Article 33 Declaration for the emergence of irregular labour (*Dichiarazione di emersione di lavoro irregolare*).

<sup>149</sup> Law decree 25 September 2002 bearing urgent dispositions in matter of regularisation of underground work and of part-time employer-employee relationships (*recante disposizioni urgenti in materia di emersione del lavoro sommerso e di rapporti di lavoro a tempo parziale*). The regularisation of undeclared work was the subject of two law decrees (195/2002 and 210/2002) converted into law 222/2002 on 9<sup>th</sup> October 2002 (*Inps Veneto* 2003, 327) and law 266/2002 on 22 November 2002 (Camera dei Deputati 2002).

<sup>150</sup> This particular process however was used infrequently by the centre-left. On the other hand, the call of the immigrant ‘*al buio*’ or recruitment by name that is while still living abroad has been the norm since 1987 with the introduction of law 943/1986 (Briguglio 2004).

a residence contract for working reasons (*contratto di soggiorno per lavoro*<sup>151</sup>). The sponsorship introduced originally by the Turco-Napolitano, served to guarantee regular entries. With the new law, employers would need to employ unknown foreign citizens while still abroad instead of NGOs, family members or trade unions vouching for the foreign worker. The concession of a two-year residence permit connected to a work contract linked for the first time residence and work and the aim was to avoid the illegal residence and presence of migrants on the territory. In practice, the migrant with an expired work permit had little chance of renewing the residence permit. Often the renewal of the work permit did not happen on time because of the impossibility of finding another job within the set time limit or the long waiting times needed, thus transforming the migrant into an irregular worker. In fact, the real issue here was the reduction of the time available to look for another job from one year to six months.

The article related to the contract, also contained the provision on digital imprints for migrants requesting a resident permit and/or its renewal. It was a “mechanism of protection for legality and a warranty also for the migrants” (5.16) (Casadio 2002). This matter however, was not the subject of disagreement within the majority where the *Lega* proposed it, but within the opposition. In fact, as the government passed the amendment, Francesco Rutelli of the Catholic political party *Margherita* (Daisy) proposed to solve the dilemma by taking the imprints of everybody, including Italians, so as not to become “an instrument against the foreigners” (5.17) (Casadio 2002). In reality, the possibility of taking digital imprints for everybody was not new, as an older law from 1999 did already provide for this but not compulsorily.

Other changes that targeted illegal migrants specifically were:

- 1) Immediate expulsion by way of escorting the foreigner without a regular residence and/or working permit and no documents to the border by the police<sup>152</sup>
- 2) Administrative detention<sup>153</sup> “in all the hypotheses of clandestine entry” (5.18) (Vassallo 2001)

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<sup>151</sup> Article 5 Residence permit (*Permesso di soggiorno*) and article 6: Residence contract for subordinate work (*Contratto di soggiorno per lavoro subordinato*).

<sup>152</sup> Article 12 Administrative expulsion (*Espulsione amministrativa*).

<sup>153</sup> Article 12

- 3) Lengthening of detention times from 30 to 60 days<sup>154</sup> for all irregular migrants within the temporary accommodation centres (CPTs) established by the Turco-Napolitano
- 4) Restriction of family reunions<sup>155</sup>
- 5) Rejection (*respingimento*) at the border but also at sea using the Italian Navy<sup>156</sup> through the so called ‘push-backs’. The latter is the highly contentious practice of sending boats of migrants en route to Italy back to countries of origin<sup>157</sup> and is considered a serious breach of the country’s “obligations under international human rights law, in particular the 1951 Refugee Convention and the European Convention on Human Rights” (ECRE 2009; Global Detention Project 2009a; Human Rights Watch 2009).

All of the above new rules and regulations part of the Bossi-Fini – introduced to stop illegal migrants but also to deter migrants settling in the country for a longer period than it was necessary for the Italian economy – also had a profound impact on asylum seekers. This is especially true for those provisions put in place to reject people before they even had the chance to claim asylum.

In terms of asylum specifically, the smaller yet important portion related to the topic which represented the real novelty of this law. In fact, surprisingly, the law contained also two articles on asylum. ‘Surprisingly’ because it was a centre-right government – whose main allies were the *Lega* famous for its anti-immigration stances and AN – that passed the law. They saw the law in its organisational aspects e.g. organising a system non-existent until then made of reception and shared responsibilities, rather than ideological ones as a centre-left coalition would have most probably done. Previous centre-left governments, despite claims of wanting specific asylum legislation, were never able to agree and pass such legislation (interview with Compagnucci). This was due allegedly, to a lack of real interest towards the issue (interview with the National Eligibility Commission Official). Furthermore, whereas the other important partner of the coalition, the Catholic party CCD-CDU, had a key role in relaxing the most

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<sup>154</sup> Article 13 Execution of expulsions (*Esecuzione dell’espulsione*).

<sup>155</sup> Article 23 Family Reunions (*Ricongiungimento familiare*).

<sup>156</sup> Article 11 Dispositions against clandestine immigrations.

<sup>157</sup> For example, Libya that is not a signatory to the 1951 Refugee Convention. Italy has signed bi-lateral agreements also with Albania, Tunisia and Morocco. These states agreed to increase their efforts to control illegal migration, “in exchange for development assistance from Italy, and a small annual quota for legal labour migration to Italy” (Boswell 2005b, 15).

stringent parts of the law related to regularisation and family reunion, they did not intervene on asylum. They preferred to concentrate their efforts on the other aspects legitimised by the rest of the Catholic world as well as the employers' groups.

Clearly, asylum was not the government's priority so much that the very first version of the bill that landed in the Cabinet on 9<sup>th</sup> August 2001 did not even have the two articles on asylum (Briguglio 2001c). Asylum had a marginal but important position. It was marginal because, as highlighted in the introduction to the bill, for the government it was not worth having asylum legislation until there were equal minimum procedures throughout Europe but it was at least useful to solve the problem of 'false' or instrumental asylum claims. In fact, under article 1 of the Martelli law<sup>158</sup> anybody who presented an asylum claim could obtain a residence permit irrespective of their position be it "regular, not regular, under a removal order ... or anything else" (5.19) (Disegno di Legge 795, 9). However, "90% of false claimants" (5.20) (*ddl* 795, 6) would abscond. Consequently, the new regulation introduced a procedure specifically for those claims considered manifestly unfounded. It was also important because for the first time for 12 years, that is after the Martelli law, asylum made its renewed – albeit minimal – appearance in a law. It was an attempt to put some order in the chaotic or non-existent asylum system. However, the law gave the wrong message by drawing up "norms with such different objectives<sup>159</sup>" (5.21) (Cento MP, Atti Parlamentari, Chamber of Deputies Deb 13 May 2002, sitting 143, 18) that is by associating migration first with criminality<sup>160</sup> and then migration with asylum that instead should be seen as a "guaranteed constitutional right" (5.22) (Bonetti 2001b). It merely reinforced the belief and assumption in public opinion that asylum seekers and immigrants belong to the same category but it also underlined a lack of interest as well as knowledge of the issue.

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<sup>158</sup> Article 1 of the Martelli Law provided for both the suspension of the removal provision and a temporary residence permit while waiting for the Central Commission to issue its final decision on the claim.

<sup>159</sup> Cento MP, Greens.

<sup>160</sup> The link between immigration and crime was further strengthened with the introduction in 2009 with law 94/2009, the so-called 'security package' whereby "clandestine immigration" became "a crime punishable by a heavy fine" (Cento Bull 2010, 422). The law introduced renewed harsher measures in relation to family reunion and obtaining Italian citizenship, increased fines for illegal entries and for over-stayers, introduced the *ronde* that is groups of citizens organised to patrol the cities' streets in order to report crimes, it required the debatable duty of public officers (including doctors) to report illegal migrants to the authorities, while the CPTs were renamed 'centres for identification and expulsion' (CIE) where migrants could be held for up to six months (Grigion 2009; D'Orsi 2010).



The most important aspects of the law with regard to asylum were:

- 1) The introduction of either an optional or a mandatory arrest of asylum seekers to be held in identification centres needed for speedier removals (FIDH 2005). As a result, a double procedure was put into place: ordinary for the optional arrest and simplified<sup>161</sup> for mandatory arrest. The latter case was designed specifically for those trying to go through the Italian border without a passport which is the case for most asylum seekers (ICS 2005), or were already on the territory illegally or finally had been expelled or turned down
- 2) In the case of a negative decision by the Territorial Commission, an immediate expulsion<sup>162</sup> order would reach the asylum seeker. At this point, the new procedure provided for the chance to appeal the decision. The Territorial Commission became responsible for the new pronouncement. The issue here was that the same components – with the integration of a member of the National Commission<sup>163</sup> – who had turned down the appeal in the first instance had to take the decision
- 3) Furthermore, the appeal did not have suspensive effect meaning that unless a request to stay in the country to wait for the results was allowed, the claimant had to leave the country with the possible risk of infringing the principle of *non-refoulement* contained in article 33 of the 1951 Convention Relating to the Status of Refugees<sup>164</sup>
- 4) The establishment of Territorial Commissions<sup>165</sup> decentralized throughout the Italian territory to support the work of the National Commission. Having Commissions

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<sup>161</sup> *Procedura ordinaria* and *procedura semplificata*.

<sup>162</sup> This provision together with the mandatory imprisonment of those foreigners without a residence permit or with an expired one who fail to comply with an order to leave the country were ruled to be unconstitutional by the Constitutional Court with Corrective Decree converted to Statute no. 271/2004.

<sup>163</sup> Until 2002 there was only the *Commissione Centrale per il riconoscimento dello "status di rifugiato"* (Central Commission for the recognition of refugee status) in Rome. The Bossi-Fini with article 32, subsection 1-quinquies renamed the Commission as *Commissione Nazionale per il diritto di asilo* (National Commission for the right to asylum). The new Commission directs and coordinates the work of the ten Territorial Commissions and trains the employees.

<sup>164</sup> Article 33 prohibition of expulsion or return ("refoulement"): "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" (UNHCR 1951).

<sup>165</sup> The Bossi-Fini introduced seven Commissions: Gorizia, Milano, Roma, Foggia, Siracusa, Crotone and Trapani. Since 2008 (*decreto legislativo* no. 25 of 28<sup>th</sup> January 2008) three more have been added: Torino, Bari, and Caserta. The Commissions became operative on 21<sup>st</sup> April 2005.

throughout the territory meant cutting down travelling time for the person claiming asylum as well as faster decisions

- 5) Finally, the changes to the *Programma Nazionale Asilo* (Asylum National Program) PNA renamed *Sistema di Protezione per Richiedenti Asilo e Rifugiati* (Central Service of the protection System for Asylum Seekers and Refugees) or *SPRAR*<sup>166</sup>. In a time when it was feared that the PNA would have ceased to exist the law demonstrated to be a step ahead by restructuring and transforming “the program ... in a system providing ... some stable funds albeit insufficient” (5.23) (interview with Dinh Le Quyen<sup>167</sup>).

These last two aspects were the only positive features of the part of the law related to asylum.

The law essentially was born to tighten the existing measures about entry of migrants on the Italian territory and the only new features were those related to asylum. The pro-asylum and pro-immigration groups, together with the opposition in government, were therefore very critical about the changes because some of the features of the previous law were not even implemented in full while asylum should have been deliberated under a different and more considered light.

But, what was the impellent necessity for the second Berlusconi government to create ‘new’ legislation only three years after the last one<sup>168</sup>? The final section of the chapter looks at the then political situation and party politics that created the Bossi-Fini with particular emphasis on the *Lega Nord* and the permanent gap between the politicians’ rhetoric and the outcome of policies that seems to be a constant feature in the policies concerning immigration. Continuities and discontinuities are also part of this analysis.

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<sup>166</sup> Article 32-1 sexies.

<sup>167</sup> Ngo Dinh Le Quyen, Responsible for immigration, asylum and human trafficking for Caritas in Rome and President of the immigration commission for Caritas Europe (*Responsabile Immigrazione, Asilo e Tratta per Caritas di Roma* and *Presidente della Commissione Immigrazione di Caritas Europa*). Interview date: 6<sup>th</sup> November 2008.

<sup>168</sup> The Turco-Napolitano became law in 1998 but came into force a year later partly because of the referendum called by the LNP to repeal the law in January 1999. However, the Constitutional Court with sentence n.31 of 7<sup>th</sup> February 2000 will declare the inadmissibility of the referendum. The repeal would have meant the cancellation also of article 14 concerning the establishment of Temporary Permanence Centres (CPT) and the detention of illegal immigrants within these. CPTs were considered among the measures that allowed Italy to enter the Schengen area and article 75 of the Italian Constitution does not allow referendums to deal with international treaties (Zincone and Di Gregorio 2002).

### 5.3 PARTY POLITICS: POLITICAL PARTIES IN THE MAKING OF IMMIGRATION POLICIES, THE PERSISTENT ‘GAP’ BETWEEN RHETORIC AND OUTCOMES, CONTINUITIES AND DISCONTINUITIES IN POLICY-MAKING

Immigration became a ‘hot’ political subject matter in 2000 that is during the creation of the coalition House of Freedoms<sup>169</sup> (*Casa delle Libertà*) with the inclusion of the Northern League. Immigration is the ‘hobby horse’ of the political debate of the *Lega* that started their populist xenophobic career first as an anti-southern party, then as anti-immigration party and finally as an anti-migrant party (Finotelli and Sciortino 2009).

The website of the *Governo Berlusconi 2001-2006* explained the law as an “*esigenza ineludibile*” – an inevitable necessity to reform profoundly the law in this subject (Governo Berlusconi, n.d.). There are four different reasons or possible explanations for this statement. To start with, the Turco-Napolitano and the Martelli law formed in a climate of pressure exercised by Italy’s European neighbours. The critics relate to the fact that Italy does not provide effective control on its porous borders. Many migrants would in fact ‘use’ the country as a passage to reach their final destination, for example France or Germany. It is still possible to observe this trend although the number of foreigners settling in Italy has increased significantly. It is not surprising then that the pressure from the EU has never ceased in fact, one of the provisions of the Bossi-Fini is to use the Italian Navy to intercept and stop boats of migrants before they arrive in Italian waters or closer to its shores.

Secondly, the government thought the Turco-Napolitano law “registered ... considerable delays in the actuation of many of the expected tools<sup>170</sup> ... but especially and fundamentally” it “has not been able to face the emergencies (5.24)” (Bertolini MP<sup>171</sup>, Atti Parlamentari, Chamber of Deputies Deb 13 May 2002, sitting 143, 4). In practice, the law was not deemed to be strict enough despite the cooperation between the centre-left government and the centre-right

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<sup>169</sup> The other members were *Forza Italia*, *Alleanza Nazionale*, *Biancofiore* formed by two Christian parties the CCD and CDU and the *Nuovo Partito Socialista*.

<sup>170</sup> The Bossi-Fini was implemented over two year after its approval.

<sup>171</sup> Speaker for *Forza Italia*.

opposition during the previous legislature<sup>172</sup> to restrict, manage and regulate people's movements within the country (Bozzini and Fella 2008).

Thirdly, both laws showed their inadequacy to the times as new and diverse types of movements started to emerge especially in relation to Eastern European visa over-stayers (Finotelli and Sciortino 2009) and migrants from North Africa. In the meantime, immigration came at the forefront of political news and scored quite high in the fears of Italian public opinion (Colombo and Sciortino 2004; Sciortino and Colombo 2004).

The last aspect relates to the fact that the Bossi-Fini initiated in political circles showing a "highly polarised and ideological political atmosphere" (Zincone 2006a, 364). The Berlusconi government and especially the Northern League had made precise promises to the Italian public about tackling illegal entry and residence of foreigners (Zincone 2006a). The theme of immigration though, had been cautiously kept hidden during the electoral campaign (Colombo and Sciortino 2003; Zincone and Di Gregorio 2002) following the logic that political parties usually do not "take clear, strong, or divergent positions" (Freeman 1995, 884) on the subject of immigration to avoid setbacks (Perlmutter 2000; Geddes 2008; Schain 2008). In contrast, more extreme right wing parties who do criticise immigration and migrants openly seldom obtain many seats and have "limited or no chance of participating in or forming governments" (Freeman 1995, 884). The Northern League for instance, came into the limelight because of their strong stance against immigration and immigrants. They obtained only 3.9% votes in the 2001 elections (Albertazzi and McDonnell 2005) but contrary to Freeman's statement, they became one of the strongest allies of Berlusconi and his governments.

### **5.3.1 The rhetoric and outcome gap**

Yet, despite the harsher tones against immigration registered in those years due to an increase in the politicisation of the issue, especially coming from the *Lega Nord*, authors have highlighted a persistent 'gap' (Boswell 2007) between parties' rhetoric and the law's actual "contradictory outputs" (Zincone 2011, 249). This gap is only apparent however (Finotelli and Sciortino 2009) and is "standard" (Geddes 2008, 350) across liberal states. Centre-right and centre-left

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<sup>172</sup> 1996-2001 *Ulivo* (Olive Tree) government.

governments that have succeeded each other over the years have produced laws with similar outputs. Although the centre-right has a more conservative stance towards immigration compared to the centre-left, the fact that there was always a Catholic component in both coalitions, allowed policies to be similar in character. Catholic parties usually have the power to mitigate choices and requests but also to maintain a certain continuity and stability in immigration policy despite changes in government (Zincone 2006b). Naturally, the laws of the market have an impact on the continuation of policies too whereas the embedded tendency of the right to have harsher control measures is mitigated by the needs of the Italian market for foreign workers.

Anna Cento Bull (2010) has traced the gap back to the fact that the *Lega*'s rhetoric against immigration is merely symbolic. This means that the use of strong language against migrants and migration and the inclusion in laws of strict measures (for example the Bossi-Fini although the author's focus is on the most recent 'security package' adopted in 2009 and wished for strongly by the *Lega*), in reality are a means to subordinate "identity to material issues, thereby (paradoxically) assuaging the fears of its electorate while helping it come to terms with culturally undesired socio-economic changes" (*ibid*, 418). In practice, while the security package highlighted repressive measures against migrants, the governments implemented other procedures that in a way contradicted the position of the *Lega*. An example of this kind of behaviour is the regularisation programs passed in 2009 but only after the 'security package' had become law (the same thing happened in 2002 with the approval of the Bossi-Fini in July while the law on the regularisation passed a few months later in the autumn). According to the author, the party in a way fulfil their duty by reassuring their electorate "that clandestine entry will not be tolerated" (*ibid*, 429). At the same time, the party is aware of the impossibility of implementing many of these measures<sup>173</sup> in real life. Nevertheless, their popularity remains stable as they blame policy failures on other actors such as "the left-leaning judiciary, the

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<sup>173</sup> The author gives a series of reasons from the "non-appearance of the defendant at the trial" to the "lack of bi-lateral agreements at state level" (Cento Bull 2010, 422-423).

The lack of bi-lateral agreements but also and especially the costs to carry out a mass deportation with "thousands of people" and "hundreds of planes" were points confirmed in interview on 15<sup>th</sup> February 2011 by Senator Boschetto with regard to the making of the Bossi-Fini and the deal on the regularisation. It was an aspect, he continued of "*real politik*" as it was unimaginable to sustain such costs.

medical profession, the opposition parties, the EU and even its allies in government” (*ibid*). She concludes that “the gap between policy rhetoric and policy outcomes” (*ibid* 431) is not due to bargaining that happened within the coalition in power but because of the electoral needs to be tackled. This latter points describe certainly a reality that sees at national (public) level policy-makers making anti-immigration propaganda, after all “that’s what the Italians want to hear” (5.25) (interview with Official of the National Commission<sup>174</sup>), while at local, private level, members of the same party are asking to regulate migrants for work purposes. However, as Bale (2008, 453) writes, “[p]arties are, after all, populated by individuals who are themselves ideological, sharing the gut instincts of their supporters – and sometimes even more so”. Furthermore, the parliamentary debates analysed with the aim to assess how the Bossi-Fini came to be tell a different story, as they recorded the harsh exchange of views between the *Lega* and their allies in the Catholic Party, CCD-CDU<sup>175</sup>. They also show that for every ‘soft’ measure passed in Parliament by the Catholics, an immediate more conservative and strict answer would come from the *Lega* (Colombo and Sciortino 2003). Many of these measures<sup>176</sup> as Colombo and Sciortino (2003, 211) emphasise, had a limited role and served more the purpose to catch the attention of public opinion on the repressive side of the law “rather than on its contradictions”. Interviews with policy-makers also highlighted the confrontations between the two parties and the more defined role of the government whose aim was to mediate. Finally, analysis of the media articles of the time demonstrates furthermore the dissatisfaction of the employers’ groups and the Church with the law. It is therefore perhaps reductive to ‘blame’ the gap simply on electoral needs, as this would imply a precise cunning strategy on the part of the *Lega* and as such astute acumen of all the party members as well. Rather, the Bossi-Fini was the result of a mix of factors: ideology (populist/xenophobic and Catholic), bargaining (at parliamentary level between the *Lega* and the CCD-CDU while outside parliament it was between the government and the employers’ associations and the Conference of Italian Bishops<sup>177</sup>), and needs of the electorate (voting for the *Lega*, for the CCD-CDU but also *Forza*

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<sup>174</sup> Interview date: 6th November 2008.

<sup>175</sup> *Centro Cristiano Democratico–Cristiani Democratici Uniti*.

<sup>176</sup> The Navy, the imprints and highest fines for aiding illegal entry.

<sup>177</sup> Conferenza Episcopale Italian, CEI.

*Italia* and *Alleanza Nazionale* that had a similar utilitarian view of immigration). These factors have created patchwork legislation (Finotelli and Sciortino 2009; Zincone 2011) and the regularisation is the apex of this patchwork. It “confirmed rather than contradicted” (Colombo and Sciortino 2003, 210) the government’s policy in terms of immigration in favour of more discretionary politics to determine quotas while at the same time reducing consultation processes.

With regard to asylum, this gap is perhaps less obvious or it is even reversed. On one side for example, the Lega states that the right to asylum is “sacred” (Lega Nord Romagna, n.d.) but during the discussion of the Bossi-Fini, one of the Northern League’s representatives showed the boorish attitude of the party on asylum related issues. He sustained that asylum cannot be given to a “population of seven million people” simply because they do not have “fundamental liberties and social rights”; instead they should “be helped in their home” (5.26) (Dussin MP<sup>178</sup>, *Atti Parlamentari*, Chamber of Deputies Deb 13 May 2002, sitting 143, 30). Indeed the Bossi-Fini contained only two articles demonstrating yet again little interest towards the issue of asylum but the new double procedure, together with the introduction of non-suspensive appeals and measures to decrease entries and stop illegal immigration, had an impact on asylum seekers overall. The debates and the interviews show a lack of discussion on the topic confirming the idea that asylum was still irrelevant. Clearly, this was because all the attention was on the immigration side of the law and especially the regularisation, because of the low numbers of claims but also because the part on asylum was discussed outside the floor of the two Houses and through communication between the Ministry of Interior and the UNHCR.

### **5.3.2 Continuities**

From the excursus of the laws implemented between 1986 and 2002 it is possible to draw a comparison in terms of continuity<sup>179</sup> of Italian immigration policy making. Four similar and

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<sup>178</sup> LNP party.

<sup>179</sup> In terms of continuity, Zincone points out that it “is not continuous” (2006b, 1). Rather, it depends on the electoral cycle as the new government in power will strive to keep the promises made during the electoral campaign while distancing themselves from the actions of the previous government. She observed that during the 2001 electoral campaign, the centre-left Olive Tree coalition assailed by the ‘electoral panic syndrome’ (*ibid*), departed from its original pro-immigration stand to get closer to public opinion’s view of

essential aspects emerge: some features of the policies, starting with the Martelli law, were EU derived due to the pressure exercised by EU member states. As such, a factor the laws have in common is the emphasis on the control of external borders. At the same time however, the laws failed to implement stricter internal controls thus allowing an expansion of the informal economy. Internally in fact, “powerful demographic, economic and social forces have sustained and expanded the demand for foreign workers” (Finotelli and Sciortino<sup>180</sup> 2009, 121). Foreign labour though has been recruited mainly through the regularisation<sup>181</sup> of illegal migrants already present on the territory rather than the “active recruitment” (*ibid*, 127) of workers from abroad. Political forces therefore, had to deal with external pressures characterised by restrictionist impulses on one side determined by public demand and the political parties on the right, and internal pressures characterised instead by the demand for foreign workers coming from employers and families (Finotelli and Sciortino 2009; Zincone 2006b).

In terms of asylum, the situation is different. On one side, the EU pressure may explain the inclusion of asylum in both the Bossi-Fini and Martelli laws. The European partners as well as international NGOs insisted that Italy adopted asylum legislation but this never materialised due to the length of the discussion and the fall of the government. On the other hand, as the Director of the Italian Refugee Council pointed out, asylum was missing from the Turco-Napolitano allegedly on the request of NGOs that were at the time putting pressure on the government to pass asylum legislation. Therefore, it appears that there is no continuity on the asylum debate. The only continuity that can be traced back is the fact that asylum has always been set against a generic background that includes immigration allegedly because of a lack of interest of both the right and the left towards the subject of asylum. So many of the measures introduced to stop illegal migrants, would automatically stop asylum seekers. For example, in the case of the

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migrants. Thus, they shifted to the right. In the same way, the centre-right government, after winning the elections introduced tough new measures complying with part of their electorate’s position on migration and highlighting the differences from their predecessors. However, they had to make adjustments due to the Constitutional Courts’ ruling that some articles of the Act clashed with the Italian Constitution (La Repubblica 2004).

<sup>180</sup> Finotelli and Sciortino (2009) apply their analysis to more recent developments including the so-called ‘security package’ (*Pacchetto sicurezza*) passed and implemented in 2008 by the centre-right.

<sup>181</sup> To date, there have been seven regularisation programs: the first one in 1982 (12.000 foreign workers were regularised) in 1986 with law 943/86 (105.000 applications granted), in 1990 with the Martelli law (217.000), in 1995 with the Dini decree (244.000), in 1986 with the Turco-Napolitano law (217.000), in 2002 with the Bossi-Fini, and in 2009 with law 102/2009 so-called ‘*pacchetto anti-crisi*’ (anti-crisis package) (294,744) (Briguglio 1998; Mola 2002; Barabagli, Colombo and Sciortino 2004; Rusconi 2010).



Bossi-Fini, the use of the Navy to intercept boats carrying migrants and more recently the bilateral agreements signed by Italy and Libya to send back migrants<sup>182</sup>. Libya is not a signatory of the 1951 Refugee Convention and stopping boats at sea and sending back migrants effectively stopped people applying for asylum in Italy.

### 5.3.3 Discontinuities

This section so far has highlighted the key role played by the political parties in policy-making with the rise of the “right” (but mainly the Northern League) as a “formidable national actor” (Menz 2008, 233). There are however, other key players at civil society level that comprise religious and secular voluntary organisations and charities that are more or less involved in the policy-making depending on their resources (such as people, time availability and money), but also trade unions that have become increasingly concerned with migrants’ well-being<sup>183</sup>, employers’ associations and families. Employers’ associations on average are for the liberalisation of immigration policies and “value managed migration of labor migrants, both high and low skill, feeding into the primary, tertiary, and, in the case of Italy, also the secondary sector to alleviate labor and in some instances skill shortages” (Menz 2008, 232). They continue to be important allies of governments when drafting new legislation. An example of this, are the measures related to the quotas<sup>184</sup> that serve the economic interests of the employers (Menz 2008).

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<sup>182</sup> In August 2004, Italy signed a bi-lateral agreement with the Libyan Government to allow deportation of ‘illegal’ migrants to Libyan’s detention camps – financed by the Italian Government (Andrijasevic, R. 2006). In 2008, Berlusconi and Libyan Leader Gaddafi signed a ‘Friendship, Partnership and Cooperation Agreement’ taking effect from March 2009 (Ministero degli Affari Esteri n.d.; Statewatch 2009). The Council of Europe, including the Italians, were also training their Libyan counterparts in the fight against illegal immigration (Del Grande 2009; Global Detention Project 2009b; Human Rights Watch 2009) while the setting up of centres in North Africa was a proposal of the UK Government back in 2003 at the Thessaloniki Summit (Blair 2003). A serious possible consequence of this is that asylum seekers are at risk of human rights violations.

<sup>183</sup> They have organised several demonstrations and rallies in support of labour migration and migrants’ communities. After all, migrants have become part of their clientele. However, they “expend much less effort on lobbying” (Menz 2008, 263) than employers.

<sup>184</sup> “preferential quotas amounting to a total of 22,000 slots for 2005, up from only 6,000 for 1998 contained within more general quotas (99,500 for 2005, up from 58,000 in 1998)” (*ibid*). Quotas cover “a high proportion of seasonal workers, especially in agriculture, temporally limited contract workers and a tightly limited number of self-employed. Furthermore, special consideration is given to university professors and researchers, certified translators and interpreters, domestic aides and au pairs, trainees, language teachers, sailors, athletes, artists, temporarily posted workers, and accredited foreign journalists” (*ibid*).

The real discontinuity concerns the relationships between pro-immigrant groups and the government. As hypothesis 4 postulated, the existence of policy networks that interact with the government may be the cause of power struggles between the networks and the government. The interaction between these groups and the political parties is highlighted in the study by Perlmutter (2000) which analyses three different political phases between 1990 and 1994. During the first phase in 1990, parties were strong and this was noticeable in the making of the Martelli law. Things changed during the second phase between 1992 and 1993 due to the absence or crisis of strong political leadership. This political impasse gave a chance to pro-immigrant groups to lobby their MPs fairly strongly creating a circle called *Patto per un Parlamento Antirazzista* (Pact for an Antiracist Parliament). The final phase in 1994 coincided with the election of the first Berlusconi government during which parties re-claimed their space whilst cutting out the lobbies. This is also the period in which a shift from the proportional representation system to a majoritarian system happened, thus, giving “less autonomy” to “individual parliamentarians” and no “potential legislative majority to influence” (Perlmutter 2000, 19-20). The introduction of this shift was due also – but not exclusively – to attempts to regulate lobbying activities. Lobbying in Italy has been seen by many authors as a negative factor because it weakens “the sovereignty of political decision” (Fotia 2002, 113) and consequently it decreases “the representativeness of political parties” (Lanzalaco 2002, 125). Furthermore, in most cases, lobbying is open to the strongest and most organised interests to the detriment of less organised ones (Fotia 2002). At the same time, lobbying increases the permeability and the vulnerability of institutions already weakened by their subordination to the same political parties (Pasquino 1988). The exploitation of this weakness by organised interests circumvents parties’ political control. However, the move to a majoritarian system, with the aim of forming a bipolar political system, would expose fewer parliamentarians to the pressures of group interests whilst having a less corrupt system of policy-making (Perlmutter 2000; Vassallo 2007). Allegedly though, because the Italian political system is formed by a plurality of political parties forming coalitions with different orientations and programs, it opens the door to interactions between interest groups with different aims and parties or single members of a given party (Fotia 2002).

The Bossi-Fini law, unlike the previous Turco-Napolitano law drafted mainly in the legislative offices of the Ministry of Interior and Social Affairs (Zincone and Di Gregorio 2002), was a ‘creature’ of the second Berlusconi government, formed by a collection of different parties that had the majority in both Houses. Besides, the Turco-Napolitano included open discussions and input from experts and non-governmental religious organisations and in particular, an umbrella group comprising several Christian associations<sup>1</sup>. The group of reflection for the religious area (*Gruppo di Riflessione per l’area Religiosa*) cooperated with the government chiefly on aspects related to policies of integration. Because of their religious denomination, they had fair success in lobbying the most moderate part of the centre-right. Yet, despite the fact that a centre-left coalition was in power and that the religious group were part of a government Committee, they did not have much success in getting their point across, the law being the result of civil servants’ work (interview with Briguglio). Zincone and Di Gregorio (2002) described this aspect as “closure of the ministries to the outside world” (*ibid*, 9) most probably due to the pressure exercised by the other EU states – and as a sort of pre-requisite to become part of the Schengen area – so to avoid delays in passing the law. With the Bossi-Fini, this closure became tighter and tighter as the government deliberately excluded from the process even the religious groups.

In 2002 and as with Berlusconi’s previous government in 1994, political parties in the ruling coalition were in control. This explains why on average pro-immigrant groups did not have such a weight in the consultation process. They lacked political opportunity in that particular government including the ‘powerful’ (because of its reputation, and extensive network of associations) Caritas. The Bossi-Fini in fact, was drafted “with no consultation at EU level or with local and regional actors” (Geddes 2008, 360).

According to Dinh Le Quyen from Caritas, during the formulation of the Bossi-Fini the government preferred to discuss things with the *Conferenza Episcopale Italiana* (CEI). However, this explanation does not give the full picture. Although non-state actors’ involvement was limited by the government’s wishes to conclude the formation of the law quickly and with as little change as possible in order not to change its original principles, it is also true that the ruling coalition did entertain some sort of relationship in a neo-corporatist style

with those interests with the most economic importance. This created an ‘elitist power structure’ according to which only a few groups benefited from their advantageous knowledge and economic position, thus gaining access to policy-makers (Marsh and Rhodes 1992). Firstly, there were highly organised businesses as the main beneficiaries of immigration (Freeman 1995). As such, they were able to express their concerns and to exert some pressure both officially and unofficially with the parties in the Majority. Secondly, pro-immigrant Catholic organisations – most notably Caritas and the *Comunità di Sant’Egidio* – were cut out from the government’s discussions but managed to have their voices heard by policy-makers with likely ideas within the Catholic party in the Majority creating an “unlikely alliance” (Zincone 2006a, 359). This alliance makes Italy a weak state with “an exclusive strategy toward the left” (Tarrow 2008, 82) as only Catholic and economic interest groups were able to sway parties on the right of the government. This is how the regularisation programme came to be. However, the government chose who to speak to and when and they were only swayed by external economic influences because of the market’s need for cheap immigrant labour. These first two set of actors had an important role – at times a decisive one – with regard to immigration.

In contrast to the part on immigration that saw the complete closure of the government towards pro-migrant groups, asylum saw the involvement of two important actors: the UNHCR on all the aspects concerning asylum and the national Association of Italian Municipalities (ANCI) that was more vocal on a system of funding to help the integration of refugees (SPRAR). The institutionalisation of SPRAR into the law was possible thanks to the pressure coming from mayors of several Italian municipalities that, beyond their political make-up, were concerned about the safety of their streets and citizens (interview with Compagnucci). The inclusion of some of the UNHCR amendments in the Act therefore, was not a consequence of the cooperation between the refugees’ organisations and the political parties as in the case of the Catholic groups. It was thanks to the perceived important role of the UNHCR as an international accredited organisation and at the same time, a bottom-up pressure exercised by mayors through ANCI to the Interior Minister.

## 5.4 CONCLUSION

The right to sanctuary in Italy is embedded in article 10 of the Italian Constitution dating back to 1967. However, to date Italy remains the only European country without specific legislation on asylum, allegedly because of a real lack of interest from political parties that are more interested in controlling the illegal entry of migrants without, however, much success. Rather, the country has preferred to deal with asylum through the transposition into domestic law of six EU Directives.

In the meantime, Italy has seen five pieces of legislation just on immigration, among which figures the Bossi-Fini Act. This is because the migration/asylum phenomenon is still relatively new, as the country has only recently gone ‘officially’ from an emigration country to an immigration one. This passage has been swift if compared to other EU countries, exacerbating “[t]he lack of immigration experience, the absence of an adequate legal framework and a strained public administration” (Finotelli and Sciortino 2009, 120). As a result, many Italians as well as political parties on the right perceived immigration as a threat to national identity and security. This is different from the UK where asylum was perceived as a threat rather than labour migration which was seen instead as a potential source of profit for the economy. The sudden change of Italy to an immigration country has favoured, at the same time, the increase of populist policies supported warmly by the Northern League. This political party, despite its strong anti-immigration stance, has become one of the most important allies of the three Berlusconi governments and was, together with the Catholic party CCD-CDU, the main actor during the making of the Bossi-Fini law. Nevertheless, the anti-immigrant rhetoric of the party and the rest of the government’s coalition did not live up to its own standards, as there was a gap between words and actions. The measures adopted were not as strict as originally drafted and even those that made it into the Act were implemented with difficulty. The gap with regard to the Bossi-Fini was due to a series of factors. First, different parties and as such different ideologies formed the coalition. Second, there was the bargaining that happened between the *Lega* – which wanted more stringent measures – and the CCD-CDU – which wanted to implement softer measures and passed successfully the regularisation of carers and domestic

workers. Finally, there was the symbolic value of the words used by the *Lega* leaders against migrants in the effort to please their electorate.

The Bossi-Fini turned out to be simply a further restriction of measures introduced by the previous Turco-Napolitano. The two articles on asylum represent the real innovation in the law. Nevertheless, the trend that started with the Martelli law to have in the same law measures related to immigration and asylum has continued with the Bossi-Fini, as if a couple of articles could indeed deal with such an intricate phenomenon. This represents one of the continuities noticed in the comparison of the laws on immigration together, with the presence of the Catholic groups within government, which has tended to soften the measures introduced. There were however also discontinuities and these related mainly to the collaboration between the government and pro-migrant groups. Alternate phases have seen the incorporation or the exclusion of these groups. Centre-left governments have been more open to dialogue and advice while centre-right governments have done the exact opposite. This was the case with the Bossi-Fini, whereby from the very beginning groups were deliberately left out of the equation. However, because of the presence of Catholic parties in government, religious groups were still able to exercise some influence through their policy-makers, while secular groups could not. At the same time, the asylum part of the law came out from the cooperation between the Ministry of Interior, the UNHCR and, on the part related to the institutionalisation of a service for refugees, ANCI. The articles on asylum did not encounter much resistance during the debates as the main issue was represented by labour migration.

The influence of Catholic parties and Catholic groups confirms Italy's place as a conservative state in Esping-Andersen's (1990) typology. The Catholic Church is depicted as having vast tentacular power. The evidence also concurs with Geddes *et al.* (2004) typology of Mediterranean countries in relation to widespread illegal migration and weak institutions. Indeed at times the government was merely an intermediary between the parties in the majority. On the other hand, the collaboration between the UNHCR and the Interior Ministry and at the same time the reticence of the government to open up even to Catholic groups show that welfare states do not necessarily fit into one fixed typology. Rather, depending on the issue – as it was asylum policy-making here – things may in fact be different or change over time.

The next two chapters deal with the UK and Italian parliamentary debates and discuss insights quoted from interviews. These are key to understanding the micro- and meso-levels of the policy process (i.e. the levels that consider the inputs and impact of policy networks in the decision-making settings) referred to in the literature review chapter. Furthermore, they are important to understand the nature of the states under analysis.

## CHAPTER 6

### THE 2002 NATIONALITY, IMMIGRATION AND ASYLUM ACT

The aim of this chapter is to account for the policy-making process that created the 2002 NIA Act between April 2002, when the first reading happened, and 7<sup>th</sup> November of the same year, when the bill received Royal Assent. Through the analysis of the asylum policy-making process, the chapter demonstrates that policy was made by political élites and in particular by specific individuals within the Prime Minister's Delivery Unit. These individuals felt that the policy was necessary to deal with the perceived asylum crisis. As highlighted in Chapter 4, between 1999 and 2002, negative headlines would appear on a daily basis in right-wing media complaining about 'bogus' asylum seekers and the inability of the government to tackle the seeming abuse of the asylum system in 'soft-touch' Britain. Public opinion was persuaded by the media to perceive asylum as a threat to national identity, security and welfare. Because of this perception, the government saw asylum as a priority issue to be tackled in order to restore its image, mainly for electoral purposes.

The bill underwent changes during its passage, but these were mainly cosmetic in character. These changes all happened during scrutiny in the House of Lords, where the government suffered three important defeats. Concessions to proposed amendments were minimal despite the strong lobby of pro-asylum advocacy groups. This is relevant to hypotheses 3 on governance and 4 on networks because it shows that asylum was still a matter of core executive control. This is in opposition to the belief that the 'Westminster model' is weaker than it was. Although there were widespread and open consultations between advocacy groups and the government, there was a deep ideological divide between them. Whereas the former wanted a safe environment for refugees and asylum seekers, the latter wished to (re)assert its power through a more decisive control on asylum seekers' right of entry. Because of this fundamental dissent and the unequal distribution of resources between pro-asylum groups and in relation to the government, the groups and NGOs are best characterised as issue networks rather than highly integrated policy communities or governance networks. The Refugee Council may be



characterised as the most powerful NGO within the refugee sector by virtue of its knowledge and resources, but also in its flexibility toward the government.

Further, the chapter highlights three geographical levels of involvement in the making of the Act: national, regional and local. The first level considers the national view of how the asylum system should work. At the time under consideration, it was steered by the Labour government and was based on the perceived asylum crisis. The regional view relates to the case of accommodation centres. The government wanted the centres to alleviate the burden on welfare services in London and the South East of England, where many asylum seekers tended to go because of existing links and job availability. The third level takes into consideration the local view and the issue of ‘NIMBY’ (Not In My Backyard) protests in those communities that were going to be affected by the construction of accommodation centres. All the sites chosen by the government to host accommodation centre were in affluent, middle class Conservative constituencies. When Conservative MPs opposed this, they were accused of ‘NIMBYism’.

Finally, the chapter explains how asylum policy was shaped by two forces. The first is the institutional structures of the UK government i.e. Number 10, the Cabinet Office, the Home Office, the House of Commons and the House of Lords. The second is the nature of the British state and its heritage of welfare policy. This was an important part of what was being contested in debates over asylum policy.

The next section provides an overview of the policy process. It starts with the identification of the key actors<sup>185</sup> involved in making the Act, both at government and civil society level and the networks they formed. This is followed by a detailed analysis of the debates, including amendments, results and changes. These are in chronological order, starting with the most debated topic (accommodation centres) and followed by the ones most criticised by NGOs (termination of support and changes to the appeals’ system). This allows identification of the process by which compromise was reached, the roles of the main actors and how they deployed power to reach compromise within each issue.

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<sup>185</sup> See Appendices 3 and 4 for the list of UK key actors who agreed to take part in the interviews.

## 6.1 THE POLICY PROCESS: ACTORS AND NETWORKS

### 6.1.1 Actors and networks: roles, interaction and power

Interviews and analysis of the debates focused on the interaction between two main types of actors. On one side there was the government. The 2002 NIA Act started in its core with major political steerage coming from the Prime Minister and the Home Secretary. The other major actor was civil society, which comprised NGOs whose aim was to lobby the government on behalf of asylum seekers, but also groups of citizens that organised specifically to protest against the government's decision to build accommodation centres in their areas. This interaction is discussed through the medium of five types of networks: internal or cross-government networks that could also be described as “ministerial meetings and civil servants meetings” (interview with Professor Saggar); “all-party-meetings either under the all-party-group or specially fixed to talk about the bill and to brief people” (interview with Lord Dubs<sup>186</sup>); networks or “official stakeholders *fora*” (interview with Shaw) on invitation organised by the Home Office in order to meet up with the main actors in the sector; “hundreds and hundreds” (*ibid*) of networks within the NGOs themselves; and finally meetings between local citizens and local authorities to discuss the establishment of the accommodation centres in their areas.

The five types of networks and the key stakeholders acting within them are analysed below.

#### 6.1.1.1 Internal or cross-government networks

These types of networks are made up of lawyers and civil servants working in different departments “reflecting the fact that we were interested in how migration was impacting on housing and health care as well as the wider economy and employment” (interview with Home Office Official 1). The Home Office, in charge of asylum and immigration policies in particular, is described as “a thinking area” as it was “not in charge of how [policies are] implemented [or] put into practice” (*ibid*). It is therefore essential to discuss matters with “the operational part of the business”, then with the Home Office lawyers and finally with “other parts of the business” (*ibid*) that may be effected by the changes, like judges or the prison system.

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<sup>186</sup> Interview date: 11<sup>th</sup> February 2011.

Nick Pearce, who at the time was the Policy Adviser of the then Home Secretary David Blunkett, emphasised the importance and influence of legal advisers within the Home Office if compared to other government departments, in the “formation of policy because it [the Home Office] is much more bounded by judicial interpretation [and] judicial review”. Legal advisers would even attend policy meeting with the Prime Minister to “advise on whether something was compatible with the Human Rights Act and also of course with the 1951 Refugee Convention” (interview). Pearce believed that the influence of these advisers was greater than that of any lobbying group. This is because ministers and civil servants form a “partnership” that at times can be instrumental. Home Office Official 3<sup>187</sup> stated during the interview that “if you imagine that David Blunkett has a sense of what needs to happen ... any civil servant who comes up with a proposal that fits within that, he's going to be enormously influential”. But within the Home Office those who counted, those who really held the power in the policy-making process of the Act were a relatively small group of people, in particular the Prime Minister (Tony Blair), the Home Secretary (David Blunkett), Nick Pearce and the Attorney General (Peter Goldsmith) who “was pretty instrumental” (interview with Home Office Official 3) in the formation of the safe third country and section 55 processes. This way of making politics has been described as ‘Blair’s sofa’s cabinet’ whereby “[d]ecisions are often taken over a cup of tea on the sofa in Mr Blair's No 10 office – known to insiders as “the den” – rather than in formal, minuted committee meetings” (Wheeler 2004). Tony Blair and David Blunkett especially were pushing “the officials very hard” (interview with Pearce) to come up with suitable solutions. Pearce stressed the importance of the Home Office and No.10 as “it was by and large all done between” the two. Home Office Official 1 did confirm this trend as her perception was “that it was all coming from David Blunkett” but added that also “Nick Pearce was a huge architect of the Act”. In fact, both the White Paper and the Act were “very much the product of Nick Pearce” as well as “David Blunkett and a couple of policy people in the Department ... they came up with this end-to-end system ... the reception centres, the accommodation centres and then the detention centres”(ibid). So these important personalities were moving the wires like puppeteers thus highlighting the political steerage behind the Act.

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<sup>187</sup> Telephone interview date: 8<sup>th</sup> March 2011.

### *6.1.1.2 All-party meetings*

All-party meetings were the official instrumental tool used by both MPs and Lords to collect the information needed while the bill was under discussion in parliament. They are normally organised “either under the all-party-group or specially fixed” (interview with Lord Dubs) and are friendly gatherings as a hostile attitude would jeopardise the cooperation. “Building a good working relationship with key people” (interview with Hussain) was essential as it was the identification of those “MPs<sup>188</sup> who are in the Parliamentary Committees, who are more influential or who have had a long standing interest in this” (interview with Dr Metcalfe). This was also a key feature noticed in Italy. There, it was perhaps even more important to identify and establish a good relationship with MPs who were more willing to listen and cooperate given the closure of the Italian government towards civil society groups. This is discussed in the next chapter.

There were also less official and more private meetings between MPs of different parties and also between MPs and NGOs’ representatives because “the vast majority of real policy-making goes on behind the scenes” (interview with Home Office Official 1). These meetings are a way to test the ground and find out “how far” an MP, for example, “is ready to go ... and what you can't agree is what we take upstairs and we sort of bash each other with it” (interview with Lord Dholakia<sup>189</sup>).

Compromise is an essential part of any political debate, although the analysis of the debates does not show a great deal of concessions. These were mainly in relation to setting a monitor for the accommodation centres that would also establish if the centre was appropriate for the inhabitants, the length of time people should stay in the centres and the education of children in the centres.

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<sup>188</sup> The process works roughly like this: first “e-mail the MP or send an MP a copy of your briefings”; then when it goes to Committee stage you might send another briefing specifically on individual clauses and possible amendments”; finally “it would go to the House of Lords and then you would repeat the process”. For a more high profile bill quite often the MPs would approach you, in particular the party élite on a particular point. So for immigration and asylum it would be the Home Affair spokesperson or occasionally a Labour rebel might come to you” (interview with Dr Metcalfe).

<sup>189</sup> Interview date: 1<sup>st</sup> March 2011.

### 6.1.1.3 Home Office fora

When the Labour party was elected in 1997 they “dissolved most of the stakeholder *fora*” (interview with Shaw) but created a new major one in 2000: the National Refugee Integration Forum<sup>190</sup>. It was regarded as the “essential link between national, regional and local problem solving” (National Archives, n.d.) and it was formed by five sub-groups from outside central government, each with different expertise<sup>191</sup>. Attending *fora*, however, may be “rather frustrating because it feels like you're just going through a tick box” (interview with Shaw). This is what happened with the Act as it was by and large a creature of the government which was “on a political mission” (interview with Flynn).

In 2002 consultations within and outside the government were fairly regular although not very open, as attendance at the government meetings was subject to invitation. These meetings were frequent and at times included different actors. Also in Italy, the meetings were by invitation but, contrary to the UK, they were rare and infrequent. On one occasion, in the UK debates it was mentioned that some politicians met with parents, teachers, head teachers and the Church’s Commission for Racial Justice to discuss accommodation centres but especially the education of children within these centres. The effect of this was to raise the issue and the consequent amendments in the House of Lords.

As Hansard indicated, the government showed a certain degree of flexibility by discussing and exploring different ideas but in the end they accepted little bargaining. Especially in relation to accommodation centres, they listened to different points of view about the impact centres would have on local communities and were certainly conscious of public opinion on asylum

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<sup>190</sup> It was however dissolved six years later as part of a plan to “overhaul ... the way in which refugee integration services are structured and funded in England” (Home Office 2006, 3). That was the beginning of the New Asylum Mode (NAM). It is more recent however, the launch in 2007 by the Labour government of the National Asylum Stakeholders Forum (NASF) as the main medium of contact with the biggest asylum organisations within the voluntary sector, the regions and local government. NASF “meets every two months, it is co-chaired by the Border Agency and the Refugee Council ... and it's primarily at Chief Executive’s level” (interview with Shaw). There was furthermore the Inter-Agency Partnership headed by the RC. It “was formed in 1999 prior to the introduction of NASS. The Partnership is contracted by NASS to provide advice, support and emergency accommodation to newly arrived asylum seekers and to provide on-going support to asylum seekers living in dispersal accommodation. The Partnership consists of six established agencies - Migrant Helpline, Refugee Action, Refugee Arrivals Project, Refugee Council, Scottish Refugee Council and the Welsh Refugee Council” (Refugee Council 2004a, 2).

<sup>191</sup> Children and Young Persons, Accommodation and Community Safety, Community and Media, Health, and Employment and Training (National Archive n.d.).

seekers and the tabloid press coverage. Finally, after the public enquiry – itself the result of criticism coming from affected local communities and their citizens – was published, they were forced to accept that accommodation centres were not such a feasible project. They agreed to experiment with a smaller centre not based in a rural area, as suggested by the Refugee Council.

As Blunkett admitted,

we were not getting anywhere. We got ourselves into the worst of our worlds where the original idea which was benign, was being painted as being restrictive and confining ... and so we had to find a solution that would have assisted us with demonstrating just how good this could have been (interview).

Lobbying from civil society in the *fora* was reasonably strong but perhaps not enough to bring substantial changes to the government's initial position, given the centrality of the asylum issue in the UK at the time.

#### *6.1.1.4 NGO networks*

NGOs were well organised and there was wide consultation with the government. As Flynn recalled:

the culture of the government is very much open door at superficial level. It's actually not difficult to phone a senior head of department in Lunar House. Everybody knows each other by their first names; it's all very friendly and clubbable at that level. Measured by the opportunity to sit down and have discussions with influential people, then it seems to be [easy]. But what really matters is the outcome of all these discussions. If you find out that it doesn't make that much difference, then you don't have that much influence and that's where we are (interview).

So, despite wide consultations, NGOs bore little or no influence on the government's plans and decisiveness to tackle the perceived abuse of the asylum system.

Stability, trust and interdependence characterised the cooperation among the NGOs during the passage of the 2002 NIA Act and are key for the application of Rhodes' network analysis (1997, 2007).

Within civil society there were two main groups of NGO actors who were more vocal and certainly more influential than others, as the parliamentary debates confirm. The first group, "involved very much in the legal" (interview with Best) comprised the Immigration Advisory Service (IAS), the Immigration Law Practitioner's Association (ILPA), the Joint Council for the

Welfare of Immigrants (JCWI), Justice and the Refugee Legal Centre. They were particularly active in briefing MPs on more technical issues, mainly in relation to human rights. The second group focused on more specialised issues, for instance children or detention<sup>192</sup>. They would lobby the government on every aspect concerning, for example, the wellbeing of children “like the Children Consortium that ... were obviously very material in lobbying on the part of children in proposed accommodation centres” (interview with Best). Both groups existed as a network prior to the Act, as was the case in Italy, and were formed by various organisations that already knew each other and had worked together before. More generally in fact, all of the above NGOs worked in several – at times overlapping – networks. For example, Save the Children operated within an umbrella group called Refugee Children’s Consortium which is made up of different children’s organisations but includes others not working specifically on children: ILPA and the Medical Foundation for the Care of Victims of Torture, for example, are also members. At the same time, most of these organisations were part of a different umbrella group called Asylum Rights Campaign (ARC) chaired by the Refugee Council.

#### *6.1.1.5 Citizen groups*

These groups were also very vocal and were able to involve local authorities and MPs but were also backed up by national asylum and refugee support groups<sup>193</sup>. These protests were powerful and delayed the start of construction but their influence was limited to that. In fact, the Home Office failed to engage with the local community prior to the start of the works “even though it was aware of the strength of feeling locally” (House of Commons 2008, 4). Once again, the government decisiveness and its political steering overrode everything else, including knowledge of the local community’s feelings towards the centres. The meetings between citizens and local authorities, albeit useful to understand the feelings of the public with regard to the centres, were not the real focus of the thesis, however. Furthermore, they deal specifically with the accommodation centres rather than the Act as a whole.

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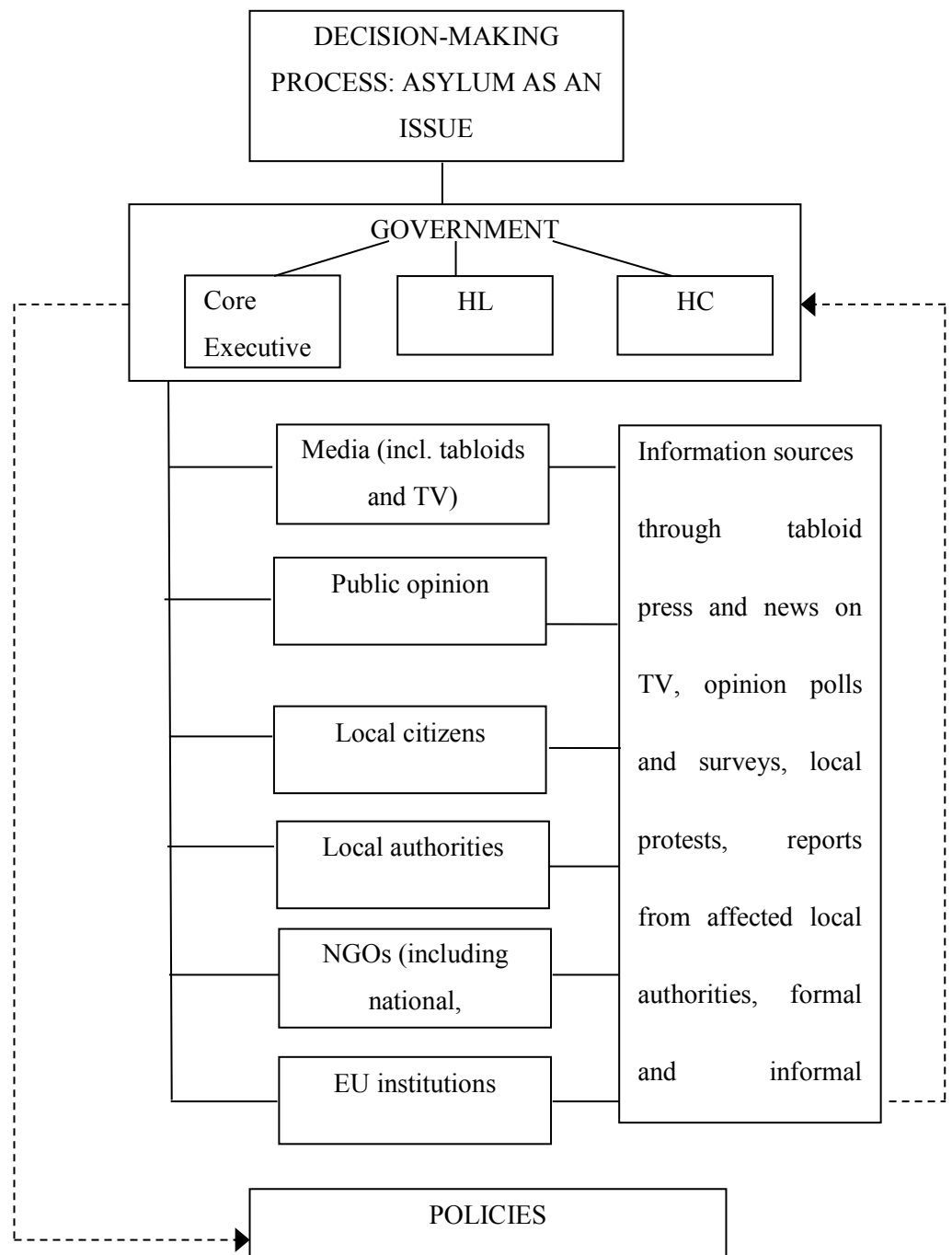
<sup>192</sup> For example, the Bail for Immigration Detainees or the Association of Visitors to Immigration Detainees.

<sup>193</sup> These latter groups however opposed the centres not to maintain the high standards of an all-white affluent area but to protect asylum seekers from isolation and institutionalisation. Their reasons were therefore different but strengthened the cause against the centres.

Figure 6.1 below shows how the asylum decision-making process was influenced by various stakeholders with different interests at stake. They fed information to the government – which included the core executive, the House of Lords and House of Commons – in an attempt to influence it through tabloid media articles and images on TV of “people hanging on the trains, jumping out of lorries” (interview with Blunkett), but also opinion polls and surveys that indicated asylum as one of the top priority issues for the British public. There were also organised protests by local citizens affected by the establishment of accommodation centres and the resulting reports written by their local councils on the feasibility of the project. At the bottom of this hierarchical structure, there are the national and international NGOs and the Refugee Community Organisations (RCOs). They are placed at the bottom because they were less likely to influence the policy process. Their agenda – the protection and safeguard of asylum seekers – was different from that of the government which was to regain the trust of the voting public. The RCOs did not interact directly with the government but were linked to the national NGOs. RCOs are too many and very often do not have the resources (people, time and money) to engage with policy directly. They therefore networked with leading organisations in their field (e.g. the Refugee Council) that did have resources and knowledge. However, they were advised by the Refugee Council to network with their MPs. The national NGOs were also networking with international NGOs (e.g. Amnesty International), the government, the Houses of Commons and Lords through formal and informal meetings. They also tried to influence local opinion by releasing interviews or public briefings in order to dispel myths about asylum seekers that were promoted by the tabloids. Finally, they attended more or less official meetings with the government and briefed MPs and Lords. EU institutions did not bear any influence on the NIA Act. It was a government initiative and the core executive’s aim was to reassert their power as a nation-state.



**Figure 6.1 Actors involved and information shared in the asylum decision-making process**



As highlighted in the previous chapters, asylum in the UK was perceived as an important and difficult issue which led to the formation of issue networks. The next section explains why and highlights their characteristics.

### 6.1.2 Issue networks

One of the main characteristics of issue networks is that there are often strong differences between the viewpoints of NGOs and government. The attitude of the organisations was refugee-centric because of their focus on human rights and integration. Their fear was that people could become marginalised and institutionalised in the case of the accommodation centres (Refugee Council 2002b, 18) and destitute in the case of Section 55, related to the refusal of support. The government did not have any “sympathy with our [NGOs] basic case about the centrality of human rights to the refugee situation” (interview with Flynn). The idea was mainly to keep people in an enclosed space and well under control while offering in-house services including the education of children, allegedly to protect them from bullying and other regrettable incidents. More specifically, in relation to the establishment of accommodation centres (but not exclusively), NGOs displayed a refugee-centred approach while the government adopted what may be portrayed as a state-centred approach and, but only to a limited extent, a community-centred approach. The community-centred approach was forced by the strong opposition within the communities where the centres were due to be built. Despite this difference of opinions between the government and NGOs, consultations were widespread. MPs and Lords in particular needed the expertise of NGOs because of the technicalities of the bill.

Two further characteristics of an issue network, as explained by Marsh and Rhodes (1992), are the large number of participants and the limited resources available, such as personnel, time, and money. According to the London Refugee Directory, available on the Refugees in Effective & Active Partnership website, there are 748 refugee organisations in London alone. Affected interests comprised several groups. For example, the ARC was the umbrella group<sup>194</sup> for the sector and comprised churches, refugee charities, and human rights organisations. While each one of these groups potentially had a voice, it was only the bigger and more established refugee communities that would attend both the ARC and the Immigration Law Practitioners’ Association (ILPA) meetings because they “had the people to do it” (interview with Hussain). So, as Neil Gerrard emphasised, it was mainly “professionals rather than ...community groups” who participated in the consultations. They were “better organised”, better resourced and better

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<sup>194</sup> It was established in 1993.

prepared to confront the technicalities of the bill (interview). Therefore, only a small group of these were at the time involved directly in the making of the bill with the Refugee Council (RC) being the most influential. Thanks to their expertise and knowledge, they proposed to the government to trial one smaller accommodation centre. Furthermore, because of their resources, the RC chaired the ARC and co-operated with Refugee Community Organisations (RCOs). In particular, the RC's Community Development Team kept the RCOs abreast of any developments and asked them to lobby their MPs. The RC collaborated also with local groups with regard to the establishment of accommodation centres in their local communities. This was not an easy co-operation as the groups had different agendas. On the other hand, the collaboration was to everybody's advantage because neither the RC nor the local groups wanted big centres in rural areas.

Hecllo (1978), the first to theorise issue networks, pointed out that issue networks share knowledge, but often do not share actions or beliefs. Marsh and Rhodes (1992) believed networks do agree on occasions, but "conflict is ever present" (*ibid*, 29). In the specific case under study, the NGOs shared knowledge on the issue of asylum but they also shared similar beliefs and actions. Because of the amount of work they have shared through the years, they have been able to form a good working environment where "differences of view" do exist "but not big ones" (interview with Hardwick<sup>195</sup>). As such, their meetings were open, informal, frequent and relationships friendly (interview with Hussain). Cooperation was "terribly easy" (interview with Best) because they shared "a common set of values and a common set of objectives and a common enemy and those things always overrode everything" (interview with Hardwick).

Another characteristic that did not match strictly with the notion set out by Marsh and Rhodes (1992) is that issue networks are unstable and contacts fluctuate. The analysis has revealed that the relationships among pro-asylum organisations were stable as well as their contacts during the making of the bill. The ARC umbrella group, for instance, used to meet "fortnightly" (interview with Hussain) with regular exchange of e-mails. Yet, contacts before

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<sup>195</sup> In 2002 he was the Chief Executive of the RC. Interview date: 8<sup>th</sup> February 2011.

and after the bill did fluctuate as meetings became less frequent, happening every one to three months.

In conclusion, the groups within the issue network had unequal powers. This was a reflection of their unequal resources but also the unequal access to the government. Only the bigger, better resourced and knowledgeable organisations had access. The RC, had an extra ingredient. Being “constructive and pragmatic” turned out to be the winning formula for the organisation as “it wasn’t the question about them being open to us, but us being open to them” (interview with Hardwick).

The next section introduces the debates in the House of Commons and the House of Lords.

## **6.2 KEY DEBATES**

A recurrent criticism moved by several MPs and Lords, was the lack of time to discuss amendments appropriately, especially considering that the bill “grew by a third in length due to government amendments” (Baroness Anelay of St Johns<sup>196</sup>, HL Deb 24 June 2002, vol. 636, col. 1097). As a result, some amendments were not discussed or “introduced in such a way that no debate took place” (Lord Filkin, HL Deb *ibid*, col. 1089). Some amendments were included at the last minute giving no chance of discussion, causing some MPs to ask for the re-committal to a Standing Committee, but to no avail. The Lords on the other hand, obtained the re-commitment and a second report stage.

In 2002 the government had a majority in the House of Commons but not in the House of Lords. This meant that amendments in the former were rarely accepted – and in the case of this bill none was passed unless they came from the government itself. Potential rebel MPs were absent from the Committee. As Neil Gerrard commented, “the Whips will ensure if there are a lot of MPs who are critical of the bill, [that] they're not on the Committee. They will make sure it's pretty well impossible for the government to lose anything” (interview).

There were many instances found during the analysis of Hansard in which Labour MPs would question parts of the bill that were not clear or posed risks to the refugee community. Many spoke out because of their direct experience working in constituencies with high refugee

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<sup>196</sup> Conservative Party.

populations. However, criticism was usually contained and amendments were often withdrawn after hearing the answer to their concerns, whether satisfactory or not. Simon Hughes<sup>197</sup> for example, stated that it was a disappointment to have heard infrequently “some of the voices that were expected to come from the Labour party in support of immigrants and asylum seekers” (Hansard, HC Deb 11 June 2002, vol. 373, col. 733). Most of the amendments came from the opposition Liberal Democrat and Conservative parties.

The House of Lords was the place where “an actual change” (interview with Gerrard MP) could happen, especially in the case of “major arguments ... at Report Stage in the Commons” (*ibid*). This did happen with the NIA bill as the government was defeated several times. For instance, the first defeat was in relation to the establishment of accommodation centres; the second to the education of children within the centres; and the third to the time people should spend in accommodation centres.

The focus of the next part of the chapter is on the actual debates in relation to the most contentious issues presented and discussed in Chapter 4. They came under scrutiny in both houses. However, the amendments that did not pass in the Commons were re-presented in the Lords namely: clause 14 on the establishment of accommodation centres and clause 82 relating to unfounded human rights or asylum claims. Although the appeals’ streamlining was welcome, the need to examine non-suspensive appeals was recognised. This was because firstly, the “draconian measure” (Lord Dholakia, HL Deb 24 June 2002, vol. 636, col. 1103) of third country removal without being able to appeal in the UK was not mentioned in the White Paper. Secondly, it was “pushed at a late stage of the bill’s passage through Parliament, giving the impression that once again there is a knee-jerk reaction to our overworked appeal system” (*ibid*). Thirdly, because of different interpretations of the 1951 Convention throughout the European Union, it was pointed out that other countries would “take back undocumented asylum seekers” that have supposedly “passed through their territory” (Baroness Uddin, HL Deb, 24 June 2002, vol. 636, col. 1120). Also the new clause on the refusal of support in case of late claim for asylum (section 55) was discussed. Of all these clauses, the one that attracted

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<sup>197</sup> Liberal Democrat MP for Bermondsey and Old Southwark.

much debate in both Houses was clause 14 with regard to the education of children within the centres.

The debates associated with the accommodation centres are the focus of the next section. This is longer than the sections dedicated to the support and appeals because a lot of time went into the discussion of the centres given the interests at stake and the several related topics, such as size, location, length of time spent in the centres and education of children.

### **6.2.1 Accommodation centres**

The establishment of accommodation centres attracted the biggest numbers of amendments and was discussed at length. Because of the inclusion of several different aspects, they appeared in different clauses. The aspects concerned the size, location, and length of time asylum seekers should spend in the centres, facilities available, education of children and support of asylum seekers who did not accept to stay in the centres.

The centres were an old idea launched by the Conservatives when they were in power and recycled by Labour – who had originally opposed it. On average, the initial trial and the idea that people should not be in the centres for long were the topics that found agreement across party lines and in both Houses. Apart from the initial accord though, many disagreements were recorded while particularly heated arguments happened during Third Reading in the House of Commons. They were due to fact that the sites chosen were all in Conservative areas. MPs concerned about the impact on their constituencies used the briefings written by various organisations in favour of small centres in urban areas to justify their reasoning.

The main concerns debated in the Commons were also the ones reported in the Lords namely, those related to the size, location, length of time spent in the centres and children's education away from mainstream schools<sup>198</sup>.

The two most controversial topics, size and location, are analysed below. They illustrate the advisory role of networks and in particular of the Refugee Council, the locus of power, government inflexibility and the important role of the House of Lords.

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<sup>198</sup> Also the facilities available within the centres and the general well-being of the residents. However, these issues are not confronted here as they did not raise as much debate and/or concern as the others.

### *6.2.1.1 Clause 16: Establishment of centres*

The analysis of this particular clause shows that the government accepted some change after suffering its first defeat in the House of Lords. Yet, change was minimal. This demonstrates that the government was determined but it was nevertheless forced to accept the negotiation process in order to move on with the debates. The clause also shows the relative power of the biggest NGOs. These were consulted by MPs and Peers but also by the government as in the case of the Refugee Council.

#### *Size*

The government's proposal to have centres hosting up to 750 people on disused government land situated in small rural areas was heavily criticised by the opposition and by some Labour MPs. The opposition in both Houses agreed that centres should be much smaller. The response of the government throughout the debates was the same in both places. Angela Eagle, Parliamentary Under-Secretary of State for the Home Department and Lord Filkin, Under-Secretary of State for the Home Department, explained the reluctance of the government to "prescribe a size" (Angela Eagle, HC Deb 7 May 2002, vol. 384, col. 72) for the trials while locking "in the pilots and any development of centres in the future" (Lord Filkin, Hansard HL Deb 9 July 2002, vol. 637 col. 603). In practice, the government did not want a system that lacked the flexibility to alter things if circumstances dictated. The power to make changes was in the hands of the government and not with MPs and Lords.

In the House of Commons, opposition MPs across the political spectrum supported amendment<sup>199</sup> no. 18 introduced by Mr Malins<sup>200</sup> to limit the number of asylum seekers to 250 within each centre against the initial number of 750 proposed by the government. The importance of having small centres that could offer better services for families with children and

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<sup>199</sup> This amendment was withdrawn by Mr Malins satisfied to have made the Minister aware of "the strong feeling of the professionals and the entire Opposition that those centres should be small" (HC Deb 7 May 2002, vol. 384, col.78).

<sup>200</sup> Former Conservative MP for Woking.

single men alike was also reiterated<sup>201</sup> in the Lords by Conservative member Baroness Anelay of St. Johns who received the support of the rest of the opposition (members of the Liberal Democrat party and crossbenchers alike). The majority on the other hand, was divided on the matter, especially in the House of Lords. Whereas Lord Corbett of Castle Vale<sup>202</sup> arose in defence of the government's idea as he believed that the main issue was not one of centre size<sup>203</sup> but of management<sup>204</sup>, others like Baroness Kennedy of the Shaws, were concerned about the wellbeing of women and children in big centres.

At Report Stage, Lord Filkin stated that the suggestion put forward by the opposition benches to have a smaller centre of about 250 people talking the same language, or up to only two-three different languages to keep the costs down, was taken into consideration. However, no final decision was taken until later in November when Beverly Hughes, Minister for Citizenship and Immigration, announced that the government had accepted that some of the trial accommodation centres should be smaller.

### *Location*

This was one of the most difficult topics. Labour was against urban areas "where services and facilities are already under pressure" (Mike Gapes MP<sup>205</sup>, HC Deb 11 June 2002, vol. 373, col. 770). The Conservatives were against rural areas because the centres were all going to be trialled in their constituencies where the local population protested against their establishment. This aspect raised the question of 'NIMBYism'.

A Labour Peer who agreed with the government was Lord Dubs. As former Head of the Refugee Council and a former refugee himself, he spoke from personal experience as he believed that housing people from the same country, sharing the same language and background

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<sup>201</sup> Amendment 98: "( ) An accommodation centre shall not provide accommodation for more than 200 persons." (HL Deb 9 July 2002, vol. 637, col. 588); and amendment 13 (HL Deb 9 July 2002, vol. 637, col. 291).

<sup>202</sup> Labour

<sup>203</sup> It would be "extremely unlikely that in the early years of these centres that maximum number will be maintained for anything like 52 weeks of the year" (HL Deb 9 July 2002, vol. 637 col. 591).

<sup>204</sup> For Lord Corbett of Castle Vale, it would be beneficial in terms of mutual support to gather clusters of people coming from the same country, sharing the same cultural background and language.

<sup>205</sup> Labour MP for South Ilford.



was important because they could “stay together and give each other support” (interview<sup>206</sup>). He also said that the opposition raised by the local communities was not to be trusted because it “may be disguised as opposition to the size ... [but] is actually based upon prejudice against having people from other” (HL Deb 9 October 2002, vol. 639, col. 307). This was the first time that a member of one of the Houses commented on the fact that people were rejecting the centres due to prejudice toward foreigners, and it suggests both a lack of awareness and of interest towards the issue. In fact, as highlighted in Chapter 4 the government was concerned mostly with ‘hiding’ people. Furthermore, because the dispersal system implemented with the 1999 Act caused many problems (e.g. racist attacks) in poor, working class Labour constituencies, the alternative were the wealthy Conservative constituencies.

In the Lords, Baroness Anelay of St. Johns presented amendment no. 100<sup>207</sup> whose aim was to clarify rules and guidelines for the construction of the centres “in rural areas where public services are already overstretched” (HL Deb 9 July 2002, vol. 637, col. 614). The issue reflected the anxieties expressed by the local communities, although other points were made, for example, with regard to the availability of religious facilities and consultations with voluntary organisations. What is distinctive about this particular amendment and the ensuing discussion is that within the Conservative party in the Lords there was concern about the well-being of the future occupants. In general, the Lords’ emphasis on human rights seemed to be of greater concern than in the Commons, suggesting a different political culture permeating the second chamber. On the other hand, the Conservative party wanted to come to terms with the demands and anger in their constituencies – after all it was a political issue for them and they did not wish to jeopardize their prospects for re-election. The voting population in these constituencies had far more power than the non-voting asylum seeking population.

Later in October, Baroness Anelay moved amendment no.12<sup>208</sup>, again on the location of accommodation centres. On this occasion, it was pointed out by Lord Filkin that planning

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<sup>206</sup> Interview date: 11<sup>th</sup> February 2012.

<sup>207</sup> “() Prior to providing an accommodation centre, the Secretary of State shall consult with the relevant local authorities, health authorities and police authorities” (HL Deb 9 July 2002, vol. 637, col. 614).

<sup>208</sup> “() An accommodation centre shall be established only when the Secretary of State is satisfied that the proposed location is suitable to the needs of the persons to be accommodated therein” (HL Deb 9 October 2002, vol. 639, col. 289).

permission for two sites had been presented but rejected. Besides, due to the growing opposition from local residents, building plans for the accommodation centres would most probably be delayed until 2004 after public enquiries<sup>209</sup> were requested by the Home Secretary. The question put forward by the Baroness to have amendment no.12 included in the bill and related to the suitability of the centres according to the needs of the people within the centres was accepted as 171 people voted in favour while 107 were “not content”. This was the first big defeat faced by the government during the making of the bill up to this point. While the government did not wish to accept the Baroness’s amendment, they were ready to soften their initial position by proposing a middle ground solution. On 5<sup>th</sup> November, Beverly Hughes announced that one of the centres would be in or very close to an urban area and would be for single men only. Furthermore, she confirmed that there had been meetings with the Refugee Council and negotiations were on-going to discuss “issues on which we do not currently agree but both sides are committed to trying to resolve them” (*ibid*, col. 151).

Between the 5<sup>th</sup> and 7<sup>th</sup> November the Houses gathered again to consider each other’s latest amendments and final considerations before the official closure of the debates. This was an important moment because it was at this stage that clear bargaining took place and the definitive changes happened.

Following talks with the Refugee Council, which argued that the government’s plan was flawed, not flexible and did not meet the Council’s proposal for a “cluster and core approach” (Baroness Anelay HL Deb 6 November 2002, vol. 640, col. 771), Baroness Anelay of St. Johns proposed two very similar amendments<sup>210</sup> to no.12 These amendments were the beginning of a series of exchanges between the Lords and Commons until the government tabled a middle ground amendment to have an independent monitor. It is not clear from the debates how the

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<sup>209</sup> One of these was held in April 2003 for the proposed accommodation centre at RAF Newton in Nottinghamshire. Many points were raised among which the fear of crime figured “highly in the concerns expressed by the many objectors” (Brier, D.H. 2003, p.64). The Inspector concluded that the fear of crime was not “sufficiently robust or objectively based” (*ibid*, 66) to reject the Government proposal based on this ground. However, the Inspector warned that the development was inappropriate for the Green Belt (a policy to control urban growth while protecting the countryside (Osborne 2007) in which the county is based due to “a significant loss of openness” (*ibid*, 54).

<sup>210</sup> No. 17, in page 9, line 8, at end insert— X ( ) An accommodation centre shall be established only when the Secretary of State is satisfied that the proposed location is suitable to the needs of the persons to be accommodated therein" (HL Deb 6 November 2002, vol. 640, col. 766). Also 17B: “In determining the location of premises provided under this section the Secretary of state shall have regard to the needs of the persons to be accommodates therein” (*ibid*, col.770).

compromise was reached. The government most probably felt the pressure to proceed quickly in order to close the deal. This amendment had been originally proposed by the Conservatives on Report on 10<sup>th</sup> October and reflected “some of the concerns expressed ... by organisations such as the UNHCR, the Refugee Children's Consortium and the Immigration Advisory Service” (HL Deb 10 October 2002, vol. 639, col. 412). The advice and proposals of issue networks in this case were taken on board firstly by the opposition and later by the government though only following defeat in the Lords.

#### *Issues arising from Clause 16*

The clause related to the size and location of accommodation centres has highlighted four key points. First, location was a major issue at national, regional and local levels. At national and regional levels, the government deemed it necessary to have centres in rural areas to unburden the welfare services in London and the South East. Labour stressed the importance of this, leading to tension with the local level which was represented by the communities affected by the centres' plans, their local authorities and local MPs. The latter, in turn, brought the issue forward in Parliament so that the Conservatives were depicted as NIMBYs by Labour.

Second, as proposed by the first hypothesis, asylum seekers were perceived as a threat by both the local citizens affected by the government's project to build accommodation centres in their communities and by the core executive. The latter was concerned with deterrence and “administrative efficiency” (Forum Against Islamophobia & Racism 2002, 5). The centres were supposed to cut down on the time needed to process a claim as well as return claimants who did not qualify for refugee status or leave to remain. With regard to the former, a study of the opposition to the centres suggested that the protests developed “to reaffirm the boundary between a rurality regarded as unsullied, sexually pure and white, and urban environments imagined as multicultural, permissive and spoiled” (Hubbard 2005b, 3). The opposition to the centres was therefore due not to objective concerns about the wellbeing of the asylum seekers. Rather, it was because the locals felt threatened by their arrival and were preoccupied with the “depreciation” of their properties (Tony Baldry MP, HC Deb 11 June 2002, vol. 386, col. 772).

The second and third points are closely related as they deal with the governance of several stakeholders and their power struggle (hypotheses 3 and 4). The main actors here were the government, the opposition in the two Houses, the citizens and their local authorities and finally the NGOs. The process shows the bargaining power of the House of Lords, the power of people in the Conservative constituencies and finally the lobby of the organisations and especially of the Refugee Council with which negotiations with the government were in progress. In the House of Lords – as opposed to the Commons – the government did not have the majority. This gave the Lords more freedom and especially more power to negotiate. As a result, the government was defeated for the first time. Although during the interview Blunkett stated that the concession related to the trial of smaller centres was due to “persuasion”, he also said that they “were not getting anywhere” (*ibid*). The feeling was that pressure to move on was greater than any possible change in opinion. After all, the government accepted the trial of only one smaller accommodation centre out of four, due to host up to 3000 asylum seekers in total. Local citizens succeeded in getting a public inquiry. The mobilisation of local interests delayed the project illustrating that citizens, their local authorities and MPs had some power. However, the government was not willing to accept defeat easily. Its power was far superior as the government went ahead as originally planned despite widespread criticism. Finally, the weight carried by issue networks did have an impact. One common thread between the two small but nevertheless important concessions (the trialling of a smaller centre and the independent monitor) is the significant presence of the NGOs. The request to have a smaller centre was based on briefings given by representatives of organisations “ranging from the Refugee Council to Amnesty International” (Tony Baldry MP, HC Deb 11 June 2002, vol. 386, col. 753) as a way of alleviating tensions within the centres and concerns among the local community. On 11<sup>th</sup> June Mr Blunkett accepted the approaches of the Refugee Council to experiment with a smaller centre and confirmed his willingness to cooperate with the organisation to achieve that.

Among all the NGOs, the one that was mentioned more often during the debates, not only by the politicians referring to meetings or briefings but also by the government, was the Refugee Council. Despite the claim that at best they could only change “the margins” and “make things controversial” (interview with Hussain), the fact that they were often cited and

their advice, sought after even by the government itself is a sign of successful lobbying. In fact, while “some bodies, organisations and agencies” opposed the centres in principle, others including the RC, engaged in a dialogue “to influence [the government], not simply to stand back and criticise it” (interview with Pearce). The winning strategy of the RC was to be “more reasonable” and as such they had a “slightly more impact ... than others” (Blunkett, HC Deb 7 November 2002, vol. 392, col. 457). Their willingness to cooperate with the government without being too confrontational, their knowledge and possibly status put them *primus inter pares*.

Another topic that caused discontent was the one related to the length of time people should be housed in the accommodation centres and was discussed within clause 25 below.

#### *6.2.1.2 Clause 25: Length of stay. Time spent in accommodation centres*

Concerns with this clause were mainly in relation to families with children and proposals varied greatly. Although there was general agreement across party lines to put a limit in the bill – in opposition and Labour – there were disagreements within the same party about the actual time people should stay in the centres. For example, in the Commons the Conservatives asked first for a 3 month time limit, then a “fairyland” (Blunkett, HC Deb 11 June 2002, vol. 386, col. 742) 6 week limit and later 10 weeks to process the claims. The Liberal Democrats asked for six months and later 9 months (six months plus three if needed). Also among the Labour members there were various requests: those who agreed with the Conservatives’ 3 months proposal and those who asked for a 4 month period.

In the Lords the Tories, through Baroness Anelay of St Johns, put forward an amendment<sup>211</sup> re-proposing the suggestion made by Mr Letwin in the Commons to house asylum seekers for a maximum period of 10 weeks and stressing the importance of setting a time limit in the bill. Liberal Democrat peers, Lord Avebury and Lord Greaves agreed in principle with the point made by the Baroness on the need to have set time limit but found the 10 weeks’ limit too restrictive. The six month period proposal made by their Liberal Democrat

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<sup>211</sup> Amendment No.104: “after ‘centre’ insert ‘for a maximum period of ten weeks, save in exceptional circumstances’ after ‘centre’ insert ‘for a maximum period of ten weeks, save in exceptional circumstances’” (HL Deb 9 July 2002, vol. 637, col. 668).

colleague Simon Hughes was for them “the absolute limit” (Lord Greaves, HL Deb 9 July 2002, vol. 637, col. 670). Labour member Baroness Whitaker, who believed in fast tracking families with children, suggested a stay between 10 weeks and 3 months<sup>212</sup> but did not put forward any amendment. Eventually, given the importance of the issue, a new clause<sup>213</sup>, proposed by Lord Filkin on July 10<sup>th</sup> following concerns about the education of children in accommodation centres rather than schools, was created *ad hoc* to deal with it. According to the new clause, the Secretary of State would decide whether to keep the family in the accommodation centre or send it to a dispersal area. The time limit was six months, extended to nine in some cases based on the length of time needed to reach the final decision on the family’s claim. During Report Stage on 9<sup>th</sup> October, the issue – again under clause 15 – was discussed once more as new proposals came forward from opposition members.

On two separate occasions, Liberal Democrat Lord Dholakia proposed an amendment<sup>214</sup> to press the government to insert a time limit in the bill to avoid the danger of people becoming institutionalised. Specifically, the time limit he was looking for was for a four month maximum period. Baroness Anelay of St Johns, who had previously asked to set a 10 week time limit, supported the amendment moved by Lord Dholakia. She stressed that after Recession and meetings with concerned organisations, she “decided that it would be appropriate to be more flexible to the government and to set them a realistic upper time limit” (HL Deb 9 October 2002, vol. 639, col.319). Lord Borrie from the Labour party did not agree with the amendment as he could not understand the wish for a time limit in case asylum seekers wanted to stay longer in the centre but could not because of a limit imposed on them.

By Third Reading on 31<sup>st</sup> October, in the Lords the government had already made two concessions on the subject. The first one regarded families with children whereby Blunkett in the House of Commons had expressed his intention to follow through Mr Simon Hughes’ proposal for a possible nine month period. The second was the result of concerns expressed by

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<sup>212</sup> HL Deb 9 July 2002.

<sup>213</sup> Clause 23: Length of stay: family with children (HL Deb 10 July 2002, vol. 637, col. 747).

<sup>214</sup> “Amendment no. 15, Page 9, line 28, after ‘centre’ insert ‘for a maximum period of four months, save in exceptional circumstances’” (HL Deb 31 October 2002, vol. 640, col. 318). And again on 31<sup>st</sup> October 2002 on Report, amendment no. 19: “Page 10, line 23, after ‘centre’ insert ‘for a maximum period of four months save in exceptional circumstances’” (HL Deb 31 October 2002, vol. 640, col. 314).

Peers during the Report stage: to extend the time limit to everybody “for other classes of applicant” (Lord Filkin, HL Deb 31 October 2002, vol. 640, col. 320) or for different accommodation centres. Nevertheless, as the House was asked to vote on the amendment (No.19) proposed by Lord Dholakia, the government faced its third defeat as 144 people voted in favour of the amendment and 121 voted against. The government’s reply to the above was a new amendment that restated the six months limit unless the secretary of State deemed it necessary for that person to stay three extra months in light of exceptional circumstance. The proposal also provided for an order to allow the Parliament to abbreviate either or both periods (Beverley Hughes, HC Deb 5 November 2002, vol. 392, col. 154). Moreover, the amendments also anticipated that a person could remain in the accommodation centre for longer than six months if they wished to.

#### *Issues arising from Clause 25*

Not as controversial as the location of centres, this topic nevertheless raised many eyebrows as differences of opinions existed within the same party. This was the case with the Liberal Democrat and Labour parties. The latter were dealt with by the Whips “to enforce its members to vote along party lines” because “it is a serious issue when you step out of line” (interview with Dr MetCalfe). Neil Gerrard, who was on the bill Committee, also commented how the government whips “would not allow anyone ... who was going to vote against the Government inside the Committee. So you had to do a deal” (interview). The deal was that a Labour MP could dissent and show disconcert but could not to vote against the government in order to follow the details of the bill and be able to raise issues in Parliament. The government therefore, had the power to ensure that its party members would vote along its wishes, at least in the Commons, due to its overwhelming majority.

In the Lords, as in the case of the accommodation centres, the government was defeated. Its reluctance to have any set limits “purely for the sake of administrative coherence” (Angela Eagle, HC Deb 9 May 2002, Standing Committee E, col. 109), had to change over the time issue. Firstly, during Third Reading on 11<sup>th</sup> June, Mr Blunkett confirmed the possibility to provide for a six plus three-month period only for families, thus accepting Mr Hughes’

proposal. Mr Blunkett in the interview admitted he did not remember this particular as too many years had passed. However, he recalled that the change of heart was due to the fact that “we were not going nowhere [*sic*] and this was going out of hand” (interview with Blunkett). Just as in the case of the size of the accommodation centres, the government accepted changes allegedly based on the fact that things were not moving quickly or smoothly enough. On the other hand, this was not a major shift. The Home Secretary from the very beginning maintained the position that no asylum seeker should be in an accommodation centre in excess of six months (HC Deb 7 February 2002, vol. 379, col. 1039). So, the concession was minimal. Besides, they maintained their position even after the third defeat, i.e. 6 months, which could however be shortened or lengthened.

The government’s response shows the negotiation process that happened during the debates. At first inflexible, the government had to find a way to please also the opposition without compromising on its basic requirement to state a limit.

The issue networks were important enough to be able to force some minor changes. For example, Baroness Anelay mentioned that after talking to outside organisations during the summer recess, she came to realise that a longer time period was better than the 10 weeks originally proposed. Although, the names of the organisations were not mentioned in the debates in this instance, the fact that she changed her mind after networking shows the weight of the NGOs.

A further issue that sparked controversy in the two Houses was that of the education of asylum seeking children in accommodation centres rather than mainstream education.

#### *6.2.1.3 Clause 36: education: general and Clause 37: education: special cases. Education of children*

As in the case of the centres, networking with outside bodies was important especially with regard to the two Houses. During the discussion of this clause, the government was defeated for the second time in the House of Lords. The defeat however was not accepted by the government. Instead they agreed to include provisions for children with special need as well as



talented ones. Ultimately, the Lords accepted the government's provisions and did not press the issue further, showing once again the power of the government to achieve its objective.

The issue of education of children in the centres rather than in mainstream schools was discussed in the Commons in clause 18 together with the facilities available to asylum seekers within the accommodation centres. Yet again, there were several different positions: MPs and Lords who preferred to see asylum seeking children in mainstream education for the benefit of all children; and others who instead believed that education in an accommodation centre would be the best solution for children who had suffered traumatic experiences. The latter was the line followed by Labour members. Throughout the debate Mr Blunkett insisted on the importance of education for children in accommodation centres mainly because it "is virtually impossible to drag a family away from a neighbourhood school" (HC Deb 11 June 2002, vol. 386, col. 750) in case of removal<sup>215</sup>. However, there was also widespread opposition to the latter proposition as "over 140 MPs, over 100 of whom were Labour, signed a Motion calling on the government to withdraw this part of the bill" (Lord Bhatia<sup>216</sup>, HL Deb 10 July 2002, vol. 637, col. 690). There was also an alignment in positions between the Liberal Democrats and the government as Simon Hughes agreed with the original idea of "a period of transition and acclimatisation" (HC Deb 9 May 2002, Standing Committee E, col. 149) for some children.

In the Lords, the education of children within accommodation centres was discussed under clause 15 together with the clause on support during Committee Stage and not in clause 18 as in the Commons. Generally, across the opposition, the government's clause was considered "regrettable" and "disgraceful" (Lord Moser, Crossbench, HL Deb 10 July 2002, vol. 637, col.694). Labour members mainly supported the government's proposals, including Lord Dubs who, during the interview, explained that that it was not inhumane to have asylum seeking children in a special school but only for a temporary period of time to give them time to learn English. However, he also thought that the government should have been more flexible in taking decisions in the children's best interests. The main proposals of clause 15 were to allow

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<sup>215</sup> Often in fact, rallies, support letters and petitions are prepared in schools and churches where asylum seeking families have been living for years becoming part of the community (BBC 2005; Carter 2005; The Independent 2010).

<sup>216</sup> Crossbench.

families with school age children to be given the chance to go to a local school, and only if there was no place there, they should be placed in accommodation centres<sup>217</sup> in order to overcome “concerns about overcrowding schools” (Bishop of Portsmouth, HL Deb 9 October 2002, vol. 639, col. 325). The amendment was re-presented during Report Stage on 9<sup>th</sup> October following a meeting<sup>218</sup> held with parents, teachers and Head teachers and the Churches Commission for Racial Justice. Labour peers<sup>219</sup> voted in favour of the amendment. Everybody else across the political spectrum stressed that those organisations working with children rejected the “government’s defences of the policy” (Lord Bhatia, HL Deb 9 October 2002, vol. 639, col. 340) including among others, Save the Children, the Transport and General Workers’ Union and the National Union of Teachers. In the end, by just one vote the government was defeated for the second time in the House of Lords as 83 people voted for the amendment and 82 voted against it. The government did not accept the above amendment as it would have restricted its power to provide for accommodation in the centre and to take into account individual circumstances when deciding where a child should be educated. Despite the defeat, on 6<sup>th</sup> November the Lords (both opposition<sup>220</sup> and Labour<sup>221</sup>) ended up supporting the government’s line. This was because the government’s concession about monitoring the centres was passed and also because the government put down provisions for children with special needs as well as particularly talented children<sup>222</sup>.

#### *Issues arising from clauses 36 and 37*

As with the issue on the size and location of the centres, networking here was relevant but ultimately exerted little power. The Bishop of Portsmouth in the Lords presented again his

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<sup>217</sup> Amendment no. 107A: “and ( ) there is a place available in an appropriate maintained school for any dependant of school age” (Lord Bhatia, HL Deb 10 July 2002, vol. 637, col. 690). The same amendment was re-proposed by the Bishop of Portsmouth on 9<sup>th</sup> October 2002 with amendment No.16 (col. 325); and finally on 6<sup>th</sup> November with amendment No. 20.

<sup>218</sup> “No school apartheid”.

<sup>219</sup> Lord Clinton Davies and Lord Judd among others.

<sup>220</sup> Baroness Carnegy of Lour (Conservative).

<sup>221</sup> Lord Lea of Crondall Baroness Gibson of Market Rasen.

<sup>222</sup> In the Act this is contained in Clause 36: Education: general where in section (2) it reads: “A child who is a resident of an accommodation centre may not be admitted to a maintained school or a maintained nursery (subject to section 37).(3)But subsection (2) does not prevent a child’s admission to a school which is—(a)a community special school or a foundation special school, and(b)named in a statement in respect of the child under section 324 of the Education Act 1996 (c. 56) (special educational needs)” (Nationality, Immigration and Asylum Act).

amendment after meeting several organisations concerned with the issue of children's education.

The bulk of the amendments taken into consideration in the House of Commons were withdrawn and the only ones that were agreed to were initiated by members of the government. In terms of power relations, this means that the government prevailed the scene despite criticism and growing opposition coming from over 30 Labour MPs and children's charities Save the Children, Barnado's, the Children's Society, Unicef UK and the NSPCC (Travis 2002).

### **6.3 SUPPORT**

The issue of support was discussed originally within clause 34<sup>223</sup> and set the rule under which only a destitute asylum seekers or the dependant of an asylum seekers could be offered a place within an accommodation centre. Getting a place in the centre would automatically mean provision of support under NASS. However, those who refused the place would be cut out from support altogether. The government's move was consistent with the development of "a more managed asylum policy" (Angela Eagle, HC Deb 14 May 2002, Standing Committee E, col. 197) so as to keep asylum seekers under control during their claim.

Support for asylum seekers was also discussed in new clause 54<sup>224</sup> which was introduced only in the autumn in the Lords. The clause stated that the asylum seeker should apply for asylum 'as soon as reasonably practicable' in order to discourage "the manipulation of the asylum system" (Lord Filkin, HL Deb 17 October, vol. 639, col. 977). The fact that section 55 was introduced at such a late stage in the Lords meant that no real discussion could take place, thus obstructing the lobbying work of issue networks. On the other hand, the Conservatives agreed with the government's plan as the withdrawal of support was in fact another old idea (as were the accommodation centres) proposed by the party a few years back. This shows continuity of policies despite the opposition exhibited by Labour in the past.

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<sup>223</sup> In the Act: Clause 43.

<sup>224</sup> In the Act: Clause 55.

### **6.3.1 Clause 43 Asylum-seeker: form of support**

#### *6.3.1.1 The end of the 'support only' option*

In the Commons, there was agreement across party lines in the opposition as both the Liberal Democrats and Conservatives opposed the clause and agreed on a particular amendment<sup>225</sup> “to tease out the government’s intentions on cash only support” (Richard Allan MP, HC Deb 14 May 2002, Standing Committee E, col. 195). In fact, the original clause would only provide support for people in accommodation centres while leaving out those who instead chose to stay with family and friends. This was against the government’s national and regional plans to deter people from moving to London and the South East and especially to keep track of asylum seekers.

In the Lords, the same topic was confronted during the discussion of clause 37 on 10<sup>th</sup> July and then again as clause 42 during the second Report Stage on 24<sup>th</sup> October. Some Labour party Peers opposed the clause calling it a “retrograde step” (Lord Dubs, HL Deb 10 July 2002, vol. 637, col. 804) as it stopped the ‘support only’ option thus leading to destitution and family separation. The opposition led to an alignment of views between Liberal Democrat and Labour Peers as an amendment to remove the Secretary of State's power to withdraw subsistence-only support was proposed in October (Lord Dholakia, HL Deb 24 October 2002, vol. 639, col. 1440). The issue here was that too many asylum seekers<sup>226</sup> were choosing the ‘cash only’ support option while remaining in London and the South East, thus not relieving the pressure on services there. By taking away the ‘cash only’ option, the government would have kept the claimants under control while alleviating pressure in the region. Asylum seekers who did not take up their place in the centre would have been left without any support. So the establishment of accommodation centres served a double purpose. First, it aimed to solve the perceived asylum crisis nationally and regionally or at least to show the population that the government was dealing with the problem. As in the case of the location of the centres, the centrality of the

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<sup>225</sup> Amendment No. 207, in page 17, line 37, leave out paragraph (a). In the end the amendment was withdrawn and the Clause was ordered to stand part of the bill, as the proposer (Mr Allan) claimed to be satisfied “that the Government will carefully consider the circumstances” (HC Deb 14 May 2002, Standing Committee E, col. 203).

<sup>226</sup> “At the end of June 2002, more than 23,000 of the more than 33,000 asylum seekers taking subsistence-only support were living in London” (Lord Filkin, HL Deb 24 October 2002, vol. 639, col. 1441).

national level in the making of the policy was paramount as the government did not want to lose face. Second, it intended to deter new arrivals by threatening to take away support. Notwithstanding this inauspicious future for asylum seekers, the amendment did not pass as all Labour Peers and the majority of Conservative Peers voted against it. The Conservatives took sides with the government in this case showing a tension between opposing the government and agreeing with it. It might be argued that to agree with the government, was not in the Tories' best interest because of the issues related to the location of the centres. But they were also aware of the asylum pressure in London and the South East and agreed in general with Labour's party plans to deter 'non-genuine' asylum seekers.

### **6.3.2 Clause 55 Late claim for asylum: refusal of support**

This clause was introduced to minimise the abuse of the asylum system. Lord Filkin presented for the first time during Re-commitment on 17<sup>th</sup> October. This late introduction was due, according to Nick Pearce, to pressure from No. 10 on David Blunkett because the bill "was insufficiently radical compared to what he [Blunkett] had wanted from the White Paper" (interview with Pearce). However, the government's plan to end the 'support only' option in the autumn of that year was revealed back in July in a leaked memorandum from Downing Street and published by The Guardian. Lord Filkin commented that the government had "no plans to introduce this measure in the near future" and he had "no knowledge of any proposal for implementation in the autumn" (Hansard HL Deb 10 July 2002, vol. 637, col. 807). This was confirmed by Pearce who said that the norm was "hammered out" (interview) weeks before the 2002 Labour Party conference and during it. However, as the leaked memorandum shows, the intention had always been there.

#### *6.3.2.1 Refusal of support if asylum claimed was not submitted 'as soon as reasonably practicable'*

The problem with this norm was the lack of clarity surrounding the wording. A person, the clause states, should claim asylum "as soon as reasonably practicable" by giving a trustworthy version of their arrival. However, the provision did not specify what "reasonably" meant. This

ambiguity was picked upon by several Peers across parties who asked about the exact meaning of the sentence (Baroness Anelay of St Johns, HL Deb 17 October 2002, vol. 639, col.798), and if it was “compatible with human rights” (Lord Campbell of Alloway<sup>227</sup>, HL Deb 17 October 2002, vol. 639, col. 984). On this occasion, the clause passed with 103 positive votes and only 39 negative ones.

This topic was discussed again a week later as the House of Lords was asked to vote for an amendment<sup>228</sup> that would rest the “burden of proof ... with the Secretary of State” (Lord Goodhart, HL Deb 24 October 2002, vol. 639, col. 1464) rather than the asylum seeker that he or she has claimed “as soon as reasonably practicable”. This amendment followed the guidelines of a report of the Joint Committee of Human Rights<sup>229</sup> (JCHR) that heavily criticised section 55<sup>230</sup>. The JCHR found that the sentence “as soon as reasonably practicable” was “unacceptably imprecise” and “lacking in objectivity” (Joint Committee on Human Rights 2002b, 9) and that leaving someone destitute would breach articles 3 and 8 of the ECHR. The government disagreed with the Joint Committee and did not accept the amendment as it would have undermined its objectives to manage late asylum claims and control the entire process. Ultimately, only 56 people voted in favour of the amendment, which would have made the provision more humane, including one Labour Peer (Lord Bruce of Donington) and one Conservative Peer (Lord Campbell of Alloway also member of the Joint committee) while 110 voted against (including the rebel Lord Judd who had been critical of the government).

#### *Issues arising from Clause 55*

This clause was presented at a very late stage in the debates. Consequently, the time available to discuss the issue thoroughly and to understand its consequences was limited. NGOs had little time “to look at what it would mean and to put their ideas, their views to MPs” (interview with

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<sup>227</sup> Conservative

<sup>228</sup> 10B and 12a.

<sup>229</sup> The Joint Committee on Human Rights is formed by twelve appointed members from the House of Commons and the House of Lords. The Committee’s role is to consider human rights issues in the UK.

<sup>230</sup> Also section 57: Application for support: false or incomplete information. It was considered to be unlawful as “it would amount to the use of a power for an extraneous or improper purpose” (Joint Committee on Human Rights 2002b, 12) that is threatening a claimant to make him/her destitute because they could not say how they entered the country. The Committee thought this was an issue concerned with criminal investigation rather than one concerned with support.

Gerrard MP) about the dangers related to a late claim and the consequent withdrawal of support<sup>231</sup>. The risk of the new system imposed by the bill was that asylum seekers would be left destitute, leading to tension with the home population, illegal working (Oxfam 2002) and deterring integration on one side, while placing extra pressure on inner city communities (Refugee Council 2002a) on the other. In practice, rather than reducing the perceived threat of asylum, the government was in danger of encouraging it especially in communities with large concentrations of asylum seekers. The late introduction of the clause meant that there was no time to mobilise the issue networks.

In terms of the debates, the House of Lords had the chance to push for an improved version of clause 55 but they did not. The Conservatives were not as vocal as on other clauses. This is understandable, as in 1996 they took a similar position when they tried to take away the possibility of support for all in-country applicants. On that occasion though, Labour had been very critical of the initiative (Refugee Council 2002e). In 2002, Labour's U-turn in this aspect of their asylum policy shows more concern about public opinion than human rights, which is in line with the perceived threat that asylum seekers represented and the moves of the government to deal with the issue.

#### **6.4 ASYLUM APPEALS**

The aim of this part of the bill was to change the 1999 legislation by removing the possibility of "in-country appeals", if the Secretary of State certified the claim as a third-country case. This would cause the appellant to appeal from outside the UK unless the removal breached the person's human rights for example, Article 3 of the ECHR that prohibits torture and "inhuman or degrading treatment or punishment". However, if the human rights claim was certified as 'manifestly unfounded', which later became 'clearly unfounded', then the removal would be made compulsory and the person returned immediately to the country of origin from where he/she could appeal within 28 days. In practice, this clause introduced non-suspensive appeals and turned out to be controversial because of several negative implications attached to it. These

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<sup>231</sup> The Refugee Council for example, estimated that in February 2002 around 20,000 asylum seekers were living with friends and family while waiting to hear for a decision on their asylum claim.

were a possible judicial oversight without the chance to correct the unlawful decision (Justice 2003) or the risk of non-refoulement by passing the asylum seeker “back down the line to their country of origin” (Refugee Council 2002b, 2).

A ‘white list’ was also added by Blunkett at a later stage in the debates. This list included all ten new EU countries that were going to join in 2004. They were considered to be safe notwithstanding on-going and widespread discrimination and police brutality towards Roma especially in the Czech Republic, Poland and the Slovak Republic (Justice 2002; Refugee Council 2002b). This section represented a deep change in policy for Labour. Simon Hughes reminded the floor how, in the run-up to the 1997 election, the then Conservative Home Secretary stated “that removing people before they appeal undermines justice” (HC Deb 11 June 2002, vol. 386, col. 799). On the other hand, asylum was not such a hot political issue in 1997 as asylum claims were fewer than they reached in 1999 due to the war in Kosovo. On average, there was consensus coming from the Conservatives. Some of the provisions included in this clause (together with the norms on stopping support) had been presented in 1996 by Home Secretary Michael Howard as the Asylum and Immigration Bill was introduced in Parliament. These provisions were: the introduction of a ‘white list’ and ‘fast track’ procedures for ‘manifestly unfounded’ claims (Webber 1996). Labour opposed these changes because Howard played the “race card” (The Guardian 2002). The white list and the abolition of the in-country right of appeal in particular had already been introduced by other European<sup>232</sup> states showing that Britain was following the EU trend, despite claims by the then Home Secretary that immigration policy was not under the influence of Brussels (Nicholson 1997). Because of this continuation of policy<sup>233</sup> (Bloch 2000; Schuster and Solomos 2004), it is understandable that the Conservatives’ supported the Home Secretary and the government against the Liberal Democrats with regards to New Clause 14 and the subsections detailing removal with no chance of appeal for a person coming from an EU safe country who did not apply for asylum there.

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<sup>232</sup> Denmark, Finland, Germany, the Netherlands and Switzerland.

<sup>233</sup> As well as discourse. Blunkett repeated “Thatcher's magic word "swamped"” (Foot 2002) but also ‘bogus’ a term also introduced by the Conservative Party.



## **6.4.1 Section 94 Appeal from within the United Kingdom: ‘unfounded human rights’ or asylum claim**

### *6.4.1.1 Right to appeal, unfounded cases, and safe list*

These debates focused on different issues, which included unfounded claims<sup>234</sup>, a safe list of countries, judicial review, and the difficulties connected to launching an appeal from a different country: for example, accessing a lawyer with knowledge of British Law. The aim of section 94 coincided with the overall message of the bill that asylum was a threat. It was designed to deter so-called ‘asylum shopping’ while regaining the trust of the electorate who do not comprehend “the reason why people who have crowded through the rest of Europe have not chosen to exercise a claim there ... People out there think that we are crackers” (David Blunkett, HC Deb 11 June 2002, vol. 386, col.799).

The right to appeal within the United Kingdom was discussed in the Commons during Report Stage on 11<sup>th</sup> June. The government emphasised that people’s reasons for coming to Britain were not always linked to personal safety. Rather, they were attracted by appealing benefits such as a:

benign economy, low unemployment, low inflation, low interests. We needed workers and people thought they could get a job without having a work permit if they got here they thought "oh well, we'll be able to work; if we claim asylum, we'll get a roof over our head and something to keep us going" ... so it was seen as an alternative route to legal open migration through the work permit system (interview with Blunkett).

Blunkett’s affirmations were in stark contrast with the research commissioned by the Home Office and published just a month later in July 2002 that found that many asylum seekers came to the UK in order to seek safety firstly and mostly. Besides, this investigation followed other research done to explore similar issues and with similar outcomes. The researchers also found little evidence that the UK was the chosen destination because of “better employment opportunities” (Home Office 2002, 55) or that people had in depth knowledge of the UK immigration and asylum process and their entitlements to benefits.

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<sup>234</sup> “We are talking about two categories: clearly unfounded, when people produce no evidence of having been at risk or that the country from which they came was unsafe for them; and the category of those who ... have not made a claim in any of the countries through which they have passed, where their asylum claim would have been quite legitimate” (Blunkett, HC Deb 11 June 2002, vol. 386, col. 798).

In the Lords new Clause 14 became Clause 82: Appeal from within United Kingdom: unfounded human rights or asylum claim. Several amendments were raised but one in particular showed the networking with NGOs. Labour Peer Lord Archer of Sandwell presented an amendment against the danger of the clause to “remove the right of appeal to the judiciary against an executive decision” (HL Deb 23 July 2002, vol. 638, col. 343). The concerns had been voiced by several NGOs as they felt that executive decisions should not be left solely in the hands of the judicial review but should be checked by “a specific channel of appeal” (*ibid*, col. 343-344). They also believed that the claimant should be able to present his case to the adjudicator whilst in the country and not from abroad, as this would entail too many technical difficulties. The amendment, despite support from some Conservative Peers as well as Cross benchers, was withdrawn.

A few months later on 7<sup>th</sup> October 2002, Blunkett announced – together with the notice of the withdrawal of asylum support – the introduction of a list of safe countries making the chance to appeal more difficult. This announcement, made by Lord Falconer on 17<sup>th</sup> October, included ten safe countries<sup>235</sup> with the possibility (subject to Parliament scrutiny) for the Secretary of State to add to the list countries that pose “no serious risk of persecution of persons entitled to reside in that State or part” of the State (HL 17<sup>th</sup> October 2002, vol. 639, col. 1054). Countries could also be removed from the list but only through primary legislation<sup>236</sup>. While the Liberal Democrats disagreed in principle with the notion of the white list as “no country is 100% safe” (Lord Goodhart, HL 17<sup>th</sup> October 2002, vol. 639, col. 1019), Conservative Lord Kingsland reminded the House that the government’s position was very similar to one promoted by the Conservative Party but opposed by Labour “both when in opposition and when in government” (*ibid*, col.1022). Other Peers commented that the risk of persecution in the new countries was “still debatable” (Earl of Sandwich, *ibid*, col. 1026), and “almost impossible for any Roma” (Lord Avebury, *ibid*, col. 1029) to claim asylum successfully. Lord Falconer<sup>237</sup> explained that if the ‘clearly unfound’ certificate was issued, a second check would follow with

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<sup>235</sup> Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia.

<sup>236</sup> This was done in 2004. Although others were added.

<sup>237</sup> Lord Falconer of Thoroton was Minister of State (Criminal Policy), Labour Party.

a judicial review in the High Court<sup>238</sup>. In conclusion, he rejected amendment no.34 (and all the others<sup>239</sup>) as it would “remove the ‘clearly unfounded’ provision” (HL Deb 24 October 2002, vol. 639, col. 1511).

This section has highlighted several points. Firstly, Labour’s position on appeals and safe countries changed. Just a few years before, Labour had been critical of the same proposals presented by the Conservatives then still in government. Now that Labour was in government it was important to show to public opinion that they were being tough on asylum. Secondly, not much obstruction came from the Tories because they had proposed something very similar six years before. This alliance of party-politics on the issue made the government more resilient towards opposition coming from the Liberal Democrat and some of the Labour Peers<sup>240</sup>. Thirdly, the EU had a small role in this particular cause. For example, Lord Falconer stated that all the member states at the Justice and Home Affairs Council in Luxembourg had agreed that there should be a presumption that asylum claims from the new accession countries should be manifestly unfounded (HL Deb 24 October 2002, vol. 639, col. 1509). Despite the fact that “European policy-making frameworks were quite largely immaterial” (interview with Pearce) and that “European states ... essentially pursued their national strategies” (*ibid*), in this case it suited the government to affirm that everybody else in Europe had agreed to do the same. Finally, the debates showed the networking that existed between the NGOs and MPs and Peers. The parliamentarians were briefed on the dangers of this clause. The Refugee Council for instance, thought it was “unlikely” that people would be able to appeal successfully from the country from which they fled in the first place thus, making non-suspensive appeals “no appeal at all” (Refugee Council 2002b, 2). In the Lords in particular, questions were raised and examples were drawn thanks to briefings and information made available from the Refugee

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<sup>238</sup>“As soon as that intention has been indicated, the applicant is given three days to lodge his application. Once the application is lodged removal is deferred until permission is either granted, in which case it will be deferred for longer, or refused, in which case protection against removal is granted. So, the critical point in answer to the first question of the noble Lord is that the three days apply from the time that the intention to apply for judicial review is raised” (Lord Falconer, HL Deb 24 October 2002, vol. 639, col. 1508).

<sup>239</sup> Only one was not rejected. This was amendment no. 39A asking the Secretary of State to consult an independent advisory panel before adding a new country to the existing list. In fact, the government agreed to form the panel “to audit and advice on the country information ... used to assess asylum applications” (Lord Falconer, HL Deb 24 October 2002, vol. 639, col. 1511). This amendment does not appear however in the final act.

<sup>240</sup> Such as Lord Clinton-Davies and Lord Archer of Sandwell, Lord Judd and Baroness Whitaker who supported an amendment presented by Liberal Democrat Lord Goodhart.

Legal Centre and IAS on the numbers of claims with consequent successful appeals. Now with the new clause, these claims would become certified simply because of the country of origin of the appellant (in this particular case it was the Czech Republic).

## **6.5 CONCLUSION**

This chapter has showed how the perceived threat of asylum led the UK government to create the 2002 NIA Act. What has emerged during detailed analysis of the debates on individual clauses and the interviews with NGOs and policy makers is that the policy was government driven with the Prime Minister, the Home Secretary, his political adviser and a few other key figures as the main individuals behind the Act. The power to make policy rested in the hands of the government despite the strong lobby of the involved organisations and the objections presented by the opposition, especially in the Lords.

During the debates, the government generally prevailed. In the House of Commons, because of its overwhelming majority the bulk of amendments taken into consideration were withdrawn and the only ones that were agreed to were initiated by members of the government. There was one exception, when Blunkett took on board the suggestion made by one of the Liberal Democrat MPs to extend the stay in the centre of asylum seekers from six to nine months. This change was, however, incorporated only in the House of Lords and as the section has demonstrated, it was a small concession.

It was only in the House of Lords that some minor changes were accepted. Here the government did not have the majority and Peers were, generally, less involved with the contentions around party politics than in the other House. The government was defeated here in three cases. This prompted some bargaining especially at the very end of the debates, between the 5<sup>th</sup> and 7<sup>th</sup> November when each House took into consideration the other place's amendments. Following this, concessions were made. Yet, there was little compromise. Negotiation was mainly on some aspects of accommodation centres thanks to the obstruction of one part of the opposition (mainly the Conservative part because the centres were due to be built in their constituencies) and the strong resistance of people living in the affected areas and their local authorities. In particular, this conflict resulted in postponement of the start of the works by

requesting a public enquiry that the government was forced to give. On the other hand, the Act showed that even in the Lords, most Labour and Conservative Peers decided to back the government. The Conservatives in particular, agreed with the government's policy on the following issues: the establishment of centres, the creation of a white list, the introduction of non-suspensive appeals and finally the withdrawal of support in certain cases. This is not surprising considering that these were procedures that the Conservative government had tried to introduce back in 1996 that is, one year before the election of the Labour party. What is important is that while Labour opposed these ideas when they were in opposition, they now introduced them in the bill. There is therefore a continuation in policy between the two parties. The odd one out was the Liberal Democrat party, which tried to oppose most proposals but to no avail. Yet, on occasion they agreed with the government (on the length of time spent in the centres, and the education of children in the centres).

The opposition by local groups to the government highlights more clearly the geographical aspect of the thesis. On one side, there are the national and regional views represented by central government to hide asylum seekers from public view. Asylum seekers were to be contained in full-board accommodation centres – inclusive of schools – and away from London and the South-East. On the other side the local view, portrayed by concerned citizens, held that the scale and proposed locations of the centres were inappropriate both for local communities and the asylum seekers themselves. This particular point emphasises the centrality of government in asylum policy making in spite of recent debates on rescaling state's functions to other bodies.

The other key actors were NGOs. These groups have been characterised as issue networks because of their special interest on this difficult issue and the inherent differences between them and the government with regards to asylum seekers. In general, there was only limited consultation, because of the few and unequal resources available, the consequent unequal power, their open membership and their shared knowledge of the issue. They did share many actions and beliefs – which is not a normal characteristic of issue networks – and were communicating on a regular basis while the bill was debated. Interviews with NGOs highlighted their limited influence on the outcome of the bill because of their lack of power. Their consultations with the government were widespread but too often superficial. They also briefed

MPs and Lords on the technicalities of the bill showing, in this case, some influence as their words and thoughts were reported during the debates. They were therefore a very important source of information. With respect to governance, the Refugee Council was the most powerful NGO thanks to its influence compared to others and to its privileged access to the policy making process. The interview with Nick Hardwick highlighted two possible reasons for this. Firstly, the non-antagonistic nature of the organisation that was able to form a good working relationship with the government thanks to its openness while it did not just stand back and criticise. The second reason was because the Refugee Council used to run services on behalf of the government and could therefore be regarded as a partner. Nevertheless, despite their open access, influence was mainly limited to that aspect of the bill concerning the accommodation centres.

The next chapter focuses on the policy-making of the Italian Bossi-Fini. The findings of these two core chapters will then be compared in Chapter 8.

## CHAPTER 7

### LAW No. 189/2002

This chapter examines the policy process that led to the formation of the law most commonly known as ‘Bossi-Fini’. It follows on from Chapters 5 and 6, which provided the historical and political background prior to immigration law No. 189/2002 in Italy and the analysis of the UK policy-making process that created the 2002 NIA Act. Although both laws were passed in the same year they were different in nature and in the way the policy process happened. Contrary to the 2002 NIA Act in the UK, which targeted asylum matters specifically and labour migration marginally, the Italian law was created to regulate immigration. However, it is still highly relevant to the issue of asylum for two main reasons:

- 1) because asylum was viewed in the context of illegal migration, some of the provisions that targeted irregular migrants (such as those on non-suspensive appeals, detention or the use of the navy to intercept boats of migrants in the Mediterranean) had an impact on asylum seekers too;

- 2) for the first time, a government introduced two articles on asylum aiming to create an end-to-end system from entry to recognition of status (or rejection) to integration. Because until this point asylum had never been considered a priority, Italy did not have specific asylum legislation. Successive governments preferred to deal with asylum crises on an *ad hoc* basis. Consequently, the analysis focuses on the Act as a whole including both immigration and asylum aspects.

Through the analysis of the policy-making process, the chapter demonstrates that the political parties dominated the scene while the government mainly acted as an intermediary. This is quite the opposite of what happened in the UK as the previous chapter has established. Here, the undisputed leaders were specific political élites close to the Prime Minister. Evidence from the analysis of the Italian parliamentary debates and the media articles of the time indicate that two specific parties in the government majority were the real power holders in the policy

process related to illegal migration. These were the Catholic CCD-CDU<sup>241</sup> and the Northern League (NL). The CCD-CDU had the support of the Catholic world and the employers' organisations with regard to the regularisation of illegal migrants. Thanks to this network, the harshest parts of the law were softened after strong clashes developed between the CCD-CDU and the NL and despite the claims of the government not to alter the legislation. On the other hand the NL, notorious for its stark political stance against migrants, reacted badly to the requests brought forward by their Catholic rivals. As suggested by the first hypothesis in Chapter 1, the government and especially the NL perceived illegal migration as an issue and as a threat to national identity and security. As a result, the NL introduced a series of controversial measures, such as those on the use of the navy to combat illegal entry along the coasts of Italy and mandatory fingerprinting of immigrants (Legge Bossi-Fini; see also Colombo and Sciortino 2003; Zincone and Di Gregorio 2002; Geddes 2008). This was done for political image and electoral purposes so to maintain the stronghold of the party's Northern provinces (Albertazzi and McDonnell 2005).

With regard to asylum the important power holder within the government was the Ministry of Interior. The then Interior Minister, a member of former post-fascist party National Alliance, and the Deputy Prefect of the Department for Civil Liberties and Immigration wrote the two articles on asylum which were then inserted in the law. The passage of these two articles did not encounter any problem in parliament as opposed to the rest of the law. This happened not only because the articles came directly from the Ministry and did not have a parliamentary origin but especially because asylum was not perceived as being as problematic as illegal and labour migration. Besides, by implementing the most deterring measures (navy and fingerprints), asylum seekers would be automatically excluded.

In this scenario, there was not much space left for NGOs and charities. In contrast to the UK where consultation with the government was widespread, in Italy the government secured the bill against potential disruptions from civil society by closing down all communication

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<sup>241</sup> It was the union of two catholic political parties: *Gruppo Unione dei Democratici Cristiani e dei Democratici di Centro*.



channels. This shows, in agreement with hypotheses 3<sup>242</sup> and 4<sup>243</sup>, that the issue of labour migration and to a lesser extent asylum were a matter of executive control just as in the UK. Nevertheless, despite the difference in the UK and Italian governments' behaviour and treatment of NGOs and charities, networks in both countries share a common trait. These networks are characterised as issue networks as argued in Chapter 2. This is because of the essential difference of opinion on immigration/asylum between the government and the political parties on one side and the advocacy groups on the other, as well as inequality of power and resources among the groups and in relation to the government. Yet, the closure of the government was not so impermeable. The biggest Catholic groups were still able to exercise some pressure on immigration issues on the Catholic party in the majority. Further minor changes to the legislation were made thanks to lobbying by the main employers' groups. On asylum issues, however, the only organisation that played an important role was the United Nations High Commissioner for Refugees (UNHCR). Thanks to their specialised knowledge, expertise and international status they were able to create a good relationship and collaboration with the Ministry of Interior. The real outsiders were those groups with a left-wing orientation with whom the right-wing government did not wish to discuss things.

Finally, the chapter highlights the relevance of parties to asylum policy formation. To understand this, it is necessary to take into account that policy was made at three different but interconnected levels. The most prominent one was the national level where the political parties in the majority were able to impose their views on the topic; the national, regional and local levels however superimposed on each other. On immigration, the Italian Regions (governed by a regional council of the same political make-up of the government<sup>244</sup>) and the local businesses were able to reach a compromise with the Ministry of Interior on the size of the quotas of migrants needed. On asylum, the local mayors in unison with the National Association of Italian Municipalities, which in turn cooperated with the UNHCR, influenced the Ministry of Interior in a 'bottom-up' pressure.

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<sup>242</sup> Hypothesis 3 deals with the shift from 'government' to 'governance' due to the existence of networks of interest that go beyond the government.

<sup>243</sup> Hypothesis 4 considers the relationships between networks and their uneven power.

<sup>244</sup> That is either belonging to the NL, FI or CCD-CDU.

The next section first distinguishes in more detail the key stakeholders at government, parliament and civil society level. Then it focuses on the networks that operated at the time.

The final part of the chapter presents the analysis of the debates and the issues that were more pressing for all the players involved (government, majority and opposition and the pro-migrant groups).

## **7.1 THE POLICY PROCESS: ACTORS AND NETWORKS**

### **7.1.1 Actors and networks: roles, interaction and power**

As with the preceding chapter, this part of the thesis draws from the analysis of the debates and the interviews and is concerned with the identification and the interaction between different stakeholders. Firstly, the Ministry of Interior where the two articles on asylum were written. Secondly, the political parties within the majority because they were the real force behind the bill. Despite the fact that the bill was initiated by the government, the latter only had a mediating role between the political parties' conflicting interests on immigration. Finally, the NGOs that can be further divided into five sub-groups which constituted an issue network.

#### *7.1.1.1 The Ministry of Interior*

As the numbers of asylum seekers, refugees and migrants was on the increase, the NGOs and the local authorities were spending their already tight budget in providing minimum services. The Ministry of Interior was blamed for not taking responsibility towards asylum seekers. It was however able to create a trusted relationship with ANCI, the national association of Italian municipalities, based on a volunteering approach<sup>245</sup>. Even many mayors of the centre-right adhered to the initiative because it was “a very political” issue “but not a party political” (7.1) one (interview with Compagnucci). Political ideologies would fall the moment a mayor of any political derivation from the Lega to Rifondazione Comunista (*ibid*) saw homeless asylum seekers on their streets. However, “if only centre-left mayors had pushed for this, probably it would have not happened” (7.2) (*ibid*). The great push coming from ‘below’ i.e. from the

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<sup>245</sup> It was not compulsory to be part of the PNA and SPRAR.

NGOs, Caritas and the priests was essential. They would put pressure onto the mayors to participate in the public notices to get access to the National Fund<sup>246</sup>.

With regard to networks, there were *fora* organised by the government to consult with the experts (the so-called third sector, the navy and the business parties) but they were by invitation only, limited in number and not very inclusive (interview with Volontè MP<sup>247</sup>). For example, the third sector was excluded at first from these meetings. They were involved later but only once or twice and their demands were not even taken into consideration.

#### *7.1.1.2 Political parties: Catholics vs. Northern League and Right vs. Left*

In the 1990s parliamentarians were “less willing to support causes like immigration” because to discuss immigration too openly “did not provide immediate positive visibility” (Perlmutter 2000, 20) and would lead to confrontation (Triadafilopoulos and Zaslove 2006). Things have changed since then considering the growth of the migrant population, the bigger role of Italy on the European scene and the consequent pressure from the EU on the matter.

In 2002, each party within the coalition in the majority promoted their own position and personal views on the matter especially in relation to illegal migration. Consequently, intense exchange of views developed. Confrontations during the Bossi-Fini’s debate were indeed constant within the majority while the LN’s game of taking advantage of the electorate’s fears towards migrants did not play in their favour as in the 2001 elections they obtained only “3.9% of the vote and a sharp fall in its share of the vote in its northern heartlands” (Geddes 2008, 355). Yet, they played a significant role in the coalition becoming through the years one of the most important allies of the government. They were in fact, together with AN, the initiators of the bill and the main antagonists of the CCD-CDU. In contrast, the opposition did take part in the immigration debate mainly with the view to ostracize the work of the majority.

In the majority, AN but especially the LN were quite inflexible and resolute that the law should not change because of their anti-immigrant ideologies. The CCD-CDU wanted to include

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<sup>246</sup> The Fondo Nazionale per le Politiche e i Servizi dell’Asilo is a fund managed by the Ministry of Interior that gives money to public bodies that provide services for the reception of asylum seekers, refugees and people with subsidiary protection status.

<sup>247</sup> Telephone interview: 12<sup>th</sup> January 2011.

a lot of changes under the pressures first of all of the Church, the Catholic pro-immigrant organisations, the trade unions, the employers and the families. Finally, FI acted mainly as an intermediate. This was due to threats from both the CCD-CDU and the LN that they would not vote for the law.

Fights and bitter remarks were the norms during the debates between the various parts but there were also negotiations. Colombo and Sciortino (2003, 209) for example, highlight how on 2 February 2002, the Cabinet made proposals for the use of the naval forces against those boats that carried illegal migrants; then just five days later on 7 February 2002, the regularisation for care and domestic workers was put forward. In the same way, on May 10<sup>th</sup> 2002, the spokesperson for the government, Bertolini, proposed to collect digital imprints for those migrants applying for or renewing their residence permits. Finally three days later, Tabacci, former MP for UDC, presented the amendment to enlarge the regularisation to all the categories of illegal workers. This game of ‘give and take’ became the mean for the ‘solidarist’<sup>248</sup> (Zincone 2006a and 2006b) CCD-CDU’s crucial role to soften the law and for the ‘identitarian’ (*ibid*) LN to assert their presence in Parliament and defend the foundation of the law (limit labour migration and deter illegal entries).

At parliamentary level, some meetings happened in the Cabinet, in the Senate and in the Chamber of Deputies before the formal passages in the two Houses. There is no trace of these in the records held by the government but they were open only to party leaders (interview with Volontè MP). More informal meetings were held between NGOs and political parties – especially the UDC – and this is how amendments were drawn (interview with Volontè MP). This was an essential part of the process because it was the only way for the pro-migrant groups to express their concerns. However, this was mainly done on a one-to-one basis and it applied in particular to pro-migrant Catholic associations and to the immigration part of the law. The asylum part of the law was instead confronted mainly by the UNHCR and the Ministry of

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<sup>248</sup> Zincone (2006a; 2006b) has identified five different policy-makers’ positions towards immigration: ‘solidarist’ (mainly involving *Rifondazione Comunista*, the Greens, part of the DS and the Catholic parties in both the Majority and the Opposition); ‘multiculturalist’ (normally compatible with the solidarist approach as it ‘tolerate’ the immigrants customs, religious practices, identity and language); ‘identitarian’ (involving the Lega and AN that are hostile to multiculturalism and religious pluralism); ‘functionalist’ (that started in the centre-right but spread to some parts of the centre-left who agreed on the usefulness of immigration for the labour market); and finally ‘repressive/egalitarian’ (related to all the political forces as it aims to stop illegal entry and residence).

Interior and later it also involved ANCI with regards to the provision of services for asylum seekers and refugees at local level.

### 7.1.1.3 Civil society

Finally, there was civil society comprising five sub-groups whose importance changed according to the different phases of the law. The first three groups were formed by the so called third sector, NGOs and charities which have known each other, cooperated fairly well and in a stable manner since the times of the war in Kosovo (interview with Briguglio). These groups were:

1) A first small group formed by the UNHCR and CIR, which due to their internal statute, would operate only on asylum related issues. Their strength with regards to this particular bill was that asylum was not perceived by the government as being as difficult to manage as illegal migration. Furthermore, the presence of the well-known and internationally well-established UNHCR served as a guarantee to the legislator. The UNHCR acted as the 'glue' as it was the mediator between the other groups and the Ministry of Interior.

2) A second larger group<sup>249</sup> working on several aspects of both asylum and immigration such as AI, ARCI, Caritas, Centro Astalli, Comunità di Sant'Egidio, FCEI, ICS, and Migrantes. Because of its composition, this second group can be further divided into Catholic and non-Catholic organisations. For example, Caritas and Migrantes were both part of the influential and tentacular *Conferenza Episcopale Italiana* (CEI), the permanent assembly of Italian bishops. CEI has a very strong presence throughout Italy and includes several other organisations. With regard to the Bossi-Fini, the government preferred to confer directly with the CEI rather than with Caritas (interview with Dinh Le Quyen) or other Catholic groups perceived to be more militant<sup>250</sup> and as such, less welcome by the government. As a matter of fact, the vast majority of the interviewees lamented the lack of dialogue with the government. Yet, those belonging to

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<sup>249</sup> Some of these organisations (including Caritas and ARCI) are founding members of the CIR (interview with Ngo Dinh) while the ICS is an umbrella group for several other associations. Although the ICS at the time did not have a link with political organisations, most of its network associations did have a connotation with the Left.

<sup>250</sup> Migrantes and Caritas despite their criticisms against the government were considered moderate; other groups were more militant such as the *gruppo Abele* whose leader blames the CEI for being too shy, the *missionari comboniani*, *Pax Christi* and the *Coordinamento Nazionale delle Comunità d'Accoglienza* (Magister 2002a).

the Catholic association world were more successful than non-Catholic ones in lobbying members of the CCD-CDU party in the majority. They did not oppose the government's ideas based on "principle ... and ideology" (7.3) (*ibid*) as other organisations that are known for their leftist background would possibly do.

3) The third group was made up of 'specialised' organisations. These were: Save the Children mainly intervening on unaccompanied minors and family reunions; IOM tackling repatriation, trafficking and the integration of migrants; and ASGI, a lawyers' association specialising in migration's juridical aspects;

4) Then there was ANCI<sup>251</sup> the representative body for Italian Municipalities giving voice to 7.500<sup>252</sup> of these and their mayors' interests. ANCI turned out to be an important player in the lobbying game with regard to the establishment of SPRAR<sup>253</sup>. ANCI took part in many formal and informal discussions where they would participate with documents drafted on the basis on the information given by municipalities (interview with Pacini). They had their own internal network made up of mayors;

5) Finally, there was a fifth group comprising the most prominent employers' (*Confindustria*, *Confcommercio*, *Coldiretti* and *Confartigianato*) and the three main trade unions (CGIL, CISL and UIL). This last group has been more "variable, random, discontinuous and multiple" (Zincone 2006a, 350). The employers dealt directly with the government and with political parties. Trade unions were as weak as NGOs in their dealings with the parties but were particularly active on the organisation of pro-migrant rallies in cities to raise awareness on the issue of illegal migrants.

Figure 7.1 below shows the decision-making process during the discussion of the Bossi-Fini. Stakeholders attempted to provide information to both the government and the political parties in order to influence their decisions. The establishment was composed by the

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<sup>251</sup> The role of ANCI was enhanced in 2000 when part of the Italian Constitution (*Titolo V*) was modified to give more power to other bodies and for the first time "the central state, regions, provinces and municipalities are at the same level; same dignity no more vertical but horizontal" thus increasing "the role of the municipality"<sup>251</sup> (interview with Pacini).

<sup>252</sup> There are in total 8.103 municipalities in Italy – 7.500 of these are part and represented by ANCI (interview with Pacini).

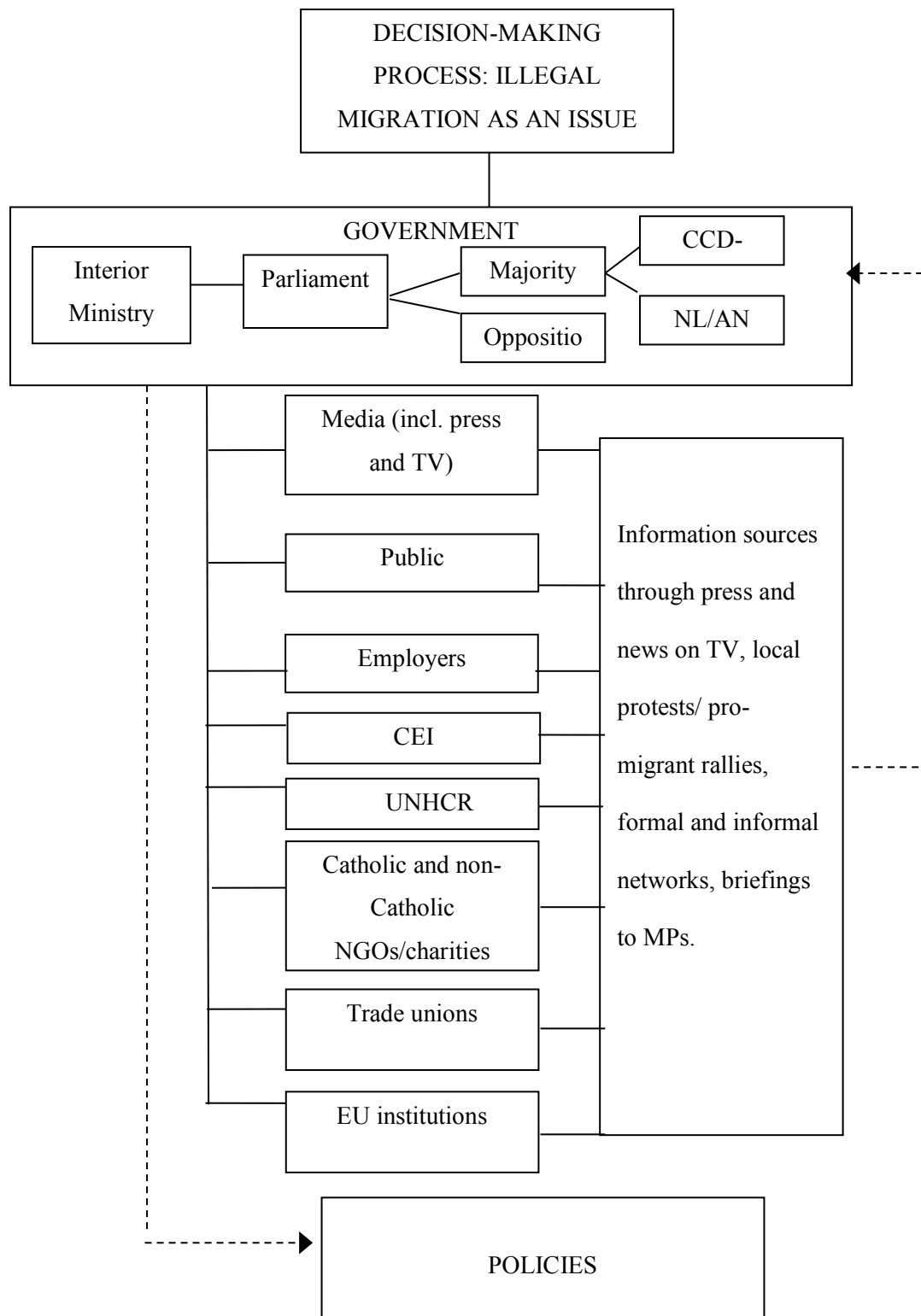
<sup>253</sup> The existence of SPRAR is contingent to the funds allocated by the European Fund for Refugees co-financed by the State through the National Fund that was established with article 32 of the Bossi-Fini (Ministero dell'Interno n.d.).

government that in this specific case had more of an intermediate role, the Interior Ministry with regard to matters related to asylum, and finally the political parties in the majority and in the opposition within parliament. Given the nature of the then government, which was based on a coalition, the majority was split into two separate entities, each one with a very strong idea on how labour migration had to be managed: the Catholic CCD-CDU and the more right-wing Northern League and National Alliance parties. Of the latter two, the NL was the most vocal.

Public opinion did matter just as that of employer groups whose need for foreign carers and workers was great. Employers groups dealt with both the political parties and the government through formal and informal hearings. They formed an “unlikely alliance” (Zincone and Caponio 2005) with the Catholic world as they shared the same need. The Church bore some influence on the government but only the CEI was allowed to discuss things directly. Other Catholic charities and NGOs were shut out from any interaction with the government. Non-religious groups were also not included. Therefore, they are at the bottom of this hierarchical structure together with trade unions. Trade unions and advocacy groups however organised marches and rallies in towns and squares to raise awareness of the law. The UNHCR was the sole organisation able to network directly with the Interior Ministry on asylum matters.

EU institutions did have some influence on the law but mainly on the asylum part as the Directive on minimum standards was then under discussion and Italy does not have asylum legislation.

**Figure 7.1 Actors involved and information shared in the asylum decision making process in Italy**



How did these groups fit into the policy process? The next section looks at how networks shaped this process with a particular emphasis on issue networks.



### 7.1.2 Issue networks

As in the case of the UK, issue networks were most representative of the Italian situation at that time for the following three main reasons: different views between the ruling government and the NGOs of how immigration should work; the awareness and understanding of asylum, the common ideals and shared actions were not facilitated by the then reigning climate of hostility displayed by the government towards the organisations; and finally, the difference in resources available to the groups. These three aspects are discussed below.

#### 7.1.2.1 *Different views*

There was a gulf that divided the government's vision of how immigration should work and should be controlled from that of the NGOs believing in a more humane approach. Whereas the government used the law as their supreme act to defend Italian sovereignty i.e. to deter migrants from coming to the country<sup>254</sup>, NGOs were more concerned with the integration of migrants within Italy. Things were furthermore complicated by the fact that the conceptual political divide between left and right is so embedded in Italian political history that even such a delicate issue became a battlefield for political parties. It was also an excuse to cut out from any possible involvement the organisations that had any social undertone and especially those traditionally linked to the left. This strategy was devised in the Cabinet because the government did not want to "lose the power of the control room (7.4)" (interview with Sen. Eufemi<sup>255</sup>). The associations therefore had no direct influence on the government. What happened was that these groups were "essentially non-bargaining" (La Palombara 1964, 249) losing autonomy to political parties. This non-bargaining position was that displayed by most interests groups because they were associated with the centre-left government (Perlmutter 2000; Bozzini and Fella 2008) such as ARCI, "historical emanation of the Italian Communist Party" (7.5) (interview with Hein). There was no relationship whatsoever with the centre-right government so "as far as lobbying goes, it

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<sup>254</sup> For example, through the use of the navy, the introduction of non-suspensive appeals and the withdrawal of the sponsorship program.

<sup>255</sup> UDC Party. Telephone Interview date: 14<sup>th</sup> January 2011.

can be synthesized into nothing” (7.6) (interview with Miraglia<sup>256</sup>). Most associations were left out from the governmental institutional and formal channels<sup>257</sup> apart from a few meetings<sup>258</sup>. This shows that core political élites had little or no interest in debating and negotiating with most advocacy groups, thus, making the policy domain close and unattainable. Most of the respondents acknowledged the fact that the Bossi-Fini was “a very colourful law on the political level” (7.7) (interview with Dinh Le Quyen). Therefore, the only way to get through to the government was to speak to MPs “for reasons linked to identity” i.e. according to their political alliances (second interview with Schiavone<sup>259</sup>). The other option was to talk with those who were notoriously more sympathetic to the cause as “in 2001 if you said the word ‘*asilo*’<sup>260</sup> one would think about kindergarten ... it was already a miracle to find someone sensitive” (7.8) (*ibid*). As such, religious organisations would dialogue mainly with MPs from the centre while traditionally left organisations would discuss matters with candidates belonging to the left and so on. Because of the political make-up of the government, the level of involvement of the non-Catholic part of the civil society was weaker on a more formal level.

Immigration in 2002 was a relatively new subject, charged with highly controversial political meaning and where most pro-immigrant lobbies would overtly criticise the government. Asylum on the other hand, was certainly the area where the government had a little bit less interest and where the two articles gave a “touch of humanity” (7.9) (interview with Compagnucci) to the norm showing a degree of respect for the Geneva Convention. On the other hand, these decisions could be considered a duty for Italy when taking into account the

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<sup>256</sup> Filippo Miraglia, *Associazione Ricreativa Culturale Italiana* (ARCI) (Italian Cultural Recreational Association). Interview date: 7<sup>th</sup> November 2008.

<sup>257</sup> Back in November 2001 for example, a letter written by some associations<sup>257</sup> denounced the fact that the government did “not feel the necessity”<sup>257</sup> (*Nessun luogo è lontano* 2001) to convene with those associations involved in the defence of migrants (Caritas and *Migrantes* 2001; Vassallo 2001).

<sup>258</sup> The 1<sup>st</sup> Commission in the Senate eventually organized a small number of meetings. The first ones were only directed to the employers’ associations. Later, representatives from the department of public security, from the *carabinieri*, from the *Guardia di Finanza*, and from the navy and port authorities were also included (Atti Parlamentari, Chamber of Deputies Deb 13 May 2002, sitting 143); but also the third sector: “something at 9 o’clock at night of which no trace remains even in the Parliamentary records, totally useless” (interview with Briguglio). Further auditions were also opened to some pro-immigrant organisations but only after specific requests.

<sup>259</sup> Second telephone interview date: 4<sup>th</sup> February 2011.

<sup>260</sup> asylum but in Italian *asilo* also means kindergarten.

lack of asylum legislation and the existing Schengen<sup>261</sup> agreements. The country was simply coming out of “prehistory” (7.10) (second interview with Schiavone). Because of these factors, the UNHCR, as an institutionalised organisation, was at greater advantage compared to other groups in the bargaining game. They were able to bring forward amendments that were incorporated in the law in cooperation with the Ministry of Interior rather than political parties.

#### 7.1.2.2 *Shared knowledge, shared beliefs and shared actions*

Most of the respondents had known each other “through the issue” (Hecló 1978, 103) from the early 1990s<sup>262</sup> and their collaboration slowly increased through the years up to the Kosovo war in 1998-1999. Because of this cooperation, all the NGO respondents defined the relationship with each other as positive where “no-one was more important than the other” (interview with Pacini). After all, in the “great game of alliances” (7.11) (interview with Pacini<sup>263</sup>) the “aim was to try to converge towards shared” (7.12) (first interview with Schiavone<sup>264</sup>) objectives because of their weakness in front of the government. They were a ‘shared knowledge’, and a ‘shared belief’ group (Hecló 1978, 103). They were also a ‘shared action’ group (*ibid*) but only to a degree because of the lack of a real structure and discontinuity of their meetings. The analysis of the interviews has, in fact, showed that e-mail exchange and meetings with a high degree of participation were the routine, revealing the existence of flexible and open networks. Yet, the UNHCR interviewee did not agree entirely with the term ‘network’, considering it to be too “big” (interview with Humburg<sup>265</sup>). As an alternative, he referred to “phases” in which they had “more structured *fora*” (7.13) (*ibid*) and others where instead they had *ad hoc* meetings

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<sup>261</sup> Italy has been a member of the Schengen area since November 1990 but the agreement came into force in 1997.

<sup>262</sup> With the creation of a group made of cross-party parliamentarians and civil society groups called *Patto per un parlamento antirazzista* (Pact for an anti-racist Parliament) (Perlmutter 2000; interview with Briguglio). However, when it was still too early to talk about asylum but not about immigration, some Catholic organisations formed the *Gruppo di Riflessione dell'Area Religiosa* (Group of Reflection of the Religious Area) in 1986. This group was particularly strong as the Turco-Napolitano was debated.

<sup>263</sup> Pacini here was referring to the fact that when preparing a document, he would first read the allies’ documents, then look for the key words that suit the municipalities’ needs and finally insert the same words into the ANCI’s document.

<sup>264</sup> Telephone interview: 15<sup>th</sup> December 2008.

<sup>265</sup> UNHCR Official. Telephone interview: 29<sup>th</sup> December 2008.

according to the topic of conversation. Prior to 2005<sup>266</sup> in fact, the groups' cooperation was not institutionalised and although they described their dialogue as constructive (*ibid*), it was without a precise pattern, it was "chaotic" because "everything was starting at the same moment, there was no coordination, there were no negotiating tables, there was no experience, we were not in the habit of discussing things, the UNHCR was not used to coordinate the NGOS" (7.14) (second interview with Schiavone). Meetings would sometimes happen "at the end of the conference XY, to the meeting Z, to the seminar X" as things "in Italy always happen in a rather disorderly way" (7.15) (interview with Dinh Le Quyen). They would meet in the "hottest periods" (7.16) (interview with Pompei<sup>267</sup>) according to the issue or amendment to discuss it in conjunction with other topics such as the EU Directive<sup>268</sup> on the reception of asylum seekers (interviews with Hein; Miraglia; Dinh Le Quyen; and Pacini). Acting towards a shared action under these conditions was therefore challenging so that having a common aim did "not necessarily produce agreement" (Hecló 1978, 104). Divergence of opinions occurred as "it would be naïve" (7.17) (second interview with Schiavone) to think the contrary. Three other factors contributed to the problem though. On one side, the government's lack of interest towards these groups weakened further their collaboration making the "journey ... more withdrawn" (7.18) (interview with Di Lecce<sup>269</sup>) as the organisations were pushed to work with their political referees on a 1-1 basis. On the other side, the competition for funding<sup>270</sup> among groups led to less cohesion and as a consequence a weaker political pressure (interview with Di Lecce; and former UNHCR official<sup>271</sup>). Finally, the different interests at stake, including organisational differences, produced disagreements. This was in relation to pro-immigrant organisations working on both asylum and immigration aspects of the law as sometimes they had to "clarify the respective mandates" (7.19) (interview with Humburg) as in the case of

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<sup>266</sup> Date of the creation of the discussion group also known as *Tavolo Asilo* (Asylum Table) led by the UNHCR

<sup>267</sup> Daniela Pompei from the *Comunità di Sant'Egidio*. Interview date: 6<sup>th</sup> November 2008.

<sup>268</sup> Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

<sup>269</sup> Franca Di Lecce, Director for the refugees and Migrants Services of the *Federazione delle Chiese Evangeliche in Italia* (FCEI) (Federation of the Evangelical Churches in Italy). Telephone interview date: 27<sup>th</sup> January 2011.

<sup>270</sup> Although both interviewees were referring to specific episodes that took place a few months before the start of the discussion on the Bossi-Fini, i.e. when the National Asylum Programme (PNA) was first established in 2001, they implied that tensions remained also during the discussion of the bill in 2001/2002.

<sup>271</sup> Telephone interview date: 5<sup>th</sup> January 2011.

bodies like Caritas which ran services while others, like Amnesty International, were more concerned with aspects of policy. The Church could have exerted more pressure on the government on asylum matters but they preferred to concentrate their efforts on family reunions, the taking of fingerprints and the regularisation that were precisely the aspects on which the CCD-CDU party was more vocal (first interview with Schiavone; and interview with Briguglio). Because of this strong support for regularisation, the *Comunità di Sant'Egidio* received much criticism from the left (opposition parties and organisations alike) because they only “asked for some [of the migrants] and not for the others” (7.20) (interview with Pompei). On the other hand, their strategy was due to their being aware that they could not have obtained more. So, the organisations had set their own priorities based on the then political climate and economic needs. Knowing that the UNHCR was already very vocal on asylum related issues, it did make sense for the other groups to press on other topics that were at the forefront at the time, i.e. labour migration and in particular, the regularisation of domestic helpers and carers upon which Italian families depend so much.

Internal disagreements within the network also happened in relation to non-suspensive appeals. This was probably the most controversial point contained in article 32 as it was planned not to suspend the removal of the asylum seeker waiting for the appeal from the national territory<sup>272</sup>. In reality, the organisations did not disagree with each other but only with the UNHCR, which was criticised for not putting more pressure on the government. Its position was considered “too modest compared to the importance of the matter” (7.21) (second interview with Schiavone). Nevertheless, it was due to the UNHCR’s negotiation that the debate on the appeals happened in the first place (interview with Dinh Le Quyen). Indeed, the political approach of the UNHCR was to follow a mediating role. This was required by the need to have a dialogue with a government that was deaf “to humanitarian and civil rights’ protection requests” (7.22) (first interview with Schiavone). The UNHCR approach can be justified in terms of “strategic evaluations” (7.23) (second interview with Schiavone) i.e. what the UN refugee organisation can achieve at a certain moment in time and in a given country. In that

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<sup>272</sup> However, the same asylum seeker could “ask the competent prefect to be authorised to stay on the national territory until the outcome of the appeal” (Legge Bossi-Fini).

precise moment, in Italy there was the passage “from the Palaeolithic to the Neolithic” (7.24) (*ibid*) and the resources were spent trying to improve other aspects of the text and specifically to provide for an asylum procedure and the establishment of SPRAR. Considering that the essence of the law was the restriction of illegal immigration, no more than that could have been done (interview with Compagnucci). Hence, to allow non-suspensive appeals in the Act would have meant giving the chance to overcome the problem through instrumental asylum claims.

### *7.1.2.3 Unequal resources and unequal power: ‘parentela’ and ‘clientela’*

The third and final reason for which an issue network has been identified is because of the different resources available and unequal power among the members of the network. On one side, there were the Catholic organisations – with Caritas as the leading one because of their known work at local level – that had the ‘advantage’ of lobbying their political referees who happened to be part of the ruling coalition. They were still not able to get through to the government that preferred to dialogue with the highest leaders of the Church (interview with Dinh Le Quyen). Then there were business groups that, although were not part of this research, were nevertheless relevant because of the importance of immigration over asylum. Finally, there was the UNHCR which, thanks to its institutional importance, international presence and extensive experience representing the third sector, became the government’s “principal speaker” (7.25) (interview with Dinh Le Quyen). Typically, the outcomes on the asylum aspects were “due to the pressures from the UNHCR regardless of what the other organisations think” (7.26) (interview with Briguglio). The organisation was without a doubt leading the debate on asylum and was also mentioned several times in the debates by both the centre-right and the centre-left parties.

### *Parentela*

Catholic groups and business organisations developed a *parentela* relationship that is “a relatively close ... relationship between certain associational groups on the one hand, and the politically dominant Christian Democratic Party on the other thus exercising ‘considerable influence’” (La Palombara 1964, 306). For instance, although the Catholic organisation

*Comunità di Sant'Egidio* tried to dialogue also with FI and AN, they specifically chose to speak first and foremost with representatives of one of the politically dominant Catholic parties, CCD-CDU, so they looked actively for representatives (interview with Pompei). The association launched an impressive campaign called *Ho bisogno di te* (I need you) and were able to mobilise hundreds of Italian families and elderly people who met under the Parliament and started shouting the slogan “I need you”. It was thanks to their pressure, in particular to Luca Volontè – spokesperson of CCD-CDU – and Bruno Tabacci – ‘responsible’ for the so-called ‘Tabacci knot’ – that they succeeded with their request to the government to have a regularisation for care workers. In the same way, *Coldiretti*, one of the biggest Italian Confederations specialising in agriculture, benefited from their position and had regular meetings with the government and the parties in the majority. *Coldiretti* have a seasonal need of migrants compared to other sectors that employ them for longer periods of time. The agricultural sector in Italy takes particular profit from the employment of migrants because of the ageing of the native population as well as the depopulation of rural areas. Migrants are highly valued due to their acceptance of low wages and difficult working conditions that are not attractive to the younger Italian population<sup>273</sup>. The *Coldiretti*’s request to have residence permits lasting three years<sup>274</sup> was accepted by the ruling coalition and it is described in article 5 of the Act<sup>275</sup> (interview with Magrini<sup>276</sup>). While LN opposed migration generally on the basis that it threatened security and local northern culture, the employers’ associations, especially in the

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<sup>273</sup> About 46% of migrants who work in the sector are less than 35 years old while the Italians of the same age amount to just 5% (Cicerchia and Pallara 2009, 96). Furthermore, it is believed that a striking 95% of migrants are employed illegally in the Calabria region alone, by far the highest percentage of employment of illegal workforce in Italy (*ibid*, 34). Through decrees issued by the Minister of Labour Roberto Maroni in February, March, May and July 2002, the numbers of seasonal migrants from Central and Eastern Europe increased while the non-seasonal migration decreased and went from 50,000 to 19,000 in 2002 (Einaudi 2007 quoted in Geddes 2008).

<sup>274</sup> *Permessi di soggiorno pluriennali*. This type of residence permit was particularly important for those regions (especially Trentino Alto Adige and Friuli Venezia Giulia) relying on the seasonal entrance of migrants living close to the border (Melica 2001).

<sup>275</sup> *Art 5 (Permesso di soggiorno) 3-ter. Allo straniero che dimostri di essere venuto in Italia almeno due anni di seguito per prestare lavoro stagionale puo’ essere rilasciato, qualora si tratti di impieghi ripetitivi, un permesso pluriennale, a tale titolo, fino a tre annualita’, per la durata temporale annuale di cui ha usufruito nell’ultimo dei due anni precedenti con un solo provvedimento. Il relativo visto di ingresso e’ rilasciato ogni anno. Il permesso e’ revocato immediatamente nel caso in cui lo straniero violi le disposizioni del presente testo unico.*

<sup>276</sup> Representative of *Coldiretti*, telephone interview: 13<sup>th</sup> June 2011.

North-East of Italy, that is the core of the populist party, were demanding more immigrants and larger quotas.

The original text, which came out from the Cabinet in September 2001, already incorporated some changes related to the quotas based on the requests put forward by those regions directed by members of the *Casa delle Libertà* (House of Freedoms) i.e. the ruling coalition while the others had been substantially ignored (Bonetti 2001c). In the original articles on the quotas (article 14 in the *ddl* presented by the Senate and article 16 presented by the Chamber of Deputies) the regions had a much smaller role compared to the final article of the law (article 17). Here, the article reads that the region “may” present a report on the “presence and conditions of migrants” (Legge Bossi-Fini) together with the effective needs of the regions for the following three years. So what caused the government to make these changes? In February 2002, a meeting was held between the Veneto region, the government and twelve employers’ associations representing all the different sectors (industry, agriculture, crafts, cooperation and the tertiary service sector) within the Veneto region. On this occasion, the employers’ associations established a permanent coordination group on immigration and labour and at the same time recognised the important role of the region in identifying the need for foreign labour in accordance with the associations. They asked that the Bossi-Fini took in the amendment related to the role of the regions in order to be able to determine the need for quotas as article 17 effectively does. The amendment was presented by the regional Councillor for Veneto, a member of AN, in conjunction with the then Minister for Labour and Social Affairs, a member of the *Lega* (Confindustria Vicenza 2002). The membership of these two politicians is significant here because the two parties that opposed migration at the national level were swayed by economic interests presented powerfully by a well organised united front (the region and the employers’ associations). This shows that if a powerful interest group has direct contacts with the public administration (in this case the Councillor and the Minister), it may avoid the control of political parties (Lanzalaco 2002).



## *Clientela*

If a *clientela* relationship develops then “an interest group ... succeeds in becoming ... the natural expression and representative of a given social sector which ... constitutes the ... reference point for the activity of the administrative agency” (La Palombara 1964, 262). The research has highlighted a possible *clientela* relationship between the UNHCR and the Ministry of Interior because of their position at the time. The UNHCR held a special position because it was recognized officially and “accredited ... by the Ministry of External Affairs” (7.27) (interview with Humburg) because of its highly reputable status and extensive first-hand experience of asylum issues throughout the world. Most importantly, the fact that their relationship with the government was not as political in nature as some of the other organisations, helped in the establishment of a less problematic and more open relationship. As in the case of the cooperation between the regions, the employers and the Ministry of Labour, the UNHCR was able, in a joint effort with the Ministry of Interior and ANCI, to establish SPRAR<sup>277</sup> the new name for the PNA. The UNHCR was the main umbrella organisation comprising diverse political interests “from *Rifondazione Comunista* to the Pope” (7.28) (interview with Compagnucci) into an unofficial negotiating table organised by the Ministry.

The next two sections focus on the debates and look more in detail at the most contentious issues of the law and how they were confronted by the above actors.

## **7.2 KEY DEBATES**

The bill had a troubled journey because of its controversial nature and three main different views: that of the fairly liberal opposition, that of the restrictive *Forza Italia*, AN, and *Lega* and that of the ‘inbetweeners’ represented by the Catholic party that had the merit of softening the harshest parts of the law but only to a degree. As a result, the bill had so many amendments that

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<sup>277</sup> The cooperation between the UNHCR, the Interior Ministry and ANCI originated prior to the Bossi-Fini; it started in 2000-2001 with the creation of the PNA that intended to put an end to the structural shortage of services for refugees. Initially, other associations took part into the discussion because as service providers, they were deemed to be able to cooperate for the establishment of the PNA. Unfortunately, the very limited funding available created “shocking”<sup>277</sup> (interview with Former UNHCR official<sup>277</sup>) sour conflicts. The organisations “perceived the start of a public system of reception based on municipalities as a sort of competition” (second interview with Schiavone). Due to internal fights, they were never able to create a leadership and to go beyond their personal interests. The UNHCR and the Ministry decided therefore to make ANCI the main service provider.

the discussion and vote was not possible “before the deadline set out for the presentation of the amendments onto the Floor of the House” (7.29) (Sen. Pastore<sup>278</sup>, Atti Parlamentari, Senate Deb 19 February 2002, sitting 124, 5). On that occasion<sup>279</sup> only a minority of amendments was discussed<sup>280</sup>. This was due to the obstruction presented by the Greens that subsequently “spread to all the members of the opposition” (7.30) (*ibid*). The 1,035 amendments were the spontaneous outcome of the initial reactions to the bill itself and were presented to the 1<sup>st</sup> permanent Committee for Constitutional Affairs on 14<sup>th</sup> November 2001. Of these, 500 were examined and only 335 were voted (*ibid*). It was on this occasion that the “*contratto di soggiorno per lavoro*” was introduced, together with the immediate expulsion with accompaniment to the border and the use of the Italian navy. The Committee had little time to analyse all the amendments due to the haste of the government to proceed. This showed a lack of willingness on the part of the government itself and the majority to accept the oppositions’ point of view but also reflected the pressures received by the *Lega* that accused the government of not being hard enough. Later, on 9th April 2002, the CDL on the Floor of the House in the Chamber of Deputies deliberated the declaration of urgency as a result of the strong stonewalling from the centre-left that “[a]fter a sitting in the Constitutional Affairs Committee that lasted until 3am ... will not allow the bill to see the final vote” (7.27) (ANSA 2002).

The part on asylum did not face the same controversies and no major upheaval happened in Parliament. The articles, written by the then Minister of Interior together with the then Prefect responsible for all immigration matters, had the support of the UNHCR. This peaceful cooperation, combined with the factual need of the country to have some kind of procedure in place after years of unsuccessful attempts and an institutionalised support service for refugees strongly supported by mayors of different political make-up, was not disrupted. After all, the procedure introduced administrative detention and non-suspensive appeals. As such, it was not a

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<sup>278</sup> *Forza Italia*.

<sup>279</sup> 14<sup>th</sup> November 2001: 1<sup>st</sup> permanent Committee for Constitutional Affairs.

<sup>280</sup> From article 1 to 13: cooperation with foreign states in the Mediterranean; *ad hoc* Committee to monitor immigration; the creation of a *Sportello unico* (single office) dealing with all immigration matters instead of having separate offices; residence permit becomes *contratto di soggiorno per lavoro*” (contract for work residence) so no job, no residence permit; use of the navy; exclusion orders carried out by bringing the person to the border rather than just by paper. In the end only seven amendments passed; 124 were rejected; 42 were barred; and 22 were withdrawn<sup>280</sup>. The remainders were not actionable, inadmissible or rejected and barred.

matter of concern for the right of the government. The opposition – backed by civil society – tried to oppose the two articles because it considered them insufficient to deal with such a delicate issue but their amendments were ignored by the government.

The next section starts with the part of the debates related to asylum.

### **7.2.1 Asylum debates**

Of the two articles on asylum the most relevant is the second one comprising many different elements such as the new double procedure, the detention of asylum seekers, the new territorial commissions, the constitution of SPRAR and the National Fund for asylum policies and services for asylum seekers, refugees and those with humanitarian protection established by the Interior Ministry. The first article provides for the issuing of a temporary residence permit if requested and valid up to the identification procedure. It is therefore not surprising that the more substantial article (in terms of content) was also the one that attracted more attention and more amendments. However, from the initial debates in the Senate through to the debates in the Chamber of Deputies, many MPs (mainly from the left and some from the Catholic parties in the majority) asked for the removal of both articles given that the same UNHCR and not some “pervicacious Bolsheviks” (7.32) (Russo Spina MP, *Atti Parlamentari*, Chamber of Deputies Deb 30 May 2002, sitting 150, 86) held that the articles were below minimum international standards. Although the government was aware of the need to have a distinct law and that the two articles only took into consideration some aspects of asylum, they were also clear about the aim of such inclusion, that is to avoid instrumental asylum claims as clarified by the then Undersecretary Taormina<sup>281</sup>.

As mentioned earlier the very first draft did not consider asylum. However, the text that came out from the Cabinet on 12<sup>th</sup> October 2001 did contain the rough version of what was going to be the final result. The three most relevant innovations were those related to: detention, the Commission and the introduction of non-suspensive appeals. Detention could be compulsory<sup>282</sup> for those asylum seekers who had tried to elude the checks at the border or for

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<sup>281</sup> *Forza Italia*.

<sup>282</sup> 1-*bis* comma 2.

those who had claimed asylum after receiving a notice of expulsion, and ‘optional’<sup>283</sup> for asylum seekers waiting to be identified – in practice, the vast majority of asylum seekers belonged to this category. The Commission for the recognition of asylum changed its name into National Commission<sup>284</sup> and its tasks transferred to Territorial Commissions<sup>285</sup> scattered throughout the country. Finally, the automatic suspensive effect was deleted after the negative decision of the Commission. From a logistic point of view, the decentralization of the Commissions throughout the territory (including near the borders) meant less travel for those claiming asylum and possibly faster decisions due to a less bureaucratic system. Conversely, Fulvio Vassallo (2001) from the University of Palermo underlined the negative feature of the Commissions that due to their composition<sup>286</sup> made up of representatives of the Ministry of Interior, would not guarantee impartiality. Additionally, the same Commission that has turned down the asylum claim is in charge of the appeal procedure. This position was also shared by other associations who effectively talked about the abolition of the right to asylum. Whereas the decentralization of the commissions was a welcome novelty (interviews with Hein; and Dinh Le Quyen), the detention of asylum seekers who had claimed asylum after the expulsion notice was considered acceptable but not that of asylum seekers who had spontaneously presented to the authorities. The most controversial point was however, the one on the cancellation of the suspensive effect.<sup>287</sup> This was considered by NGOs and the opposition in breach of article 33 of the Geneva Convention on *non-refoulement*. It was also pointed out that provisions related to the subsistence of asylum seekers had not been even considered (Briguglio 2001b).

The subsequent version of the bill was approved by the Senate on 28<sup>th</sup> February. In this instance, article 24 was approved fairly immediately because the few amendments presented were simply not accepted, with no further explanation on the part of the government or the majority. Article 25 on the other hand had nearly 300 amendments most of which were

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<sup>283</sup> Art. 25, 1-*bis*.

<sup>284</sup> 1-*quinquies*.

<sup>285</sup> 1-*quater*.

<sup>286</sup> The National Commission for example is chaired by a *prefetto* (prefect), and it is formed by a senior civil servant working for the Italian Cabinet, a civil servant following a diplomatic career, a prefect from the Department of Civil Liberties and Immigration and from a senior civil servant from the Department of Public Security. A representative from the UNHCR participates to the meetings without the right to vote (Legge Bossi-Fini, article 6, subsection 1-*quinquies*).

<sup>287</sup> 1-*ter*, *comma* 6.

presented by the opposition. Those approved were only six<sup>288</sup>: three presented by Senator Boschetto spokesperson of the Government and member of the *Forza Italia* party; two presented by Senator Forlani from the Catholic majority CCD-CDU; and one presented by Senators Guerzoni, De Zulueta and Budin of the Democrats of the Left and Olive Tree coalition. The more interesting amendments among the six that were accepted, were those presented by the Catholics and by the opposition presumably under influence from the UNHCR<sup>289</sup>. Although the discussion in Parliament is reported in full, it displays only the amendments and the votes and not a real exchange of ideas. The changes<sup>290</sup> the UNHCR had proposed in December 2001 corresponded word by word to the amendments presented on the Floor of the House.

The debate on the two articles – now articles 27 and 28 – continued in the Chamber of Deputies on 30<sup>th</sup> May during sitting 150. Again article 27 was passed fairly immediately while article 28 had a total of 92 amendments. Only 13<sup>291</sup> of these – presented in the 1<sup>st</sup> Permanent Committee by the Committee itself on 7<sup>th</sup> May 2002 – were accepted by the government and passed. None of the amendments “fruit of auditions” (7.33) (Boato MP, Atti Parlamentari, Chamber of Deputies Deb 30 May 2002, sitting 150, 111) with AI, ICS, MSF, the IOM, the UNHCR and others and presented by the opposition went through. It is important to underline here that amendment 28.259 did in fact consider one of the amendments originally proposed by the UNHCR in December 2001: that concerning repatriation in the light of those international conventions of which Italy is signatory especially article 3 of the ECHR. Another amendment worth emphasizing is no. 28.260 that introduced the SPRAR as the result of “agreements with local authorities and the UNHCR” (7.34) (Undersecretary Mantovano, Atti Parlamentari, Chamber of Deputies bulletin 18 April 2002). The UNHCR in fact, in one of the few hearings<sup>292</sup> the government gave just one week before on 12<sup>th</sup> April stressed the importance of continuing and improving the PNA to be able to deliver better quality services to asylum seekers and refugees (Manca di Nissa, Atti Parlamentari, Chamber of Deputies Deb 12 April 2002). The

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<sup>288</sup> 25.12; 25.13; 25.105a 2<sup>nd</sup> text; 25.157; 25.159a 2<sup>nd</sup> text; 25.588.

<sup>289</sup> Amendments 25.12, 25.13 and 25.105a.

<sup>290</sup> Thanks to the archives maintained by external expert Sergio Briguglio.

<sup>291</sup> 28.250, 28.251, 28.252, 28.253, 28.254, 28.255, 28.256, 28.257, 28.258, 28.259, 0.28.260.5, 28.260, 28.261.

<sup>292</sup> *Indagine conoscitiva*. The formal audition was granted on 12<sup>th</sup> April in the 1<sup>st</sup> Commission within the Chamber of Deputies following a request from ICS, MSF and AI. Also the OIM took part.

creation of SPRAR or better the changes to the PNA, meant firstly more input from the regions that would participate on a voluntary basis, secondly collaboration between regions and local authorities, and ultimately acknowledgment of the importance of creating a national system recognised by the Italian state to help asylum seekers and refugees. It was a ‘bottom-up’ approach that made all this possible. During the hearing, the UNHCR’s representative also proposed an “intermediate phase” (7.35) (*ibid*) of fifteen days during which the claimant could apply for an appeal without being repatriated given the potentially fatal situation he/she would risk, if sent back after been erroneously deemed not to be genuine. It emerged that the UN’s refugee agency wished originally for the articles on asylum to be removed. However, conscious of the (unspecified) pressures the Italian Government was under, they accepted the situation and instead proposed amendments on three points, one of which was accepted: suspensive appeals; humanitarian protection <sup>293</sup> ; further warranties on the functioning of the Territorial Commissions( especially in terms of the selection of the members based on their competency in carrying out their duties as well as their professional background).

### **7.2.2 Immigration debates**

In terms of immigration the bill was not met with favourable opinions. Part of the opposition compared it to the German *Gast-arbeiter* (Livia Turco<sup>294</sup> MP, Atti Parlamentari, Chamber of Deputies bulletin 18 April 2002) to be used according to the market’s needs with migrants required to go back to the country of origin when the contract expired (Reyneri 2004). This system would in turn create “insecurity because the immigrant whose permanence is linked to the employer’s needs has no interest in integrating” (7.36) (*ibid*) into the host society. Pro-immigrant lobbies claimed the bill saw the migrant only in a utilitarian view or as “arms” (7.37) (interview with Pacini) “useful only if and until when he produces wealth ... reducing immigration to a matter of public order” (7.38) (Sen. Malabarba<sup>295</sup>, Atti Parlamentari, Senate

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<sup>293</sup> This was mentioned in article 1.*sexies*.

<sup>294</sup> DS-U.

<sup>295</sup> *Gruppo Misto*.

Deb 28 November 2001, sitting 57). Trade unions<sup>296</sup> believed that the policy would bring an increase in irregular migration. Finally, the employers' associations<sup>297</sup>, especially those in the north-eastern regions of Italy where the employment of foreign labour is fairly widespread due to a higher industrial development compared to the rest of the country, were also critical. In 2003, the former President of the Veneto Industrialists and Vice-President of *Confindustria*, Mister Tognana, affirmed that the policies of the *Lega* did not represent his category because the "collective imagination" proposed by the party is different from the reality of the factories (Maurelli 2003, 3).

The Bossi-Fini roused strong emotions also within the same majority in parliament. Harsh conflicts between the Northern League and the Catholic parties of the so called Whiteflower<sup>298</sup> became the norm from the very first discussion of the law in the Cabinet throughout the whole parliamentary process. This caused delays over delays to the approval of the *ddl* in the Cabinet in November 2001 until the final passages of the law in July 2002. The Catholics, deeply unsatisfied by the "imprecise or deliberately ambiguous" (Colombo and Sciortino 2003, 205) text loosely based on the proposals made a couple of years earlier<sup>299</sup>, presented about a hundred amendments the discussion of which started in January 2002. The amendments were introduced in a meeting held in December 2001 between the parties' group leaders, part of the government coalition of the House of Freedoms<sup>300</sup> (CDL). The amendments contained the reintroduction of the sponsorship program, the abolition of the residence permit and the introduction of quotas on a regional basis. The most important feature and controversy of this and previous discussions was however, the possibility of a mini-amnesty for 300,000 domestic workers (La Padania 2001). In reality, the Catholics wanted an amnesty for all irregular migrants including those employed in industries setting off the anger of the leader of the *Lega Nord*, Umberto Bossi, whose fierce stance against illegal immigrants and for the devolution had been at the centre of

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<sup>296</sup> Especially the largest ones like *Confederazione Generale Italiana del Lavoro* or CGIL (Italian General Confederation of Labour), *Confederazione Italiana Sindacati dei Lavoratori* or CISL (Italian Trade Union Confederation for Workers) and *Unione Italiana del Lavoro* or UIL (Italian Labour Union).

<sup>297</sup> *Confindustria*, *Confcommercio*, *Coldiretti*, *Confartigianato*.

<sup>298</sup> *CCD-CDU: Biancofiore*

<sup>299</sup> See Chapter 5: proposals by Fini-Landi and Bossi-Berlusconi.

<sup>300</sup> *Casa delle Libertà*.

the *Carroccio*<sup>301</sup>'s electoral campaign. Apparently, the *Lega* “renounced to their identity” (7.39) (interview to Calderoli MP in *Il Sole 24 Ore* 2001, 9) to join the governing coalition. As a result, passing the law that they considered impregnable from start to finish was of the utmost importance.

The intentions of the government were clear throughout: to deter unsolicited migration in order to ‘protect’ public order while ‘favouring’ “those immigrants that enter Italy regularly and in Italy they respect the laws and work honestly” (7.40) (Undersecretary Mantovano, *Atti Parlamentari*, Senate Deb 20 February 2002, sitting 125, 8). In practice, the idea was “to do a law... for both the Italians ... the Europeans” (*ibid*) as well as the honest migrants that would be “functional to the” Italian “production mechanism and ‘disposed of’ ... when this utility stops” (7.41) (Barilli n.d). The very first steps in this direction started with the controversies linked to the regularisation of migrants.

#### 7.2.2.1 Regularisation

The article and consequent amendments on the ‘declaration of emergence of irregular work’ were presented for the first time in the Senate. However, the discussion on the topic started earlier in the Cabinet. It is interesting to see how the provision developed considering that at the very beginning of the discussion, the hypothesis of having such regularisation was not an option especially for the *Lega* while it was essential for the Catholics within the majority (CCD-CDU). The result has been a juggling government going forwards and backwards on its positions trying to please both parties. Back in November 2001 for example, the speaker for the government, Senator Boschetto, agreed to open a discussion on the topic. The following month the first amendments on the topic were presented by several groups within the opposition<sup>302</sup> and one by the CCD-CDU; while in a meeting with all the leaders of the political parties came to light the prospect of having a mini-regularisation of 300,000 workers without a residence permits but employed as domestic workers (Benini 2001). The discussion continued in the Senate where further amendments were presented by both sides. The difference was that the opposition

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<sup>301</sup> Other name of the Northern League.

<sup>302</sup> 4.01 Dentamaro . (Mar-DL-U); 8.03 (Daisy); 10.0.1 Giarretta *et al.* (Mar-DL-U); 17.0.1 Boco *et al.* (Greens); 27.0.2 Forlani (CCD-CDU).



targeted all migrants without a regular residence permit whereas the majority concentrated explicitly on care and domestic workers, specifying that it was not in the government's intentions to give any other type of regularisation (Senator Boscetto, *Atti Parlamentari*, Senate Deb 20 February 2002, sitting 125). In the government's view in fact, to extend the 'regularisation' (*regolarizzazione*) to all potential illegal migrants would have meant an 'amnesty' (*sanatoria*) similar to those given in the past by the centre-left. Naturally, a possible alignment with a centre-left position was something that the government wanted to avoid at all costs given the increasing concerns of the Italian population towards immigration and the pressures exerted by the Northern League on the matter. The tendency of the government to disassociate from previous moves was such that even a couple of years later, Mantovano justified the government's decision to extend the regularisation to other workers by explaining the "substantial difference" between the two terms because the "past *sanatorie*" would only "consider the presence ... of people out of work, guaranteeing only the registration at the Jobcentre. The regularisation" on the other hand, not only did this but it also "requested a real job relationship ... formalized with a job contract and a regular salary" (7.42) (Ministero dell'Interno 2004). Eventually, an amendment<sup>303</sup> proposed by the same government endorsing the emergence of domestic and care workers was passed and the so-called 'mini-regularisation' became in fact a 'maxi-regularisation' as the government agreed to extend it to all foreign workers without a regular permit.

In the Chamber of Deputies the article was once again the object of interest from both parts of the Parliament. Over 40 amendments were presented and clashes between the UDC and the rest of the majority due to the imposition not to employ more than one care worker per family emerged (Canetti 2002). A total of fifteen amendments were withdrawn the following day by *Forza Italia*<sup>304</sup> and the Northern League<sup>305</sup>. The remaining ones were voted on 3<sup>rd</sup> June during sitting 152 including the one proposed by Tabacci MP<sup>306</sup> to incorporate into the regularisation

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<sup>303</sup> 25.0.200.

<sup>304</sup> The amendments were withdrawn on 9<sup>th</sup> May 2002 (29.16, 29.40, 29.39, 29.17, 29.20, 29.19 and 29.01).

<sup>305</sup> Withdrew amendments: 29.6, 29.7, 29.8, 29.9, 29.4, 29.10, 29.13 and 29.14 on 9<sup>th</sup> May.

<sup>306</sup> CCD-CDU.

all illegal workers<sup>307</sup> and to avoid the one-year imprisonment for employers. This amendment was co-signed by other parliamentarians including some from the opposition and was also known as ‘*nodo*’ Tabacci (Tabacci knot). It represented a further obstacle to be dealt with, thus, increasing the tensions within the majority and preventing the bill becoming law in the shortest possible time. In fact, both the *Lega* and AN opposed fiercely the proposal as they believed it represented a *sanatoria* (La Repubblica 2002b). The impasse was solved after a meeting in the Cabinet. It was agreed that the Catholics would withdraw the ‘Tabacci amendment’ in exchange of an *ad hoc* provision to be approved and passed at the same time i.e. ‘contextually’ as the bill became law (Rassegna Online 2002; Il Giornale 2002). However, the other Catholic group at the opposition – the Daisy group – decided to ‘adopt’ as its own the amendment but to no avail as the Chamber clearly rejected it including the same UDC that proposed the amendment in the first place. After the voting, 13 amendments<sup>308</sup> were passed, the majority of which had been presented by the 1<sup>st</sup> Commission. The issue though, was far from being solved. The LN opposed the term ‘contextual’ and instead proposed to include the provision into the immigration quotas, thus, generating more polemics and threats from the UDC to re-present in the Senate the amendment signed by Tabacci. In the end, the Senate approved the article (now article 33) that came out from the *Camera* without any further changes while the ‘*nodo*’ was untied as the Cabinet effectively kept its promise. Through an order of the day<sup>309</sup>, the government undertook to present a provision (i.e. a law-decree) – as the Bossi-Fini would come into force – that would legalise the position of the *extracomunitari* in the same way as the regularisation provided for

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<sup>307</sup> Amendment 29.3 presented on 13<sup>th</sup> May in the *Camera* during sitting 143.

<sup>308</sup> 29.70, 29.71, 29.72, 29.52, 29.53, 29.54, 29.55, 29.73, 29.74, 29.75 proposed by the Commission; 0.29.52.1 (*Testo così modificato nel corso della seduta*) proposed by Sinisi (Daisy, DL-Olive Tree) together with Bressa (Daisy, DL-Olive Tree), Leoni (DS-Olive Tree), Bellillo (Misto-Italian Communists) and Boato (Misto-Greens-Union); 29.6 proposed by Luciano Dussin, Fontanini and Cè (LNP); 29.10 proposed by Landi di Chiavenna (AN).

<sup>309</sup> *G33.3 Il Relatore, Il Senato, impegna il Governo: a presentare un provvedimento che, all'atto dell'entrata in vigore del disegno di legge n. 795-B, legalizzi la posizione degli extracomunitari che, presenti irregolarmente sul territorio italiano, prestano lavoro subordinato, a condizioni analoghe a quelle previste per la regolarizzazione di cui all'articolo 33 dello stesso disegno di legge; a inserire nel predetto provvedimento la non punibilità delle violazioni delle norme relative al soggiorno, al lavoro e di carattere finanziario, in relazione alla occupazione degli extracomunitari di cui al provvedimento di legalizzazione; a non adottare decreti di allontanamento dal territorio nazionale per i lavoratori compresi nella legalizzazione.*  
(Briguglio 2002).

by article 33 of the law. The controversial term ‘contextual’ was dropped to the delight of the *Lega*. The law-decree became law 266/2002 in November 2002.

#### 7.2.2.2 Sponsor

The sponsor had been introduced by article 23<sup>310</sup> of the Turco-Napolitano law according to which an Italian or foreign citizen with a legal residence permit, if able to provide accommodation as well as cover for costs related to maintenance and health, could help a migrant to come to Italy to look for a job for a period of one year but only. This mechanism had been requested by Catholic associations and mainly used to employ domestic workers (Meroni 2002). The reason for the abolition was due to the fact that in 2001, 60 per cent of these requests came from foreigners acting as guarantors opening “hypotheses and scenarios that for objective reasons did not give” the government “peace of mind” (7.43) (Ministero dell’Interno 2004). In practice, this method allegedly opened entry to people who did not already have a job and, for such reason, were more “exposed at risk of working illegally” (7.44) (Senator Boschetto, *Atti Parlamentari*, Senate Deb 19 February 2002, sitting 124) as well as ending in the hands of organised crime especially at the end of the one-year period. As an alternative, the government gave the option to the Italian regions and the local authorities to organize courses for the formation of would be migrants in the countries of origin<sup>311</sup> in the hope of facilitating the entry of migrants with a “rudimentary notion of our language and law” (7.45) (Undersecretary Mantovano, *Atti Parlamentari*, Chamber of Deputies bulletin 18 April 2002). The problem with sponsorship was the fact that the previous government had established low quotas for the entrance of people through the programme (15,000 in 2000 and the same number in 2001), though the requests by far exceeded the numbers imposed through the decree (Morbello 2002). Therefore, in the government’s view there were two main issues connected to the sponsor: a) too many guarantors were non-Italians. The Turco-Napolitano did not put a limit despite the fact that it is common for migrants who live and are settled in a given country to help others creating that social process called ‘chain migration’ (Massey *et al.* 2002). Perhaps the government

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<sup>310</sup> Art. 23 (*Prestazione di garanzia per l'accesso al lavoro*).

<sup>311</sup> Article 19.

wanted to avoid just this as it was believed that many were not genuine in their intentions, leading to prostitution, drugs dealing and illegal work; and b) the partial or inadequate success of the programme despite the fact it had been implemented recently. For example, a study in the Veneto region showed that “in 2000 more than 1200 sponsored workers found a job” (7.46) (Morbello 2002) the majority of which were likely to be among those who entered through the programme making it quite successful. Furthermore, very often an employer would rather meet in person a future employee especially in the case of domestic workers and carers.

In the Senate, both the CCD-CDU and the opposition presented amendments to keep the sponsorship programme although the government decided against<sup>312</sup>. Despite this, a series of new (and extremely similar to each other) amendments on the same topic were presented in the Chamber of Deputies on 7th May revealing a cooperation between unlikely allies. Some were brought forward by the opposition<sup>313</sup> but also surprisingly by a representative of FI<sup>314</sup> who emphasized that the direct acquaintance between employer and employee is more adequate than choosing from a list of names<sup>315</sup>. The main difference compared to the other amendments was that the guarantor had to be Italian and had to give a guarantee to the State of 20,000/40,000 Euros depending on the length of the job search (Meroni 2002). As this was an individual request and not having the support of the rest of the group, it was withdrawn a couple of days later. The votes on the amendments happened on 29<sup>th</sup> May during sitting 149 but the sponsorship was not reintegrated.

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<sup>312</sup> Atti Parlamentari, Senate Deb 18 December 2001, 1<sup>st</sup> Commission, sitting 72, amendments: 3.28 proposed by Guerzoni, Battafarano, Viviani, Piloni, Di Siena, Grusso, De Zulueta (*DS-Ulivo*) and re-proposed on 20th february 2002 during sitting 125; 16.29 proposed by Guerzoni, Viviani, Battafarano, Grusso, Piloni, Di Siena (*DS-Ulivo*); 16.3 Peterlini (*AUT - Gruppo per le autonomie*). Senate, Floor of the House, sitting 131, 27<sup>th</sup> February 2002, amendments: 16.1 proposed by Senator Eufemi (CCD-CDU); 16.29 proposed by Guerzoni, Viviani, Battafarano, Grusso, Piloni, Di Siena; 16.3 Kofler (*AUT*); 16.500 Borea (CCD-CDU); 16.502 proposed by Brutti Massimo, Viviani and equal to 16.3.

<sup>313</sup> Amendments proposed by the Opposition: 3.28; 18.16; 18.22; 18.1; 18.5, 18.3; 18.6; 18.28; 18.7; 18.31; 18.17; 18.29; 18.34; 18.23; 18.18; 18.24; 18.25; 18.12; 18.4.

<sup>314</sup> Amendment proposed by Dario Rivolta from FI: 3.44: “*Dopo le parole: ai sensi dell'articolo 20 aggiungere le seguenti: È prevista una percentuale pari al 5 per cento della quota d'ingresso prefissata annua, di cui al comma 4, per gli stranieri che entrano in Italia, su richiesta di un cittadino italiano e al fine di ricerca lavoro, garantiti dallo stesso cittadino italiano che ne ha fatto richiesta allo Sportello Unico della Provincia di appartenenza*”.

<sup>315</sup> So called *chiamata nominativa*.

### 7.2.2.3 Residence permit and work permit

This provision was regulated by article 5 and aimed at connecting the possibility of residence in Italy to the existence of a job, so in practice if there was no job, there would have not been a residence permit. Furthermore, it imposed “on the sole employers the solution to the problem” to provide “a dignified accommodation to foreign workers” (7.43) (Sen. Viviani<sup>316</sup>, Atti Parlamentari, Senate Deb 29 November 2001, sitting 34, Commission for Work and Welfare).

Article 5 in the Senate had a total of 53 amendments and only 4 were approved. One of these was presented by the *Misto*<sup>317</sup> group while the other three were presented by the government speaker Senator Boschetto. However, nothing particularly substantial was added to the bill approved a few months earlier in the Cabinet.

As the text passed to the *Camera* and in particular to the 1<sup>st</sup> permanent Commission over 100<sup>318</sup> amendments came out from the analysis. Here on 9<sup>th</sup> May another major issue emerged: the addition of the subsection on the fingerprints for those migrants requesting a resident permit or the renewal of the permit<sup>319</sup> because “it is fair to know who you are dealing with” (7.48) (Dussin MP<sup>320</sup>, Atti Parlamentari, Chamber of Deputies Deb 13 May 2002, sitting 143, 28). However, for the opposition this measure gave the message that “foreigners are all potential criminals or ... subjects to keep under control” (7.49) (Mascia MP, *ibid*). The government favoured only four amendments<sup>321</sup> that consequently were approved: two (including the one on the imprints) proposed by the Commission and two minor ones proposed by Soda MP of the

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<sup>316</sup> DS-Ulivo.

<sup>317</sup> A ‘Mixed’ group is made up of several different parties ranging from extreme left to extreme right as well as Catholics: PRI, *Rifondazione Comunista*, MS *Fiamma Tricolore*, SI, *Comunista*, LAL, NPSI, LGU, MTL, Udeur-PE, Ind-Cdl, Cdl, *Italia dei Valori*, MIS, DC-Aut.

<sup>318</sup> 5.69; 5.1; 5.99; 5.17; 5.101; 5.41; 5.31; 5.70; 5.100; 5.43; 5.18; 5.68; 5.19; 5.71; 5.44; 5.104; 5.20; 5.72; 5.21; 5.105; 5.106; 5.73; 5.45; 5.22; 5.46; 5.67; 5.47; 5.40; 5.98; 5.74; 5.48; 5.23; 5.2; 5.24; 5.12; 5.3; 5.13; 5.25; 5.4; 5.93; 5.14; 5.92; 5.26; 5.15; 5.5; 5.75; 5.6; 5.76; 5.32; 5.33; 5.77; 5.49; 5.78; 5.94; 5.27; 5.34; 5.79; 5.28; 5.50; 5.16; 5.103; 5.29; 5.80; 5.51; 5.66; 5.52; 5.81; 5.35; 5.7; 5.82; 5.8; 5.36; 5.84; 5.37; 5.83; 5.120; 5.85; 5.95; 5.53; 5.65; 5.96; 5.86; 5.39; 5.9; 5.54; 5.38; 5.55; 5.87; 5.10; 5.88; 5.102; 5.107; 5.89; 5.56; 5.57; 5.58; 5.97; 5.90; 5.11; 5.59; 5.91; 5.60; 5.61; 5.62; 5.64; 5.300; 5.110.

<sup>319</sup> *Al comma 1, dopo la lettera a), è inserita la seguente: «a-bis) dopo il comma 2 è inserito il seguente: 2-bis. Lo straniero che richiede il permesso di soggiorno è sottoposto a rilievi fotodattiloscopici». Conseguentemente, dopo la lettera e) è inserita la seguente: «e-bis) dopo il comma 4 è inserito il seguente:*

*4-bis. Lo straniero che richiede il rinnovo del permesso di soggiorno è sottoposto a rilievi fotodattiloscopici». 5. 300. Il Relatore.*

<sup>320</sup> Northern League

<sup>321</sup> 5.111 (new formula for 5.110); 5.200; 5.31 and 5.45.

DS-Olive Tree party. In light of the many criticisms, the government passed on 3<sup>rd</sup> June<sup>322</sup> an order of the day to take digital imprints also of Italians. A few more final amendments were presented in Senate<sup>323</sup> just days before the law was finally passed but none was accepted.

This final section of the chapter has focused on the main challenges posed by the law and faced by the government and the organisations. The part on asylum was not seen as an issue by the government because of the ingenious inclusion of four provisions: the double procedure, the non-suspensive appeals, the decentralisation of the Commissions, and the establishment of SPRAR, essential for the integration of asylum seekers and refugees in Italy thanks to the inclusion of local authorities. Many within civil society and the opposition called for the articles to be withdrawn so as to bind the government to the promise to create the long sought after legislation. All in all however, the same organisations which tried to have the articles removed were pleased in the end by the decision to keep the articles as they put some order into the mayhem of the Italian asylum system.

The articles on immigration were more problematic because they saw the hostility rising between two parties within the same coalition but with two very different ideas of how immigration should be handled. The final law was quite different from what came out originally in the Cabinet at the beginning of the process due to extensive bargaining between the political parties.

### **7.3 CONCLUSION**

This chapter has focused on the policy-making process behind the Bossi-Fini law. The analysis of the debates, the survey of the articles of the time, as well as the interviews with NGO representatives and policy makers have highlighted some important points. Firstly, the dominance of the political parties in the majority that led to tensions within the same coalition. The LN in fact defended the harsher line originally outlined in the Cabinet. The Catholic CCD-CDU acted more in defence of migrants' rights thanks to the pressures exercised by the Church and in particular, the CEI and the Catholic pro-migrants organisations, but also the employers'

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<sup>322</sup> Presented by D'Alia MP of the CD-CDU party.

<sup>323</sup> Atti Parlamentari, Senate Deb 9 July 2002, sitting 208.

associations. The resulting final Act therefore was not as strict as it was claimed it was going to be at first. Some of the originally proposed harshest measures (for example, the crime of clandestine immigration and the withdrawal of family reunions) were scrapped at the very beginning. Instead, a regularisation programme for domestic and care workers was introduced and after the bill became law it was massively extended to all the other categories of workers. On the other hand, other severe provisions were put in as an alternative. However, these were more of a populist compromise for that part of the majority less inclined to a solidarist approach towards migrants in general, than a real threat. The Catholics were the real power-brokers as they were able to soften the law through bargaining. The government played a mediating role between the two parties.

Secondly, the chapter has highlighted the great difficulties of most of the advocacy groups especially those historically linked to the left or perceived to be on the left, in participating in the policy-making process. Many of these groups and especially Caritas, like the Refugee Council in the UK, used to run services for asylum seekers and immigrants. This factor however, did not give them favoured access as they were still not included in the policy process. The government, according to most of the civil society's respondents, was simply not interested in a dialogue as the few consultations showed. For others, the problem was not the lack of interest but the decisiveness and strength of the government. Pro-migrant organisations lacked political opportunity because of the government's political make-up. For these reasons they can be characterised as issue networks. They had a completely different view from the government of how asylum and immigration should work. Furthermore, due to the closure of the government, advocacy groups were only able to express their concerns and lobby their political referents, thus weakening collaboration with each other. Furthermore, interviews highlighted that although organisations had known each other for a long time and collaborated fairly well together, their cooperation was not sustained throughout the policy debate but varied according to the period and the topic. This is because immigration and asylum were still relatively new in 2001/2002 and associations were not well organised, while coordination from the UNHCR was just starting. Collaboration was also difficult at times because of the lack of funding and competition to get policy makers' attention. Finally, the resources available to the organisations

were also different. For example, the UNHCR, thanks to its extensive experience and knowledge of the issue and to the relative interest of the government on asylum, was perceived as being the most adept with which to discuss the matter. The UN agency was able to deploy a certain degree of pressure and collaboration with the Ministry of Interior. On the other hand, immigration was a much more a delicate subject. It stemmed from a political and ideological attitude and had a different set of actors involved, creating a strange alliance between the employers' organisations, the Church and families.

The third point relates to the relationship between asylum and immigration. The Bossi-Fini was born to regulate immigration but especially to deter unwanted migration. It was therefore quite restrictive. The interesting thing about the process is that despite the government's closure towards any possible social aspect related to improve immigrants' lives, it introduced two articles on asylum. This was unforeseen by many working for migrants, first because Italy did not have legislation on asylum and second because a centre-right government succeeded where previous centre-left governments failed. The two articles, although not complete, at least bridged the gap existing until then in Italy. Furthermore, all the unpleasant fights that happened on the immigration side did not happen on asylum. This was partly due to the fact that these articles had a government origin – they were written by the Minister of Interior together with the Prefect in close alliance with the UNHCR – but also because asylum was not perceived as being as problematic as illegal migration and finally, it was a process long overdue.

Fourthly, the policy process has illustrated that although politicians were still the main mediators in the decision-making process, they felt the pressure exercised by others (Klijn and Skelcher 2007). The findings have showed that policy was the result of a mix of 'top-down' and 'bottom-up' approach. The governance of networks was nevertheless minimal. On one side, there was the closure of the government and on the other side, the pressure of very few organisations (the CEI and its Catholic organisations, the employers' associations, the UNHCR in collaboration with ANCI that from its part involved the mayors of both main coalitions) on points that the government could not possibly ignore. But the fact that they had their voices heard by the government and the moderate Catholic parties within the majority illustrates a



bottom-up approach for policy making. Some of the requests brought forward by these categories were observed to improve or soften the norm in some of its harshest parts.

The mixture of top-down and bottom-up approaches links national, regional and local views on the matters of asylum and immigration which overlapped frequently and were permeated by party politics at a high degree. Power within government was less geographically centralised than it might have been because of the determination of the political parties as well as the bottom-up pressure deriving from local mayors to improve services for asylum seekers and as well as satisfying the labour market needs of the Italian regions.

## CHAPTER 8

### COMPARATIVE ANALYSIS OF THE ASYLUM POLICY-MAKING PROCESS IN THE UNITED KINGDOM AND IN ITALY

The aim of this chapter is to use the analysis of the asylum policy processes in Chapters 6 and 7 to determine how far they reflect the nature of the two states. Despite their dissimilar historical, economic, social and political developments, the two countries in 2002 created asylum and immigration policies with very similar goals, aimed at deterring illegal entry to the detriment of basic rights for asylum seekers. Yet, the way in which they reached their aim was unquestionably different. The two Acts are therefore a way to understand how far the policy-making process is a product of national political structures.

During the analysis three key themes that are pertinent to both countries have emerged:

- 1) The existence of issue networks
- 2) The nature of the political systems
- 3) National, regional and local levels of policy-making

These themes reflect the research questions and hypotheses set out in Chapter 1 and they are concerned with government power to create asylum and immigration policy in the presence of other actors within the policy domain (hypotheses 3 and 4). They also relate to the ability of the government to deal with party politics, given the difficult issue of asylum in the UK and immigration in Italy as well as the nature of their political systems (hypotheses 1 and 2). Although both Acts were government initiatives, the political leaders differed in the two states. Whereas in the UK there was a lot of political steerage coming from No.10 and the Cabinet Office through influential individuals such as the Prime Minister and the Home Secretary, in Italy it was the political parties in the majority that set the rules of the game while the government acted as mediator. Both governments had to deal with internal constraints that were different in nature, resulting in compromises in order to pass the two laws. Furthermore, a comparison of how party politics affected the formation of asylum policy reveals the importance of different levels of policy-making: national, regional and local. The national level was represented in both countries by the governments' and the political parties' expression of how

asylum and immigration should work and be regulated. The regional level in the UK was linked to the establishment of accommodation centres away from London and the South East; in Italy, the regions contributed to the decisions related to immigration quotas. Finally, the local view was expressed in the UK by local residents, local authorities and MPs opposing the government's plan to build accommodation centres; in Italy, it was conveyed by local employers in need of labour power and by mayors in need of support from the government to run services for asylum seekers. These themes account for similarities and differences in the attitudes of the two governments towards immigration and asylum in 2002, and the different perspectives of policy-makers and civil society<sup>324</sup> towards each other and towards the two issues.

The themes are developed in the chapter as follows. Firstly, the similarities and differences between the networks at civil society level and their relationships with the governments are highlighted. Secondly, government's ability to make asylum policy given the constraints and the political compromises they had to deal with, is covered in the second part of this chapter. Finally, how the two political systems were affected by the actions of political parties is discussed. This was particularly evident in the Italian case where the coalition parties displayed very strong yet different ideologies and were the most prominent actors at all three levels: national, regional and local. In the UK – although these three dimensions are present – it was especially at local level that party politics permeated the most because of the protests within the Tory constituencies. Hence, the relationships between the central core and the periphery (i.e. the government and the other two levels) were very different in the two countries precisely because of the political parties' influence.

### **8.1 KEY THEME 1. ISSUE NETWORKS: DIFFERENCES AND SIMILARITIES.**

While the literature review in Chapter 2 highlighted the major differences between the various concepts of policy networks, Chapters 6 and 7 showed that in both countries in 2002 issue networks were key, despite differences in the states' political and welfare systems. These networks were formed by advocacy coalitions working for the welfare of asylum seekers and

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<sup>324</sup> For civil society, I intend NGOs, charities, the UNHCR and trade unions.

migrants. As proposed by hypothesis 3 – which presupposes the change from ‘government’ to ‘governance’ – the advocacy groups tried to influence the law through direct and indirect lobbying.

The issue networks in the two countries were different in nature. To begin with, the Italian networks were not as established as the UK ones. The research has picked up a higher degree of instability in Italy in both meetings and disagreements. In the UK, in contrast, meetings within networks were more regular and structured. Groups were also often invited to both official and unofficial meetings with several policy-makers as well as civil servants, regardless of the political party they belonged to. In addition, there were more internal conflicts in the Italian network than in the UK one because of differences of opinion and also because of the different interests involved. In Italy, their mandates often overlapped due to their internal statutes but generally they worked together as they had before on several other occasions.

In terms of the nature of the political system, as per the second hypothesis, the governments displayed different attitudes with regard to the lobbying of NGOs and charities. While in the UK basic consultation was widespread, in Italy it was kept to a bare minimum according to government wishes. This is because the UK government did not feel threatened by the groups that did not have the support of the public. In particular, No.10 chose to engage more actively with the Refugee Council on the question of accommodation centres (hence, the decision to run a trial with a smaller one) because of the widespread local hostility towards the government’s decision and the pressures exercised in the Lords. In Italy, the government displayed two different behaviours. On asylum there was widespread consultation between the Ministry of Interior and the UNHCR while political parties did not interfere. The UNHCR acted as mediator with the other groups that were left out from the official process. On labour migration, only employers’ groups and some experts (for example, the Navy) were included in the consultation process while advocacy groups were deliberately kept in the dark and excluded by the official government consultations. The thesis is that the government did not want to deal with ‘unnecessary’ delays<sup>325</sup> because of humanitarian reasons (the Church was already

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<sup>325</sup> The previous centre-left government did entertain wide consultations with NGOs and charities while discussing the Turco-Napolitano law. This resulted in longer discussions and possibly delays.

performing this duty) and also felt threatened by the pro-migrant groups. It wanted to keep hold of the operations as much as possible while keeping interference to a minimum in order to appear stronger. In relation to labour migration, some Catholic organisations backed by CEI were none the less still able to communicate with some policy-makers and, albeit disorderly, they were able to influence to a degree the policy process. They had to revert to lobbying on a one-to-one basis i.e. with “legislators of like ideological predisposition” (La Palombara 1964, 249). The bishops were the only ones who were allowed to communicate with the government. However, these meetings happened behind closed doors. The work of NGOs and charities was nevertheless weakened by this strategy as their work as a unit suffered. On the other hand, the influence of the Church and employers’ groups was strong and the government had to accept that their requests were not only moved by humanitarian concerns (at least in the case of the Church), but also and especially for utilitarian needs. Some sectors of the Italian market necessitated the use of foreign labour and the black market was widespread. At the same time, because “welfare is a matter of familial responsibility” (Bloch and Schuster 2002, 398), things were particularly difficult for those with no family support, which included refugees and asylum seekers. Italian families in particular, have come to rely more and more on foreign care workers and domestic helpers. It is easier to understand in this context the important role played by the Catholic world in the making of the Bossi-Fini and the regularisation of illegal migrants employed by families. This reinforces Esping-Andersen’s (1990) description of the corporatist Italian welfare regime, whilst showing similarities to the Mediterranean welfare systems (Ferrera 1996; Sciortino 2004), that is, a non-interventionist state and underdeveloped family services. The regularisation, therefore, became the necessary tool in the attempt to put some order into this situation. Notwithstanding these differences between issue networks in the two countries, the UK pro-migrant groups cannot be considered more powerful or successful than the Italian ones. What constituted success for the UK groups could only be measured by the amendments presented in parliament, following friendly all-party meetings or more structured *fora* organised by the government. Both types of meetings served the purpose to inform MPs and Peers of the current asylum situation. The organisations on the other hand, did not feel they had a particularly privileged relationship with the establishment or that they had any influence at

all. Groups had limited public and media support apart from the Guardian newspaper (interview with Pearce). The fact that asylum and immigration were highly politicised issues (due to asylum being perceived as a threat as proposed by hypothesis 1), makes the work of associations very difficult and frustrating. They may have had some results, but only at the margins, and made things appear more controversial. The main problems they pointed towards were: the government's large majority, the electoral advantage in taking a strong stance against asylum seekers, the public opinion polls that were putting asylum at the top of people's concerns and finally the Daily Mail's negative headlines. Another element that emerged during the analysis was the last minute changes affecting further the governance role of stakeholders. Chapter 4 for example, showed that during the making of the 2002 NIA Act, two important provisions<sup>326</sup> were added at the last minute. The advocacy groups therefore did not have the chance to discuss the issues thoroughly among themselves and to inform MPs and Peers of the consequences of these new obligations. The thesis is that these moves were made at the last minute in a way that would hinder any possible objection or opposition. In Italy, despite the weakness of the pro-migrant groups as a whole, Catholic groups were still able to permeate the fortress built by the government. They did this by communicating directly with individual Catholic policy-makers with whom they had a political affiliation, in unofficial one-to-one meetings.

There are three similarities among the two networks. Firstly, there was a lack of similar ideology between the governments and pro-migrant groups in both countries. The groups demanded less strict laws and more rights for migrants while the governments were reluctant to grant them. There was, as a result, limited trust and cooperation between the core executive and network members. At most, there was consultation on specific aspects of the bills. Secondly, the groups in both countries shared few and unequal resources (e.g. in terms of obtainability of funding, number of staff, knowledge and availability of time). The big organisations had more resources. In Italy, this was particularly important as Catholic groups were advantaged compared to their non-Catholic counterparts, owing to the political formation of the coalition

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<sup>326</sup> These were: section 55 that removed all benefits from in-country applicants if their claim was not made "as soon as reasonably practicable" after the person's arrival; and Section 94 that introduced the concept of 'clearly unfounded' asylum applications and denied in-country appeals (non-suspensive appeals).

government which comprised the Catholic group CCD-CDU. So, despite the unavailability of the government to discuss the law with the advocacy groups directly and openly, the Catholic groups were still able to communicate indirectly with their MPs. Thirdly, only those groups with more status had access to the governments. This applies specifically to the RC in the UK and UNHCR in Italy. They were the biggest, best resourced and best known pro-asylum organisations and were often officially invited by the UK government and its MPs (who relied heavily on their briefings) and by the Italian Ministry of Interior to take part in meetings.

To explore further the role played by issue networks, the theoretical framework<sup>327</sup> of Marsh and Rhodes (1992) is used.

### **8.1.1 Membership: participants and interests**

Pro-migrant organisations usually have a very large, fluctuating membership that makes them unstable due to the lack of resources (for example limited funding). They also have limited vertical interdependence (Marsh and Rhodes 1992).

In the UK – contrary to Italy – there are many pro-asylum groups. Some of these in 2002 gathered under the umbrella group ARC chaired by the Refugee Council. The RC co-operated with refugee community organisations (RCOs) keeping them abreast of any developments while asking them to lobby their MPs. RCOs were too many and too small and did not take part in the ARC meetings. There was some limited vertical interdependence as the smaller groups depended on the information passed on to them by the bigger members of the network.

The situation in Italy differed because of the closure of the then government to most types of charitable or advocacy lobbying. Because the UNHCR was the only recognised organisation among the advocacy groups to have access to the Ministry of Interior, it was the main spokesperson for the other associations. This dependency was limited by the fact that the UNHCR's only interest was in asylum and not in labour migration. As a specialised refugee organisation and because of its internal statute, the UNHCR could not comment on immigration matters. Other organisations concerned with both immigration and asylum would instead pronounce themselves on both aspects. On the other hand, due to the specific dual nature of the

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<sup>327</sup> For the full explanation see Chapter 2.

Bossi-Fini regulating both immigration and asylum, the UNHCR would “comment or intervene upon” both (8.1) (Interview with Humburg). A consequence of this dependency and behaviour was that the Italian organisations had to remind each other’s remit occasionally in order not to trespass the remit of other organisations. As Schiavone pointed out, a reason why this situation may have arisen was because of the lack of experience and coordination especially on the part of the UNHCR as at the time “there were no negotiating tables ... we were not in the habit of discussing things, the UNHCR was not used to coordinate the NGOs” (8.2) (second interview).

Another typical feature of pro-migrant groups is that different interests normally permeate the network. This was the case in both countries. Some groups were more concerned with services (and the financial aspects related to run these services) while others focused on the legal or policy development aspects. This produced several networks in the UK: on detention, on the EU, on support and on policy. They were able to work together on the different aspects of the bill and their collaboration was for the most part very positive. In Italy the picture was different. There was one network formed by organisations whose interests were more practical as they ran services and managed funds (for example, Caritas) and others that were more concerned with the juridical aspects of the law (for example, ASGI or AI). None of the pro-immigrant organisations mentioned during the interview a possible collaboration with the business groups, despite some of the claims being similar, such as the reinstatement of the sponsor programme. They may have had common interests at stake – those of expanding immigration and to regularise illegal migrants – but they seemed to operate on two separate levels. Whilst the Catholic groups’ stance was more humanistic and they were keen on the regularisation of domestic workers and care helpers, the employers’ groups were market oriented, asking for the regularisation of all the other categories of undocumented migrants. Nevertheless, this alliance served the purpose of introducing the regularisation of domestic workers and care givers contained in article 33 of the Bossi-Fini and, a few months later, extending it to all other categories of migrants.



### 8.1.2 Integration: frequency of interaction, continuity and consensus

The fluctuation of membership over time was not an issue for this research. This is because to identify any changes that may have an impact on policy implementation would require a prolonged period of study measured in years. Because this research focuses on the formulation of two specific laws, the period taken into consideration is much shorter (i.e. 8 months for the Bossi-Fini and about 7 months for the 2002 NIA Act). There was, however, fluctuation in the intensity and quality of contacts, especially in Italy. Here, although organisations had worked together before, they did not have any structured network so meetings were often happening *impromptu*. Besides, due to the government's political make-up, the majority was less open to discuss the matter, especially with associations with a left-wing orientation or background. As a result, the associations had to resort to lobbying MPs on a one-to-one basis thus weakening the potential for cooperation. In the UK, interaction among groups was more frequent. Contrary to the Italian case, there were two main structured networks with meetings organised by NGOs and those organised by the Home Office. For example, the ARC meetings would happen on average every two weeks while e-mails were a regular feature for exchanging information. Access did not fluctuate over time rather, according to the issue: "policy or ... welfare support, benefits, accommodation, housing or ... vouchers, or ... detention, or ... enforcement" (interview with Shaw). This meant that the organisations could not develop a strategy for the development of the legislation as a whole thus undermining their lobbying activities.

In both countries conflict was present between the government and the lobbying groups because of the nature of the asylum issue. Because issue networks tend to form around a delicate topic, conflicts with the government are common. This was certainly the case of asylum in the UK, where a predominantly strong core executive decided the sorts of the legislation. It was also the case of labour migration in Italy, where the political context was dominated by the political parties in the majority and where it was decided at Cabinet level not to interact with pro-migrant groups in order to keep conflict (and delays) to a minimum. There was a "genuine ideological divide" (Somerville 2007, 114) between pro-migrant organisations<sup>328</sup>, concerned

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<sup>328</sup> Italy: ARCI, Caritas, *Centro Astalli*, CIR, *Comunità di S.Egidio*, ICS, FCEI, trade unions and UNHCR; UK: AI, IAS, ILPA, JCWI, Justice, Liberty, and RC. These are the stakeholders who had more resources to

with the wellbeing of all migrants regardless of the authenticity of their claims and the government's<sup>329</sup> concern with keeping numbers down and with maintaining its credibility in front of that part of the voting population requesting a decrease of inflows. Migrant organisations, typically, criticise governments because their policies tend to implement strict measures to the detriment – rather than the benefit – of the migrant population. Because of these criticisms, governments are less likely to involve NGOs and charities in shaping policy as was the case here. As such, any effort to bring about substantial change is hampered because it is not in the interest of the government. This research showed predominantly “a relatively weak pro-migrant lobby” that worked “in a political context ... strongly dominated by the state’ (Statham and Geddes 2006, 265). Nevertheless, groups in the UK were invited to take part in official meetings organised by the government whilst in Italy official meetings with the government happened only a couple of times.

Conflict was not a unique feature of the relationship between the governments and civil society though. Tensions also existed among participants of the networks, mainly in Italy. In the UK, groups within the advocacy coalition network were a ‘shared-knowledge’, ‘shared-beliefs’ and often a ‘shared-action’ group (Hecló 1978). Cooperation stayed strong due to the “common enemy” (interview with Hardwick): the government. Being fairly well organised, groups would decide together their next steps showing general consensus on how to lobby the government. In Italy, groups shared knowledge but not always beliefs and even less actions because of the one-to-one interaction with their MPs. Overall, most interviewees judged the relationships with each other as positive. On the other hand, the situation the groups were in was also considered quite chaotic because there was no coordination. Furthermore, the different interests involved and the dual nature of the legislation led to moments of less cohesion. The number one issue for the Italian government was illegal migration in connection with the black market rather than

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lobby the governments/MPs, who were more vocal by organising protests for example, the trade unions in Italy, whose briefings and cooperation were often quoted in Parliament and also those (the majority) that agreed to be interviewed.

<sup>329</sup> It is from January 2001 a paper published by the Home Office entitled *Migration: an economic and social analysis* that put asylum seekers, illegal entrants, overstayers and family reunions on the same level. In particular, the paper claims that asylum seekers can “choose their choice of destination” based on “political factors, cultural, family and personal ties, and perceived economic opportunity”. As such, “people ... will switch between different migration categories in response to those same incentives” (Glover *et al.* 2001, 11).

asylum. This, together with the fact that the principal communicator on asylum with the Ministry of Interior was the UNHCR pushed the pro-migrant groups to concentrate their efforts specifically on labour migration and particularly on the regularisation programme. This caused the *Comunità di Sant' Egidio* to be criticised by other groups and by the opposition then in government for its choice to concentrate efforts on the regularisation of domestic helpers and care workers only (instead of including other categories of undocumented migrants, such as factory workers or those employed by farmers or even failed asylum seekers). As a service provider, the *Comunità* was in daily contact with people at both ends: migrants (legal and illegal) and the people who employ them, especially families. At the time, they were aware that one of the main problems Italian families had to face was the lack of helpers for the elderly and for people with disabilities. This is the legacy of a “rudimentary welfare state” (Menz 2008, 234) whose provisions for its citizens are minimal<sup>330</sup>. The need for carers was therefore great and the Catholic association felt they had to push in that direction. Their position is understandable partly because of the government’s particular critical stance against illegal migrants, despite the market’s need for this type of work force, and partly because the asylum ‘problem’ was repeatedly pushed away with the promise to tackle it at a later stage. Another cause of concern (and conflict) was in relation to the suspensive appeals. The UNHCR was heavily criticised by the ICS for not being more assertive with the government. The refugee agency made a historical, social and political evaluation based on the then asylum system in Italy (second interview with Schiavone). They preferred to obtain a general improvement of the situation – considering that there was no asylum legislation and no asylum procedure – rather than jeopardize matters to push for an improvement that may not have happened anyway. A final source of conflict was in relation to the availability of resources. Although this was linked specifically to the creation of the PNA that happened a couple of years before the Bossi-Fini, this may have had repercussions for the future collaboration of the groups. This is discussed in the next section.

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<sup>330</sup> Welfare entitlements for immigrants are even more basic from the lack of public housing availability, to “casual, highly precarious, poorly paid employment” (Menz 2009, 234) to the compulsory report of illegal migrants by doctors.

This section has demonstrated that UK networks were better structured and organised and had a higher degree of interaction. The openness of the UK government to consultations with these groups also helped towards this collaboration in the network. In contrast, collaboration in Italy was hampered by the reticence of the Italian government to interact with groups during the policy process, ‘forcing’ them to interact with their MPs on a one-to-one basis rather than as a group, and finally to the difficulty of the law itself that covered asylum as well as labour migration.

### **8.1.3 Distribution of resources**

Lack of resources (as in funding, people, time, knowledge) led to the instability of networks. This meant that only the largest or better known organisations had a chance to lobby policy-makers through face-to-face meetings or to attend meetings organised within the network. In Italy, the lack of financial support created issues with regard to the distribution of funding. The groups more concerned with the delivery of services feared the competition and the possible decrease of funding on which depended their own survival. Prior to the Bossi-Fini and during the set-up of the PNA in 2001, some of the groups, that had until then managed the services for asylum seekers through funding coming from different sources, clashed quite fervently. They did not appreciate the entrance of ANCI onto the floor as one of the main service providers because “the start of a public system of reception” was considered “as a sort of competition” (8.3) (second interview with Schiavone). During the discussions of the Bossi-Fini these clashes did not materialise but two interviewees implied that these disagreements had repercussions for future group collaboration. This may explain, partly, the lack of a more structured teamwork. On the other hand, through article 32 of the Bossi-Fini, the PNA institutionalised the establishment of the National Fund for the Policies and Services on Asylum<sup>331</sup>. According to this fund all local bodies may request financial support to deliver services for the integration and reception of asylum seekers not staying in identification centres (also established by the law). Allegedly, some groups preferred to maintain a softer line with the government (for example, on the issue related to the non-suspensive appeals for which the UNHCR was criticised) in the

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<sup>331</sup> Fondo Nazionale per le Politiche ed i Servizi dell’Asilo.

hope of getting a “slice of the wedding cake” (8.4) (Briguglio 2002). This would explain the lack of clashes on the same issue that instead heated the discussions just one year earlier.

#### **8.1.4 Power**

The consequence of having unequal resources and unequal access to government meant that organisations had unequal powers in helping frame legislation. This corroborates hypothesis 4 according to which power is held unevenly within the network. However, power in this case is a relative notion because the limitations of the associations were great. The most important obstacle was that the two governments kept outside lobbying to a minimum and well under control. Besides, the ability of the largest organisations to generate change in the legislation was hampered by the fact that their relationship with the governments was merely consultative.

The two organisations that had privileged access to the government were the RC in the UK and the UNHCR in Italy. The RC had a bigger role than others in relation to accommodation centres. Its technical knowledge of asylum in the UK and non-confrontational attitude gave it status in the eyes of the government that was becoming more and more uncomfortable about the widespread objections to the centres. Also the fact that the RC ran services for the Home Office in 2002 gave it more power and influence compared to other organisations. The only comparable national organisation in Italy to the RC, the CIR, had similar goals to the RC (lobbying activities, sensitization of the media and public opinion, social and legal support) but did not run services on behalf of the Italian government. This explains why CIR was not included in the consultations by the government; they were not needed to offer a consultation that the UNHCR was already providing. The UNHCR in fact was

the leading organisation to have relationships with us, with the legislator and also with the government. It was the most active one, it was also the most identifiable, the most recognised. It had a series of qualifications that made it more reliable, more reliable than others (8.5) (interview with Sen. Boschetto<sup>332</sup>).

The UNHCR shared with the RC deep knowledge of the asylum issue and a non-confrontational attitude that gave it status and increased its chance of being consulted. It found an important ally

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<sup>332</sup> Interview date: 15<sup>th</sup> February 2012.

within the Ministry of Interior with which it collaborated very closely to create the two articles on asylum.

In the UK, the government was open to limited consultation with NGOs and charities. These civil society groups lobbied individual MPs who in turn lobbied the government. They were also invited by Ministers to attend official meetings, though more often by MPs who needed background information or to be briefed on a particular topic. The 2002 NIA Act was quite a technical bill and NGO's knowledge and expertise was welcome and sought after. Lord Dubs' view was that "compared to most European countries access is much better here just by tradition, by convention" (interview). Nevertheless, the ultimate influence of NGOs on the final Act was minimal. The Italian government was not so gracious. Its claim was that it listened to everybody without exception. However, it was "a partial listening" (8.6) (interview with Senator Boschetto). Analysis of the documentation in Chapter 7 revealed that only the biggest interests (i.e. the employers' associations) were invited to take part in official meetings and also in "less visible forms of lobbying, consultation, and even co-decision making" (Menz 2009 236). In reality, the government was for the most part sealed off from any kind of lobbying coming from NGOs, charities and trade unions, a line decided at Cabinet level due to the legislation being "a contribution extensive in scope ... this was a law that involved a lot the people understood as society" and as such, a plurality of issues (8.7) (interview with Senator Eufemi). All migrant organisations were left out to minimise interference. By letting down the guards and allowing groups to infiltrate, "the government risks losing the management of the control room" (8.8) (interview with Senator Eufemi) as pressures in Parliament may weaken it. Furthermore, the government wanted to proceed speedily and close the matter as soon as possible in order to maintain its promise to the electorate to stop illegal immigration.

This section has showed that both countries had issue networks despite the marked differences in the way the two policies were created. The application of the case studies to the framework on issue networks developed by Marsh and Rhodes in 1992 helped identify the similarities and differences between the networks in the two countries. However, their theoretical explanation did not fit thoroughly with the reality of these particular case studies. For example, the networks in the UK would meet up regularly, in opposition to the theory that

assumes fluctuation of contacts. On the other hand, their theory entails studying a field for a prolonged period of time (e.g. years) in order to be able to show the impact of networks on policy outcome. The case studies in this research take into account a shorter period of time.

Conflict was also an issue that was not met in the UK while in Italy, although present, it was not an important feature of the meetings.

Marsh and Rhodes' framework, to the best of the researcher's knowledge, has never been used in a comparative approach to find out the asylum policy-making process. It was therefore useful to highlight important differences that define the networks in the two countries.

## **8.2 KEY THEME 2. NATURE OF POLITICAL SYSTEMS: THE DETERMINATION OF WESTMINSTER AND THE WEAKNESS OF MONTECITORIO, INTERNAL CONSTRAINTS AND LEVELS OF COMPROMISE**

The second key theme that emerged during the analysis was the ability of the governments to make asylum and immigration policies, given the constraints they encountered and the levels of compromise they had to adhere to in order to pass the laws. This is related to the nature of their political system as presented by hypothesis 2.

In both countries the bills were government initiatives, reflecting the urgency of asylum in the UK and illegal migration in Italy. National sovereignty was perceived to be at stake, while public opinion was against migration and media pressure, especially in the UK, was strong.

In the UK, the decisiveness of the government, the lack of bargaining with other political forces and with asylum lobbying groups that were at most consulted, is consistent with the 'Westminster Model'. This means that the British government was characterised by parliamentary sovereignty, strong executive and "majority party control of the executive (that is, prime Minister, cabinet and the civil service)" (Rhodes 2003, 5). The creation and the increase of activity of the Prime Minister's Policy Unit together with the "Downing Street Press Office ... and a Strategic Communications Unit reporting to the Chief Press Secretary" (Holliday 2000, 170), further demonstrate this point: control was key. The research has demonstrated that in the UK, despite the government's openness to consultation with groups, the law was made in the core of the government, the Policy Unit, "under clear direction steers from the politicians"

(interview with Home Office Official 3). These were the Prime Minister, Tony Blair, the Home Secretary, David Blunkett, Nick Pearce, “a huge architect of the Act” (*ibid*) and a few other senior officials with an interest at stake. The strength and determination of the government and its leaders does not mean that compromise did not happen. The government had to grant concessions in the Lords<sup>333</sup> after three important defeats. Two events occurred that changed the state of affairs within the government: the meetings between the Peers and NGOs during the summer; and the obstructions caused by the protests in the Conservative localities chosen for the centres. These two aspects led to the defeats in the Lords and the relative victory of the Tories. The consequence of these defeats allowed for some bargaining to happen and concessions did occur. The Conservative party’s weight as the second biggest party after Labour was certainly important but the alignment and the continuity of asylum policy between Labour and Conservatives was also a factor not to under evaluate. The Act in fact, continued the restrictive policy-making style of the Conservatives, for example, on the further curtailment of welfare entitlements. The Tories also supported the amendments related to the unfounded human rights and non-suspensive appeals while the establishment of the centres’ initiative found general agreement across party lines. On the other hand, the decisiveness of the government not to give in (too much) to pressures and to compromise only on essential but minor aspects are also indicators of its strength. Clearly, the UK government’s authority was prevailing over everything and everybody else. In essence, the last word was still that of the government that maintained throughout the debates a strict attitude towards the law. The real constraint on the government was represented by judicial reviews rather than NGOs lobbying. What seemed to be working generally were the legal challenges<sup>334</sup> “on very specific points of

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<sup>333</sup> For example, the experiment with one smaller centre; the permanence in accommodation centres for families with children from 6 to 9 months (as Simon Hughes from the opposition party Liberal Democrat had originally proposed in the House of Commons) further extended it to all asylum seekers in the House of Lords; and the establishment of a monitoring system of the centres (another ‘victory’ of the Conservatives in the Lords).

<sup>334</sup> For example, the provision to deny welfare support to asylum seekers who did not claim “as soon as reasonably practicable” that is immediately after their arrival in the country. Two particular issues arose. One was the risk of destitution so the Home Office legal advisers had to prove that if an asylum seeker stayed with friends or family he/she was not at risk of destitution. The other was how to make sure that asylum seekers knew they had to claim immediately. The suggestions were tested in the Courts as a pre-emptive measure. In the first case, it was found that there was a breach of article 3 of the ECHR and therefore the law had to be changed. In the second case, the Home Office had to put up signs in the ports (Refugee Council 2004a). In Italy, judicial review exists but in a different format. According to article



legal policy” (interview with Dr MetCalfe). Some groups supported judicial reviews of government’s decisions and that was a factual and “frequent constraint on executive power” (interview with Pearce).

In contrast to the UK, in Italy the debate on illegal migration was the real issue and was subjected to the pressures coming from two opposite forces within the ruling majority – the CCD-CDU, which promoted the interests of the Catholic world, and the NL, which opposed immigration based on principle – leading to strong clashes. The government had mainly a mediating role showing both its inability to control the parties within its parliamentary majority and, to a degree, fear of their power, in case they decided to make the government fall – an aspect not to under evaluate in the ever fragile Italian political system of coalitions. The core of the government therefore was not as compact or decisive as the British one. Furthermore, because of the clashes within the majority, the concessions given in Parliament were much more consistent than those in the UK. For any contentious measure, there was a ‘softer’ amendment to counterbalance the situation. For example, the original statements made by the government on the bill said that no amnesty was ever going to happen. This was done to reassure public opinion that they were going to take their distances and discontinue the previous centre-left governments’ policies. However, the confrontations between the Northern League and the Catholic Party CCD-CDU led to the regularisation<sup>335</sup> of illegal migrants. Being based on a coalition, the then government was very sensitive to its members’ rants especially when they threatened to vote against the bill (interview with Volonté MP). The parties of the ruling coalition in fact, came from very different backgrounds and as such, did not share the same ideologies. In contrast to the UK, the opposition parties failed to bring about any change. This was mainly because of the resolution of the government not to open up any dialogue but it was also due to the fact that the opposition was divided into a “galaxy” (8.9) (interview with Brutti

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134, 1<sup>st</sup> comma of the Italian Constitution, the Constitutional Court can annul anti-constitutional laws after scrutiny.

<sup>335</sup> To note the use of the term ‘regularisation’ (*regolarizzazione*) rather than ‘amnesty’ (*sanatoria*). It was a strategic decision made by the government to reassure their electorate that the two terms had different connotations and results. In reality, they had the same meaning. It was a “pun (*gioco di parole*)” because “the term ‘*sanatoria*’ was linked to the polemics from the previous years” when “both a part of AN and the League argued strongly against the amnesties made by the centre-left; they could not call it an amnesty” (interview with Brutti).

MP<sup>336</sup>) of many groups big and small that hardly shared the same position<sup>337</sup>. It was not a compact group, decreasing further their chance of a victory. This is mirrored in the hundreds and hundreds of amendments presented by the opposition. These were all rejected, showing the determination of the majority to conclude the process quickly and without interference. On the asylum front, things developed very differently. Because of the lesser importance of asylum matters for policy-makers, the two articles on asylum did not encounter any major obstacle. Whereas the welfare entitlements of asylum seekers in the UK were further curtailed in the hope of discouraging more asylum seekers from coming to the country, the welfare of asylum seekers and refugees in Italy was slightly improved through the institutionalisation of the PNA now called SPRAR<sup>338</sup>. In the case of the UK the changes related to the welfare happened through intra-governmental discussions; in Italy ‘bottom-up’ pressure coming from mayors through ANCI and the UNHCR was fundamental for the developments.

This section has substantiated that, due to the different political contexts, the laws were developed in contrasting ways. Firstly, the emphasis in the UK was on asylum and in Italy it was on illegal migration. A different attitude was showed towards asylum in Italy. Here, policy-makers did not perceive asylum as a major problem but for the first time the legislation contained two articles on the question. Secondly, the role of the core executive differed considerably with the Italian government acting as a mediator and the UK Policy Unit taking charge of the development of the law. Even in Parliament the tone used by policy-makers during the debates was drastically different. In the UK it was far more gentle and polite than in Italy. This does not mean that there were no conflicts as

in the Commons they hit you over the head with a blunt instrument and here [House of Lords] they stick a knife in your back, give it a twist, it comes out and it's such a small knife that doesn't show but the wound is deep and it hurts. They can be quite tough but they are tough in a more polite way (interview with Lord Dubs).

“Montecitorio” on the other hand, “is still a long way from Westminster” (Zucchini 2008, 112; see also Capano and Vignati 2008). Debates were characterized by a “chaotic struggle” and it

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<sup>336</sup> Interview date: 15<sup>th</sup> February 2011.

<sup>337</sup> For example, the DS tended to separate their position from that of the radical left although there was a convergence of ideas because of the severity of the proposals (interview with Brutti MP).

<sup>338</sup> See Chapter 5 for an explanation.

was not evident when the “battlefield” (*ibid*) became clear political confrontation. Shouting and insults happened often as the LN and CCD-CDU’s requests were radically different, leading to several intra-coalition conflicts but also bargaining between parliament and government.

The next and final section is dedicated to the third key theme that has emerged during the analysis.

### **8.3 KEY THEME 3. THE THREE LEVELS OF POLICY-MAKING: THE PERMEATION OF PARTY POLITICS AT NATIONAL, REGIONAL AND LOCAL LEVELS**

This section looks at how the political parties permeated the national, regional and local dimensions during the policy process in 2002. The way party politics developed and affected asylum policy in the two states was very different, showing once again the dissimilarities in their political systems. This in turn had an impact on the way the two laws developed. This section is related to the first two hypotheses that deal respectively with the nature of asylum and the nature of the political systems. The nature of the nation-states’ political systems determined how they responded to the perceived threat of asylum/illegal migration. The three levels were not as distinct and separate as it may appear. They overlapped often (especially in Italy) precisely because of the relationships between the main political parties at all levels.

In the UK, the national level prevailed thanks to the strength and unity of the core executive and its majority in the Commons. Here, the NIA Act’s main opposition came from some Labour backbenchers, the Liberal Democrat party and – on some issues – the Conservatives. The trial of accommodation centres cut across parties in terms of consensus. The main difficulties were encountered in the House of Lords. In spite of this, even in the Lords where Peers are more independent from party politics, they did not insist too much on certain issues such as the ‘refusal of support’ and the ‘unfounded human rights’ clauses. With the latter clause in particular, the Conservatives in both Commons and Lords agreed with the government because they had proposed something very similar just a few years back. Despite concerns in terms of human rights, generally the opposition in the Lords aligned itself with the government’s strict position. The national view, however, clashed with the local level because

of the proposals to establish accommodation centres in rural but wealthy Conservative constituencies causing disagreements among citizens and local authorities. The local level had the 'merit' of delaying the policy process for two main reasons. First, local citizens and their local authorities opposed the accommodation centres fiercely. The protests caused the government to open an enquiry and consultations with the locals. This in turn, affected the start of the works of the centres that were delayed (and never completed). Second, the Tories in the opposition took advantage of the situation by bringing up repeatedly the subject of the location of the facilities (as well as the size). More time was therefore devoted to the centres than any other issues. Local constituencies therefore had an impact at national level causing considerable delay. None the less, in the end the government's national view prevailed over the regional and local views showing a definite 'top-down' approach to asylum policy-making. In fact, the government only agreed to trial one smaller centre but it continued with its resolution to build the centres as planned. The fact that they were never built was due to the Treasury opposition to spend money when the numbers of asylum claims was gradually but steadily reducing.

In Italy, these three levels were permeated by party politics to a much higher degree than in the UK. So, contrary to the UK where the government was the most prominent actor<sup>339</sup>, in Italy, the most important actors were the political parties whose views prevailed overall. However, the final law was the fruit of a mix of top-down and bottom-up pressure showing a lesser degree of centralisation of power as well as strength of the government. At the national level, the political parties imposed their views on the legislation with a series of give and takes that frustrated the policy process. The authoritarian position of the NL was softened by the presence of the Catholics that had instead a more solidarist approach and promoted the will of the Catholic world (CEI in particular). At the regional and local levels there was a lot of bottom-up pressure coming from members (regions and mayors) belonging to the same parties of the ruling coalition to improve aspects related to immigration quotas and the asylum protection system. At the regional level in particular, Italian regions and employers' organisations put pressure on the government so that regions could have a bigger say on immigration quotas. The regions that had the strongest impact on the national level were those governed by members of the political

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<sup>339</sup> See Appendix 5 for the comparison of key actors in the policy process.

parties of AN and LN that is, the same political colour of the parties in government. This shows that whereas at national level the same parties and especially the LN, opposed immigration based on principles and ideologies, at regional level the ideologies left space for a more pragmatic view based on labour market needs. Finally at the local level, the mayors put pressure on the government through ANCI to improve the services for refugees and asylum seekers with the institutionalisation of the PNA. The Prefect within the Ministry of Interior was able to involve mayors from the centre-left administration but also – and more surprisingly – the centre-right. This was only possible because there was a centre-right coalition in power and because the issue of asylum went beyond the party political. From a point of view of a city's image, they had to solve the issue regardless of the left/right dichotomy. From a human rights' perspective, it was left to local authorities to provide help and shelter in cases where the civil society could not because of a lack of resources.

#### **8.4 CONCLUSION**

This chapter has reported three major findings from the comparative analysis. Firstly, despite the different nature of the governments both countries had issue networks. Marsh and Rhodes' (1992) framework on networks was useful in identifying the similarities and differences within the networks in the two countries and their relative strengths and weaknesses in affecting policy making. They were identified as issue networks because of the irreconcilable different opinions between advocacy groups and the governments. However, the networks displayed some important differences. Here lies the value of the comparative research: contrasting and evaluating the same variable in two different contexts. The authors' theoretical framework was applied to an empirical situation that has confirmed some points but has also found some differences. The second finding relates to the importance of the nature of the government systems. Particularly, how the UK and Italy were able to create legislation in relation to their dealings with other political forces as well as civil society. The centre of power in the UK was the core of the government but in Italy it was the political parties in the majority that had more strength while the government played an intermediate role. The findings have shown that in the UK the government could only be slowed down on some aspects of the law in the Lords.

However, the continuity of asylum policy between Labour and Conservatives made it possible for Labour to get away with the most stringent provisions. In Italy, because asylum was not perceived as a threat, the Ministry of Interior was able to prepare undisturbed the only two articles on asylum in agreement with the UNHCR. Important also was the role of the Italian municipalities and their mayors regardless of their political colour. Furthermore, while the UK government was open to consultation, the Italian one was not. However, the final NIA Act in the UK was the expression of the core executive while the Bossi-Fini was the result of intra-coalition clashes within the majority. Here, the government was not as resolute as the UK one but mainly acted as mediator showing its weakness in the face of the political parties. As a result, compromise was heavier in Italy than in the UK. The strength of the Lords in opposition to some parts of the bill in the UK and the continuous clashes among the majority in Italy lead the two governments to compromise on certain aspects of the laws. Whereas in the UK the compromises were minimal, in Italy they changed the face of the law because of the volatile situation of the coalition government and the economic and political system. In the UK, the debate between majority and opposition developed mainly around the issue of accommodation centres. Concessions in Italy were only among the ruling members because the opposition was weak in parliament. A different attitude was showed towards asylum in Italy though. Here, the argument is that the severity of the law in terms of illegal labour migration on one side, and the relative low numbers of asylum claims together with the lack of an asylum system<sup>340</sup> on the other, forced the government to put some kind of ‘generous’ concession in the norm related to the institutionalisation of the PNA into a national system (SPRAR).

Finally, the last section on party politics has shown the interaction of national, regional and local levels of policy-making. In the UK, the national point of view of the government prevailed over the other two dimensions thanks to the strength of the core executive. There was some resistance at the local level that ended up postponing the start of the works in relation to the accommodation centres, but overall government resolution succeeded. In Italy, the three levels were more tangled because of a larger permeation of party politics. This, in turn, has highlighted

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<sup>340</sup> There were also continuous pressures exercised by the European partners to have asylum legislation and to share responsibility over asylum seekers and refugees – in a way the asylum developments in Italy were a mix of top-down derived from the EU asylum directive then under discussion

that the law was a mixture of top-down and bottom-up pressure. This difference mirrors the way in which asylum was lived by the governments: as a threat in the UK given the widespread interest and anxiety showed by the population, but not such an important issue in Italy. Here, the main issue for the people was illegal labour migration fuelled by right-wing parties.

The final chapter contains the conclusions to the thesis, which deal with the importance of the nature of the state.

# CHAPTER 9

## CONCLUSIONS: SUMMARY AND DISCUSSION

### 9.1 SUMMARY

The thesis aim was to establish how policy proposals become policy decisions through the lens of asylum policy. It focused on the perception of asylum in the two states, the response of each government to the issue, and the levels of power of governments and other stakeholders involved in the policy process. In both countries negotiations within parliament were key but outcomes differed because of the different political systems, the power of the centre and the relative lack of power of the other stakeholders despite their interests and concern. It was through their advisory role that stakeholders comprising issue networks had the ability to change some of the proposals, but not fundamentally.

The main contention of the thesis was that the process was determined by the nature of the state and its political system. To this end, it examined Italy and the UK, chosen because of their political systems which have some similarities (e.g. bicameral) but many differences (e.g. in 2002 one was a coalition). The Italian coalition government was poles apart from the current UK coalition government as it was formed by several parties with deep ideological differences. These differences hindered the negotiations in the majority and frustrated cooperation whilst forcing the centre to adopt a mediating role.

The focus was asylum policy, the objective of which was perceived differently in the two countries. The thesis has demonstrated that the significance of the asylum “threat” varied between governments, affecting how they treated the issue. It was a particularly difficult topic in the UK where it was one of the government’s top priorities due to the negative headlines and public reaction to asylum seekers and to migration policy more generally. In contrast, in Italy asylum was not a priority, concern being greater with labour migration and especially illegal migration.

The thesis aimed to determine how far the perception of the asylum issue combined with the nature of the states to produce policy outcomes. The key mediating variable was



hypothesised to be the role of issue networks and their power to influence the political system.

A model was created to test four main hypotheses:

1) The premise of the first hypothesis was that asylum is perceived as a difficult issue and a potential threat to governments' sovereignty, national security, economy and national identity. This threat was more noticeable in the UK than in Italy. While in the UK the government responded to very strong pressure and criticism coming from the media and the public, in Italy, asylum *per se* was not deemed to be as difficult as labour migration and illegal migration. Besides, pressure here was not as strong as in the UK but the Italian government aimed at keeping their promises made to their electorate during the political campaign. The perception of asylum as a difficult issue in the UK therefore, affected the way it was treated during the process that led to the creation of the NIA Act. Conversely, the Italian Bossi-Fini's main goal was to toughen some aspects of the previous legislation related to labour migration while introducing important novelties in terms of asylum. On the other hand, the same measures used to detect and deter illegal migrants were also used for asylum seekers.

2) The second hypothesis theorised that differences in the nature of the state (in particular, different welfare and political systems) dictate the way in which policies are created to deal with the difficult issue of asylum. Legislation outcomes may, therefore, be different between countries. The thesis' findings show that, despite the different political and historical nature of the two governments, both countries passed laws with similar goals to limit the entry of unwanted citizens (the UK had a Labour government and showed features of liberal states and Italy had a centre-right government and displayed features of Conservative and Southern European states). However, the way in which the two policies were created was different. For example, the UK government with its strong parliamentary sovereignty held consultations with several pro-asylum organisations and granted only minor concessions to the opposition in the Lords. The Italian government, in contrast, displayed the opposite behaviour. Organisations were automatically excluded from any consultation and no changes suggested by the opposition were taken into consideration. The final law was the result of political negotiations between two parties in the majority, the Catholics and the Northern League, confirming the hypothesis of a polarised country subjected to an unstable political coalition.

3) Hypothesis 3 dealt with the shift from ‘government’ to ‘governance’ due to the increasing presence and influence of stakeholders other than the government in the policy arena. The question is: to what extent is the policy process influenced by networks of interest, so that ‘government’ has become ‘governance’? The issue of ‘government’ becoming ‘governance’ was never a reality in either country, but especially in the UK where the ‘Westminster model’ prevailed. The findings have highlighted a different degree of inclusion of governmental and non-governmental organisations in the policy process as well as their relative power. In the UK consultation was widespread but the government and in particular its core (i.e. the Prime Minister, the Home Secretary, his Policy Advisor and a few other Ministers in the Delivery Unit) were the ones behind the Act. In Italy, consultation was non-existent officially but unofficially some Catholic groups were able to speak on a one-to-one basis with their representatives in the majority. So during the policy-making process networks made of pro-asylum and immigration groups were largely immaterial.

4) Hypothesis 4 was about the relationship between government and networks. In both countries there were issue networks that because of their characteristics are unable to bring about substantial change as highlighted in the literature review chapter. Furthermore, networks exercised power unevenly. In both countries there were two organisations that had more power than others. The findings demonstrate how members of issue networks have different power from one another. Indeed, in the UK the most ‘powerful’ organisation in terms of resources as well as status was the Refugee Council. In Italy, it was the UNHCR thanks to its non-confrontational attitude towards the government as well as the openness to dialogue of the Interior Ministry. Furthermore, the UNHCR was not associated with any political party and so it was easier for them to get access in order to negotiate some terms of the two articles on asylum.

The next section contains the discussion which highlights the contribution of the research to the current knowledge in the field of asylum policy-making

## **9.2 DISCUSSION AND WIDER REFLECTIONS**

The originality of this research lies in its comparative approach. Firstly, asylum policy-making is an area that has not been overly studied. This is the case especially in Italy where the focus

has been on immigration policy-making with respect to illegal and labour migration (for example, Finotelli and Sciortino 2009; Sciortino and Colombo 2004) and multi-level policy-making in the same field (Zincone 2006a, 2006b, 2011; Zincone and Caponio 2004, 2005). In the UK, where literature on asylum is flourishing, migration policy is rarely examined in terms of policy networks (most notably Somerville and Wallace Goodman 2010) and asylum policy even less so. Lastly, no previous study has confronted how asylum legislation is created in a comparative framework. There is little study in the area of how interests may shape asylum policy-making in different countries, while taking into consideration the nature of the state in decision-making. Different countries in fact have different governmental structures which impact on how decisions are taken and affect how individuals and organisations are able to participate within network. Therefore, the role and nature of the state and the political system which included the operation of networks in both countries were central to the analysis.

Firstly, given these differences between the two governments under study, the nature of the state became one of the key focal points. According to the second hypothesis, the nature of the state determines the way in which a certain difficult issue is confronted by the establishment. Following Esping-Andersen's (1990) typology of welfare states, this research underlines the usefulness of comparative studies of European welfare states. A comparison of similarities and differences between UK and Italy allows us a deeper understanding of how policies are made. For example, findings on the UK asylum policy have found that the government was not entirely liberal – contrary to the typology – as it further decreased asylum seekers' safety and freedom with the introduction of non-suspensive appeals and accommodation centres. Unlike the UK, the nature of the state in Italy concurred up to a point with Esping-Andersen's idea of a conservative state. According to this notion, the Italian state is non-interventionist when it comes to services for the family that are left to the care of the Catholic Church. This was also the case with the asylum system that historically has always been under the care of both Catholic and non-religious pro-asylum organisations. For the first time however, a small change was registered as the Ministry of Interior decided to cooperate

closely with the UNHCR to reform the basic asylum program and to devolve a higher amount of funding to municipalities able and willing to take part into the program.

Esping-Andersen's typology therefore has limitations that should be taken into account. The critics to the typology highlighted in chapter 2 showed that welfare states are not fixed entities. They change over time and share different features with each other that may place them in different categories depending on which aspect one is focusing. For example, this study agrees with Bonoli's (1997) welfare classification of the UK (who gets what and how much) and Italy (dependence on family). It also agrees with the interpretation by Geddes *et al.* (2004) that sees the country placed in a South European group, run by weak state institutions while informal institutions like Catholic pro-migrant organisations providing services for migrants and asylum seekers are very important.

Secondly, the thesis has highlighted the ways in which governance can operate in subtle ways in neoliberal states, where non-state organisations – such as migrant organisations, Non-governmental Organisations (NGOs), employers groups, trade unions, religious groups, etc – may be co-opted into the delivery of state-like functions: for example, finding housing accommodation in the UK or running/monitoring immigration centres in Italy and asylum centres in the UK and hence contribute to the legitimisation of policies they might otherwise have opposed. In the UK the interview with the former chief of the Refugee Council brought this issue to the forefront as they were the organisation with the most access to the government. In Italy this was not observed. Here the UNHCR was the privileged associative body but they did not provide services on behalf of the government. It was the Catholic associations that carried out most of these duties and *Caritas in primis*. However, they still did not have access to the government.

Thirdly, the focus on governance has examined the role of institutions (the government and political parties) in policy-making and also that of advocacy groups and their interconnections with each other and the government with the aim to influencing policy. The literature review has acknowledged that there are alternative approaches to the study of networks and governance that do not emphasise the power of the state. Rather, they take into consideration migrants' views as those of important actors. However, because the aim of the

thesis was to understand the policy process rather than policy outcomes, migrants and asylum seekers were not included in the sample of people to be interviewed due to the limited power migrants and asylum seekers currently have at parliamentary level. They may nevertheless have some impact on networks.

The interviews carried out with civil society groups and policy-makers were essential to understand how things panned out during the process. To do this, the use of policy network theories was key. In particular, the theoretical framework of Marsh and Rhodes (1992) on issue networks was analysed and adapted to this research. The purpose of this adaptation was to facilitate the comparison of the networks in the two countries. Some of the key characteristics described in their theory did find confirmation in the empirical research. For example, the fact that between advocacy groups and the governments there was lack of trust and dialogue. On the other hand, findings have showed – contrary to what Marsh and Rhodes had envisaged – that there were two organisations that both governments trusted and came to rely upon. These were the Refugee Council in the UK and the UNHCR in Italy. These two organisations were also those with more resources and recognised status and for these reasons, they had privileged access to the policy process. Furthermore, while the Italian network was characterised by strong instability, the UK one was not. This is an important factor that shows that the observed reality is different from hypotheses, especially in a comparative framework.

A further criticism of Rhodes' (1997) ideas is that although the influence of non-state actors represented by the private and voluntary sector is recognised, he underestimates the interaction among the actors within the network. This was true for the Italian case particularly where the advocacy groups came to rely greatly on the UNHCR because of the closure of the government to their plea.

Other points in the framework were less pertinent given the nature of the study and the topic. For example, although Marsh and Rhodes point to the fact that a 'differentiated polity' is corroding the unity of the 'Westminster model', this research has in fact found out that the contrary was true in 2002 during the making of the NIA Act. The core of the government was united and power strong. The same thing cannot be said for the Italian government. Here, unity was threatened by the very nature of the coalition in power that gathered political parties with

diametrically opposed identities and ideologies (the moderate Catholics and the populist/anti-immigrants Northern League members), making collaboration difficult and relations at times hostile.

Although the two states differed in many ways, the two laws had similar outcomes. Both pieces of legislation in fact aimed at keeping unwanted citizens at bay. Furthermore, despite the fact that consultation was widespread in the UK but not in Italy the result was similar: the presence of issue networks had little influence on the policy process. This shows that issue networks did not have power over the governments and that those governments were comparatively free to do as they pleased. On the other hand, the way in which the result was achieved was different. In the UK a more democratic process during the making of the law brought three defeats to the government in the House of Lords, but concessions were none the less minimal. In Italy, the government had a mediating role while the political parties represented the real force behind the legislation. There was also a resolute behaviour not to discuss and disclose matters with the wider civil society. At the same time broader interests had an influence on the developments of the law and these were the economic and regional interests in labour migration. This part of the thesis was concerned with the levels of policy making in the two countries and aimed at contributing to geographical knowledge and geographical scales of influence and policy making. In particular, it related to the third key theme emerged during the analysis: the permeation of party politics at national, regional and local levels during the policy process.

The study deals with asylum making policy at a time when not just the role of the state, but the geographical forms of state sovereignty and regulation, have been undergoing change and debate. The thesis has highlighted that the three levels or scalar structuring of policy making continue to operate in this field, despite widespread assumptions of an unbundling or rescaling of the state and its function. It seems these scales do still matter in the process by which policy gets made, and that when it comes to asylum, the role of the state is still central.

The weight of party politics was stronger and more evident in the Italian case than in the UK where, despite the local view (mobilised local citizens together with their local authorities) clashing with the national view (core of the government) on the implementation of the

accommodation centres, the central government's view prevailed. In Italy on the other hand, it was the political parties that were more prominent. Their influence was noticed at national level during the debates on the law as well as at regional and local level. However, whereas in the UK there was a distinct top-down approach to policy making, in Italy policy was influenced also by a bottom-up approach. Money (1999, 62) for example implies that local political parties are in tune with public inclinations on immigration so that "policy positions of mainstream parties will tend to converge toward the local median voter" and "the positions of the parties will tend to shift in tandem". For example, the Italian regions, in cooperation with employers' organisations, put pressure on the government to accept larger immigration quotas because of market needs. As far as asylum was concerned, ANCI was able to get mayors of different political colours to agree and put pressure on the government to commit more funding for the development of an asylum system.

In conclusion, the literature review for the thesis has showed that there are some gaps in the literature that should be addressed. For example, a different approach might incorporate interviews with asylum seekers to see if their actions (for example hunger strikes, demonstration and riots) do have an impact on local policy making and if so, would this carry more weight at national level. The thesis has in fact focused on two specific laws passed in the same year. A different way to look at the same issue would be to concentrate on a longer period of time and incorporate more legislation or legislative outcomes.

### **9.3 CONCLUSION**

The empirical findings of the thesis have emphasised the differences between the political systems of the UK and Italy. Yet, whilst having two different political systems the two states created asylum policy with similar deterring outcomes. Policy differences were due to three main factors: historical events and developments in asylum policy, key people in government and (but to a lesser extent and only if beneficial to the key people in government) key interest groups.

Asylum in the UK was a major difficult issue and was perceived as a "threat" by a government that was strongly criticised by the media and part of the voting population. In Italy, it was illegal

labour migration that created more problems at government level where the ruling majority wanted to keep the promises made during the electoral campaign. The difference in the notion of “threat” was particularly significant for the research. It enriched the comparative element because whereas in the UK efforts were made to control asylum seekers, in Italy the concept of asylum was still relatively new. This meant that for the first time there were some guidelines on the matter in law.

There were also different interests at stake: those of the two governments including the political parties especially in Italy and those of the issue network members. Key people in the UK government and in the two political parties in the ruling majority in Italy held more power as they steered the legislation with little hindrance from opposition parties and civil society. As both governments had an overwhelming majority in both Houses, it was easier for them to overcome major obstructions. On the other hand, while the UK government suffered three important defeats in the Lords, the Italian government suffered none. At the same time though, generally in the UK there was a convergence of ideas between the Conservatives and Labour, especially in relation to the most pressing parts of the law (most notably the accommodation centres and non-suspensive appeals). This increased the chances of a more peaceful collaboration. In Italy instead it became evident that it was the political parties in the majority that were dominating the policy process and the Bossi-Fini was the expression of these parties. Furthermore, in both countries there was also a bottom-up approach that turned out to be significant in the development of the laws especially in Italy. In the UK, citizens mobilised to have an enquiry on the feasibility of the centres. This slowed down the process. In Italy, mayors of different political colours, united under the Italian municipality association (ANCI) were able to put pressure on the Ministry of Interior to improve the funding available to provide shelter for asylum seekers.

Finally, the findings show that the power of issue network members was weak as well as uneven. The presence of issue networks had similar implications in both countries due to their minimal weight on the decision-making process. The ‘governance’ of stakeholders did not weaken the power of central government in either. Yet, the way the governments cooperated with civil society was different with the UK government being more open to consultations and



the Italian one more closed. Only the two biggest, more resourceful and more experienced organisations were able to deploy some form of power. However, both organisations were approached by the two governments on practical issues: the accommodation centres in the UK that had met many obstacles and the development of an asylum system in the Italy until then non-existent. The efficacy of these two organisations was therefore due to both their recognised national and international status and the objective needs of the two governments to have practical solutions. These findings suggest that some NGOs may be able to use what power they have to engage with the government on a regular basis with practical suggestions and non-confrontational behaviour.

## APPENDICES

### APPENDIX 1

#### ITALIAN INTERVIEWEES: CIVIL SOCIETY

| ORGANISATION  | NAME                     | POSITION HELD   | DATE OF INTERVIEW                                      |
|---|--------------------------|---|--|
| Amnesty International                                 | Giusy D'alconzo          | Researcher  | Telephone interview:<br>20/11/2008                     |
| Associazione Nazionale Comuni Italiani (ANCI)         | Luca Pacini              | Responsible for Welfare and Immigration matters                           | 03/11/2008   |
| Associazione Ricreativa Culturale Italiana (ARCI)     | Filippo Miraglia         | Responsible for immigration matters                                       | 07/11/2008   |
| Caritas   | <i>Ngo Dinh</i> Le Quyen | Responsible for immigration, asylum and human trafficking                 | 06/11/2008   |
| Centro Astalli – Jesuit Refugee Centre                | Berardino Guarino        | Projects' Director  | 04/11/2008   |
| Comunità di Sant'Egidio                               | Daniela Pompei           | Representative  | 06/11/2008   |
| Federazione delle Chiese Evangeliche in Italia (FCEI) | Franca Di Lecce          | Director for the Refugees and Migrants Services                           | Telephone interview:<br>27/01/2011                     |
| Italian Consortium of Solidarity (ICS)                | Gianfranco Schiavone     | President of the International Consortium of Solidarity – Refugees office | Telephone interviews:<br>15/12/2008 and<br>04/02/2011. |
| Italian Refugee Council (CIR)                         | Christopher Hein         | Director  | 04/11/2008   |
| N/A   | Sergio Briguglio         | External expert   | 05/11/2008   |
| UNHCR   | Jürgen Humberg           | Official  | Telephone interview:<br>29/12/2008                     |
| UNHCR   | Anonymous                | Former Official   | Telephone interview:<br>05/01/2011                     |
| <i>Confederazione Nazionale Coltivatori Diretti</i>   | Romano Magrini           | Responsabile delle Politiche del Lavoro                                   | Telephone interview:<br>13/06/2011                     |

## APPENDIX 2

### ITALIAN INTERVIEWEES: POLICY-MAKERS

| <b>POLITICAL PARTY</b>                                   | <b>NAME</b>          | <b>POSITION HELD</b>   | <b>DATE OF INTERVIEW</b>           |
|--|----------------------|--|------------------------------------|
| CCD-CDU  | Luca Volontè         | MP   | Telephone interview:<br>12/01/2011 |
| CCD-CDU  | Sen. Eufemi          | Senator  | Telephone interview:<br>14/01/2011 |
| Democratici di Sinistra                                  | Massimo Brutti       | MP   | Telephone interview:<br>15/02/2011 |
| Forza Italia   | Sen. Boschetto       | Senator  | Telephone interview:<br>15/02/2011 |
| N/A  | Riccardo Compagnucci | Vice-prefect<br>Department of Civil<br>Liberties and<br>immigrations | Telephone interview:<br>18/02/2011 |
| National Eligibility Commission                          | Denozza              | Vice prefect   | 06/11/2008                         |
| Ufficio della Segreteria del Presidente della Repubblica | Anonymous            | Official   | Telephone interview:<br>03/01/2011 |

## APPENDIX 3

### UK INTERVIEWEES: CIVIL SOCIETY

| <b>ORGANISATION</b>                         | <b>NAME</b>             | <b>POSITION HELD</b>                     | <b>DATE OF INTERVIEW</b>      |
|---|-------------------------|--|-------------------------------|
| Amnesty International                       | Jan Shaw                | UK Refugee Programme Director            | 10 <sup>th</sup> October 2008 |
| Centre for European Policy Studies          | Professor Elspeth Guild | Associate Senior Research Fellow         | 9 <sup>th</sup> October 2008  |
| Compas                                      | Dr. Sarah Spencer       | Senior Fellow and former Deputy Director | 27 <sup>th</sup> October 2008 |
| Immigration Advisory Service                | Keith Best              | Chief Executive                          | 15 <sup>th</sup> October 2008 |
| Joint Council for the Welfare of Immigrants | Don Flynn               | Policy Officer                           | 21 <sup>st</sup> October 2008 |
| Justice                                     | Dr Eric MetCalfe        | Director of Human Rights Policies        | 1 <sup>st</sup> October 2008  |
| Refugee Council                             | Imran Hussain           | Policy Officer                           | 10 <sup>th</sup> October 2008 |
| Refugee Council                             | Richard Williams        | EU Working Group                         | 23 <sup>rd</sup> October 2008 |
| Refugee Council                             | Nick Hardwick           | Chief Executive                          | 8 <sup>th</sup> February 2011 |

## APPENDIX 4

### UK INTERVIEWEES: POLICY-MAKERS

| <b>INSTITUTION/<br/>POLITICAL<br/>PARTY</b>                 | <b>NAME</b>                | <b>POSITION HELD</b>  | <b>DATE OF<br/>INTERVIEW</b>                          |
|---|----------------------------|---|---|
| Home Office   | Anonymous                  | Officer a.  | 9 <sup>th</sup> October 2008                          |
| Home Office   | Anonymous                  | Officer b.  | 21 <sup>st</sup> October 2008                         |
| Prime Minister's<br>Strategy Unit in the<br>Cabinet Office. | Professor Shamit<br>Saggar | Former Senior Policy<br>advisor   | 29 <sup>th</sup> October 2008                         |
| Home Office   | Nick Pearce                | Former Special<br>Adviser to Blunkett<br>and Head of the<br>Policy Unit | 8 <sup>th</sup> February 2011                         |
| Home Office   | Anonymous                  | Officer c.  | Telephone Interview:<br>9 <sup>th</sup> February 2011 |
| Home Office / Labour  | David Blunkett             | Former Home<br>Secretary  | 21 <sup>st</sup> January 2011                         |
| Independent   | Lord Bhatia                | Lord  | 2 <sup>nd</sup> February 2011                         |
| Labour  | Lord Dubs                  | Lord  | 11 <sup>th</sup> February 2011                        |
| Liberal Democrat  | Lord Dholakia              | Lord  | 1 <sup>st</sup> March 2011                            |

## APPENDIX 5

### COMPARISON OF KEY ACTORS IN THE TWO COUNTRIES

| Actors                   | United Kingdom  | Italy   |
|--------------------------|---|---|
| <b>Government</b>        | Decisive role of No.10 and Home Office. They had their own internal network formed by legal advisers and other HO officials. Their work was important but it was steered by the Prime Minister and the Home Secretary.  | Mediating role between the CCD-CDU and the NL.  |
| <b>Opposition</b>        | In the House of Commons, the opposition parties only flagged up issues but did not have any real bargaining power because of the majority in the government. These issues were brought up once again in the House of Lords. Here the opposition parties defeated the government showing some bargaining power.  | Very small role due to the closure of the government to any interference (Their role was limited to proposing amendments that were almost entirely discarded and obstructing the works by delaying the policy process).   |
| <b>Political Parties</b> | Many of the issues discussed during the policy process found agreement across party lines. There were also disagreements but political parties were not particularly prominent. Asylum was a hot political issue generally rather than a party-political divisive issue as immigration in Italy.  | The CCD-CDU and the NL were the real power holders within government. They clashed strongly on labour migration.  |
| <b>Civil society</b>     | <p>NGOs and charities were involved in the consultation process but they did not have bargaining power. This included the RC that came out from the analysis as the most powerful NGO thanks to their expertise, national status but also their positive non-confrontational collaboration with the government.</p> <p>There were protests against the establishment of the accommodation centres. These were organised by local citizens and local authorities in Tories constituencies. Their protests forced the government to open a consultation process with the local authorities and delayed the start of the works. But the government in the end went ahead as planned.</p> | <p>NGOs and charities were excluded by the government's consultation process. However, Catholic groups had a fair chance to be listened to by Catholic MPs within the majority; the UNHCR was the only specialised agency on asylum issues. For this reason (together with the fact the asylum was not perceived a priority by the government and their non-party-political stance) they had some bargaining power. This lead to the collaboration with the Ministry of Interior; ANCI also had some bargaining power thanks to the cooperation with the Ministry of Interior, the UNHCR and the mayors especially those from right-wing parties given the ruling government's political make-up; employers groups were consulted and cooperated with the Italian Region.</p> |

## **APPENDIX 6**

### **DISCUSSION GUIDE IN ITALIAN**

#### **Interessi/preoccupazioni**

1. Qual'era il suo interesse nei confronti della Bossi-Fini?
2. Quali erano le preoccupazioni maggiori?
3. Quale era il suo ruolo – o quello della sua organizzazione – durante il processo di policy-making della Bossi-Fini (coinvolgimento attivo o parziale?)

#### **Networks (gruppi di consulenza professionale)**

1. C'erano networks? Ne faceva parte?
2. Che tipo di networks? (interne all'organizzazione/esterne; formali/informali) e quante?
3. Come sono state create?
4. Come funzionavano? (Flessibili e aperte oppure chiuse?)
5. Quale era il ruolo di queste networks nello sviluppo della legge?
6. Con chi ha avuto piu' contatti e come?
7. Chi erano gli altri membri?
8. Questo tipo di networking esisteva gia' oppure e' stato creato specificatamente per a Bossi-Fini?
9. Chi ha promosso l'iniziativa?

#### **Natura dell'interazione**

1. A che tipo di riunioni ha partecipato?
2. Chi altri vi prendeva parte?
3. Quante riunioni?
4. Frequenza?
5. Dove vi incontravate?
6. Di che cosa discutevate?
7. Come vi scambiavate le informazioni?

#### **Risultati**

1. Hanno sempre accettato il suo punto di vista (successo / insuccesso)
2. Quando la Bossi-Fini alla fine e' passata, qual'e' stata la sua reazione?
3. Qual'e' il suo punto di vista sulla legge?
4. Pensa che sarebbe potuta andare diversamente? Come?
5. Avrebbe fatto qualcosa in maniera differente?

#### **Compromessi/Potere**

1. Durante il processo di policy-making process, ha avuto ripensamenti o rivalutato la sua posizione iniziale?
2. Se si perche'?
3. In quale momento?
4. Compromessi?
5. Perche' e dove?
6. Pensa che i diversi stakeholders (*dir.* terzo fiduciario cui le parti in lite affidano la custodia di cose) avessero lo stesso potere?
7. C'e' una maniera per misurare la sua influenza?

8. L'influenza della Chiesa Cattolica

**NGOs**

1. Ha fatto lobby sul governo e i mass-media?
2. Come ha identificato i suoi alleati e i non-alleati?
3. Veniva ascoltato?
4. Atteggiamento dei ministri nei confronti della legge?

**Influenza**

1. Influenza dei mass-media sul governo
2. Influenza dell'Unione Europea sul processo di policy-making della Bossi-Fini



## **APPENDIX 7**

### **DISCUSSION GUIDE IN ENGLISH**

#### **Interests**

1. What was the particular rationale for this legislation? Where did it come from and why?

#### **Sources**

1. What sources of knowledge did you draw on to guide your policy choices? (Did you prefer academic studies, commissioned research, own organizational knowledge, special commissions, voluntary sector, or media as sites of knowledge production? Why?)
2. What kind of sources did you use to carry out research? (Through in-house research units, commissioning external research, or less formal networks?)
3. What information was derived from other organisations?

#### **Networks**

1. What kind of networks did you form with other organisations?
2. Where these already existing?
3. How would you describe the relationship with the organization?

#### **Influence/Power**

1. How influential were you?
2. Do you think the Government – due to its majority – was more powerful than the NGOs?
3. The nation-state is ‘hollowing-out’ but not on immigration issues – at least in 2002. Is it true? Why?
4. Are things changing?

#### **Compromise**

1. Did you change your opinion during the process?
2. If so, when and why?
3. Was there any compromise?
4. Where?

#### **The legislation**

1. Why did you spend so much time debating accommodation centres when there were more pressing topics to discuss for example, section 55; the repeal of part III of the 1999 Act on automatic bail hearing; and children’s detention?
2. During the debates, it was pointed out that accommodation centres were all in Conservative areas and the Conservatives were accused of NYMBIsM. Did you agree?
3. Why was section 55 introduced so late? Was it a Government’s manoeuvre or was it a genuine late thought?
4. Did the Home Office have an agenda?
5. If so, were politicians manipulating others’ opinions to reach their goals?

#### **Media/constituencies**

1. How powerful was the media in influencing your views?
2. How important were constituencies?

- 3 Were they more influential than the media?
- 4 Do you think the media shapes public opinion or has public opinion their minds made up? (e.g. the average reader of the Daily Mail is probably inclined to think that way)

**EU**

1. Did the EU have any influence at all on the Government throughout the policy-making process of the NIA Act?

**AT THE END:**

Is there anything you feel I have left out?

Who else do you think I should see?

## APPENDIX 8

### COPY OF LETTER SENT TO ITALIAN INTERVIEWEE (DR HEIN)



London, 2<sup>nd</sup> October 2008

Dear Dr Hein,

I am a PhD student at University College London under the supervision of Professor John Salt Director of the Migration Research Unit and Dr Alan Ingram. Given your expertise and great experience of asylum issues, I am getting in touch with you in reference to my research on the formulation of asylum policies in Italy and the UK.

My research focuses on the interaction and power relations between the various stakeholders in the making of asylum policies. While Italy does not even have asylum legislation, the UK has produced several Acts. Furthermore, while both countries share similar attitudes towards asylum seekers, they present different policy outcomes due to their different historical and political trajectories. My project focuses on the UK Nationality and Immigration Act 2002 and on the Italian Bossi-Fini law of the same year. My research will involve interviews in each country with a range of actors who were actively involved in the respective legislative processes, including policy-makers, NGOs, Refugee Community Organisations.

A short summary of my project is attached.

In particular, I would like to interview you. I believe my research would benefit greatly from your insights into the policy making process in this area and would be very grateful if you were able to take part. I estimate that the procedure would not take up more than an hour of your time.

I am looking forward to hear from you.

Kind regards,

## APPENDIX 9

### COPY OF LETTER IN ITALIAN SENT TO ITALIAN INTERVIEWEE (GIANFRANCO SCHIAVONE)



Londra, 3 ottobre 2008

OGGETTO: Intervista per ricerca di dottorato

Egregio Dott. Schiavone,

Sono una studentessa alla University College London dove sto facendo un dottorato di ricerca sotto la supervisione del Professor John Salt, Direttore della Migration Research Unit e del Dr Alan Ingram. Ci siamo incontrati parecchi mesi fa di sfuggita durante una conferenza a Udine tramite Alessandra Fantin e data la Sua gran esperienza in materia di asilo, Le scrivo ora in merito alla mia ricerca sulla formulazione delle politiche di asilo in Italia e nel Regno Unito.

La mia ricerca si occupa dell'interazione tra i vari stakeholders e del potere che esercitano nel creare le politiche d'asilo. Infatti mentre l'Italia non ha nemmeno una legge organica sull'asilo, il Regno Unito ha prodotto diverse leggi in materia. Inoltre nonostante i due paesi in questione abbiano degli atteggiamenti simili verso i richiedenti asilo, producono leggi differenti grazie ad uno sviluppo storico e politico diverso. Mettero' a confronto il Nationality and Immigration Act 2002 e la legge Bossi-Fini in quanto contengono significative implicazioni per i richiedenti asilo. La mia intenzione e' di intervistare stakeholders attivamente coinvolti nei processi di policy-making delle due leggi (policy-makers, NGOs, Refugee Community Organisations).

Un breve sommario in inglese della mia ricerca e' in allegato.

Come avra' visto dall'oggetto della mia lettera vorrei avere l'opportunita' di intervistarLa. Credo profondamente che la mia ricerca trarrebbe un enorme beneficio dal suo intuito e conoscenza del processo di policy-making in quest'area e le sarei estremamente grata se ne prendesse parte.

Spererei di andare prima a Roma per condurre delle altre interviste in novembre per poi salire in Friuli (i miei genitori abitano a Sacile) verso la fine di novembre, inizi dicembre. La procedura non dovrebbe durare più di 1 ora.

In attesa di una Sua risposta colgo l'occasione per porgerLe distinti saluti.

## APPENDIX 10

### COPY OF LETTER SENT TO UK INTERVIEWEE (DAVID BLUNKETT)



The Rt Hon. David Blunkett  
House of Commons,  
London SW1A 0AA

17<sup>th</sup> December 2010

Dear Mr Blunkett,

I am an ESRC funded PhD student at University College London under the supervision of Doctor Alan Ingram and Professor John Salt.

My thesis compares the formulation of asylum policies in the UK and Italy, especially in relation to national governance. Although other studies have focused on the role of interconnecting networks in policy-making, none so far has specifically looked into asylum legislation in a comparative manner. My focus is on the UK Nationality and Immigration Act 2002 and on the Italian Bossi-Fini law of the same year.

My thesis looks particularly at the interaction and power relations between the various stakeholders in the making of asylum policies. While Italy does not even have asylum legislation, the UK has produced several Acts over the last decade or so. Furthermore, while both countries share similar attitudes towards asylum seekers, they present different policy outcomes due to their different historical and political trajectories. For example, asylum legislation in Italy has tended to be an addendum to mainstream migration legislation but in the UK the main focus of several Acts has been asylum.

I am now in the later stages of my research. So far my main work has focused on Parliamentary debates, official documents, media coverage of the issue together with preliminary interviews with various stakeholders, including representative of NGOs and some politicians. It has now reached the stage where I have been able to identify key actors and their role in both countries. I now need to discuss with them why they articulated particular views and took the actions they did.

I believe your insights as Home Secretary into the policy making process that produced the 2002 Act are vital in explaining how it came about and how the network of stakeholders was created and functioned. I am writing to ask if you would be willing to spare me 30-45 minutes of your time to answer some queries about your role that have emerged from my analysis of the Parliamentary debates and discussions.

I would be grateful if you would suggest possible dates and times, before the end of January 2011 if at all possible. If you feel able to respond positively to my request, I will send you more details about the project and the specific issues I would like to raise with you.

## APPENDIX 11

### ASYLUM LEGISLATION IN THE UK

| Legislation  | Year | Main points   |
|--|------|---|
| <b>Asylum and Immigration Appeals Act</b>                        | 1993 | The Act incorporated the 1951 UN Convention on refugees into UK law. It introduced: the power to fingerprint all asylum applicants (and their dependants) to deter multiple applications; accelerated and 'fast-track' appeals procedures to assess asylum applications; the right to appeal before removal from the UK; the restriction to access to housing for asylum applicants (UK Border Agency n.d.) .   |
| <b>Asylum and Immigration Act</b>                                | 1996 | The Act "provided that the right of appeal against removal to safe third countries in the EU (and Canada, Norway, Switzerland and the USA) would be exercisable only from abroad". It removed benefit entitlements to in-country asylum applicants and further restricted access to housing. It introduced a 'white list' of countries (UKBA n.d.).   |
| <b>Immigration and Asylum Bill</b>                               | 1999 | The Act removed remaining benefit entitlements from all asylum applicants and created the National Asylum Support Service (NASS) to support and disperse destitute asylum seekers on the basis of a no-choice dispersal system (Daly n.d.).   |
| <b>Nationality, Asylum and Immigration Act</b>                   | 2002 | It provided for the establishment of accommodation centres; repealed the provision of automatic bail hearings created by the Immigration and Asylum Act 1999; removed support in three cases: for asylum seekers who did not take up the government's 'offer' to reside in an accommodation centre; for those who did not apply for asylum 'as soon as reasonably practicable' upon arrival in the United Kingdom; and for claimants who would not co-operate with the authorities. It introduced non-suspensive appeals and a 'white list' of ten safe countries that were about to join the European Union in 2002; extended the power of detention including families with children (NIA Act).                                 |
| <b>Asylum and Immigration Act (Treatment of Claimants, etc.)</b> | 2004 | The Act introduced "a provision to allow termination of support to families and a power to attach a condition of community activity to hard case support". It also included "changes to homelessness law so that a refugee will be deemed to have acquired a local connection with the local authority in which their dispersal accommodation is situated. The Act also creates new penalties for people who arrive in the UK without valid documentation" (Refugee Council 2004b, 2).  |
| <b>Immigration, Asylum and Nationality Act</b>                   | 2006 | It reiterates what it was said in the government's five year plan:<br><ul style="list-style-type: none"> <li>- stop granting indefinite leave to remain (ILR) to recognised refugees, and the introduction of an appeal against a decision to remove or refuse to extend their right to remain in the UK;</li> <li>- measures to further strengthen border controls by fingerprinting all visa applications and carrying out electronic checks on people entering and leaving the country;</li> <li>- the extension and consolidation of vouchers as a form of support for failed asylum seekers who are unable to return to country of origin;</li> <li>- the introduction of a number of counter terrorism measures,</li> </ul> |



|   |      |   |
|---|------|---|
|   |      | including a clause that extends the grounds on which the government can exclude people from asylum (Refugee Council 2006, 2).   |
| <b>UK Borders Act</b>                           | 2007 | It “introduces the power to impose compulsory biometric identity documents for non-EU immigrants; enables the government to require children under the age of 16 to carry a biometric identity card; allows automatic deportation of some foreign nationals in two circumstances: if they are imprisoned for specific offences or they are imprisoned for more than one year”. It gives “immigration officers with police-like powers, including increased detention, entry, search and seizure powers”. It “allows additional reporting and residency conditions to be imposed on immigrants granted limited leave to remain. This could mean reporting regularly to the UK Border Agency or residing at a specific address” (The Guardian 2009b). |
| <b>Criminal Justice and Immigration Act</b>     | 2008 | This Act covers a wide area including. In terms of immigration it “introduces a special immigration status for those believed to have been involved in terrorism and other serious crimes. Recipients have no formal leave to enter or remain in Britain, and the home secretary can impose conditions on their residence and employment and require them to wear an electronic tag. Special immigration status can also be applied to their spouses (The Guardian 2009c).  |
| <b>Borders, Citizenship and Immigration Act</b> | 2009 | It is also known as ‘simplification bill’ whose aim is to review all existing asylum and immigration legislation. It “creates new powers to allow customs officials and immigration officers to share information; amends the rules on naturalisation; creates a new category of temporary leave to remain, entitled “probationary citizenship leave”. This will form part of the new route to citizenship and will constitute an additional period for which migrants are denied access to services and welfare; introduces the concept of voluntary community service for migrants” to “reduce the length of the naturalisation process by up to two years (The Guardian 2010).   |

## APPENDIX 12

### IMMIGRATION/ASYLUM LEGISLATION IN ITALY

| Legislation   | Year | Main points   |
|---|------|---|
| <i>Legge Martelli</i><br>Law 28 February 1990 n.39  | 1990 | Only Art.1 contains information on the right to asylum. For the first time, this allows entrance at the Italian borders to non-European refugees. In fact, with the 1951 Geneva Convention, only European refugees could make their way into the Italian soil until this time.  |
| <i>Legge Turco-Napolitano - Disciplina dell'immigrazione e norme sulla condizione dello straniero</i> (Discipline of immigration and regulations on the condition of the foreigner) Law 6 March 1998 n. 40  | 1998 | This law introduced a series of new regulations from the reinforcement of borders controls to the definition of flows and type of immigrations. A quota system fixed every year according to the countries of origin and to the type of workers was introduced. Quotas did not however cover the entries for family reunion, asylum seekers and humanitarian reasons. The law furthermore, introduced new ways of opposing illegal immigration also with the creation of detention centres, where immigrants who had received an expulsion order were held from twenty to thirty days while all the controls are done. Finally, the law also provided a <i>carta di soggiorno</i> , a particular permit with unlimited duration for those immigrants who had legally lived in Italy for 5 years (Legge Turco-Napolitano). |
| Law decree 25 July, no. 286 – <i>Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero</i> (Single text regulating the discipline on immigration and norms on the situation of the foreigner) | 1998 | The new decree supported the dispositions against illegal immigration as well as discrimination against specific groups, such as refugees. Although, the decree could be seen in a positive way for the improvements made on the conditions of the legal immigrant, it is important to take notice of the reinforcement of the expulsions and rejection through the institution of <i>fermo amministrativo</i> , which is a type of detention in those cases where a person cannot be immediately expelled (Decreto legislativo 286/98).  |
| <i>Legge Bossi-Fini</i><br>Law 189/2002, effective since 21 <sup>st</sup> April 2005 date of entry into force of the implementing Regulation 303/04 (DPR n.303 16/09/2004 regolamento attuativo)  | 2005 | The norm has introduced 4 new points with regards to asylum:<br>1)The introduction of identification centers. Asylum seekers will be held while waiting for their request to be examined;<br>2)Double asylum procedure: simplified for asylum seekers within the identification centers; and ordinary for free asylum seekers;<br>3)The institution of 7 territorial commissions to recognize refugee status (in Gorizia, Milan, Rome, Foggia, Siracusa, Crotona, Trapani);<br>4)If refugee status is not given, asylum seekers will be expelled immediately from the country even if they have appealed. (ICS 2005).   |
| Law-decree 92/2008 containing 'urgent measures on public security' converted into law 125/2008  | 2008 | It introduced the following provisions: <i>aggravante di clandestinità</i> (aggravating circumstances for illegal migrants) according to which the illegal migrant who has committed a crime may have a higher punishment; expulsion of the foreign citizen (including a EU citizen) if condemned for two years (it used to be 10 years); stricter punishments for employers taking on illegal migrants and home owners renting to illegal migrants; the CPTs change name and became <i>centri di identificazione ed espulsione</i> (Centres for the identification and expulsion) (Programma Integra 2008).  |

|  |      |  |
|--|------|--|
| Law 15 July 2009 no. 9 (so called <i>pacchetto sicurezza</i> ) | 2009 | The <i>pacchetto sicurezza</i> (security package) introduced the <i>reato di clandestinità</i> (crime of illegality) according to which the illegal migrant has to pay between 5000 and 10000 Euros. It also introduced the so-called <i>ronde</i> that is groups of non-armed citizens who patrol the streets and may signal security issues. Finally, it provided for an extension of the stay in the <i>centri di identificazione ed espulsione</i> (Altalex 2009). |
| Law 28 June 2012 no. 92 (so called <i>Riforma Fornero</i> )    | 2012 | This law reformed the <i>Testo Unico</i> by doubling the residence permit from six to twelve months for those who have lost their job (LeggiOggi 2012)   |

## **APPENDIX 13**

### **ORIGINAL QUOTATIONS CHAPTER 1**

(1.1) criterio di omogeneità culturale

(1.2) particolare attenzione sia riservata a quei cittadini che provengono da paesi che hanno più forti legami con la cultura europea e che, quindi, possono, con maggiore facilità, integrarsi nella nostra società

## APPENDIX 14

### ORIGINAL QUOTATIONS CHAPTER 5

(5.1) in Cina non c'e' la liberta' di stampa. La liberta' di stampa e' uno degli elementi della nostra Costituzione. Chiaramente, qualsiasi cinese che veniva in Italia e diceva "io li non posso farmi il mio giornale" doveva essere, in base all'art. 10 della Costituzione, considerato rifugiato politico. E questo non era ... pensabile.

(5.2) indicare l'Italia come un paese ... di ricovero , di accoglienza

(5.3) aprire le porte a tutti

(5.4) il fenomeno della crescita di nuovi arrivi

(5.5) una proposta alternativa

(5.6) una normativa gia' dal '98 zoppicante in quanto all'immigrazione si e invece all'asilo no

(5.7) nonostante fosse il governo Prodi di sx, non aveva ascoltato minimamente le associazioni

(5.8) qualcuno ha fatto fuori il governo Prodi e la cosa e' decaduta

(5.9) La disumanita' dell'ideologia della societa' multirazziale

(5.10) I casi in cui e' possibile trattenere il richiedente asilo, nonche' la possibilita' di allontanamento dopo il primo grado concessa dalla procedura accelerata

(5.11) Grande innovazione

(5.12) Taglia e incolla

(5.13) Non una legge con il proprio pensiero

(5.14) Costituzionalmente censurabile

(5.15) Sostanziale sollievo a fronte della scarsa corrispondenza tra i contenuti del disegno di legge e quelli della usuale propaganda di alcuni dei partiti di maggioranza

(5.16) un meccanismo a tutela della legalita' e anche a garanzia degli immigrati

(5.17) uno strumento anti straniero

(5.18) In tutte le ipotesi di ingresso clandestino

(5.19) Regolare, irregolare ... o altro

(5.20) Il novanta per cento [dei presentatori di queste domande strumentali] facevano poi perdere le loro tracce

(5.21) In uno stesso provvedimento, norme con obiettivi cosi diversi

(5.22) Diritto costituzionale garantito

(5.23) Invece paradossalmente la B-F strutturo' il PNA e lo trasformo' in un sistema prevedendo anche dei fondi stabili per quanto insufficienti

(5.24) Registrato ... notevoli ritardi nell'attuazione di molti strumenti previsti, non è stata oggetto di un adeguato monitoraggio ma, soprattutto e fundamentalmente, non è stata in grado di fronteggiare le emergenze

(5.25) quello che gli italiani vogliono sentirsi dire

(5.26) Per far fronte ad alcune necessita ... una popolazione di sette milioni di abitanti perché vengono meno i diritti fondamentali di libertà e i diritti sociali ... si possono però aiutare a casa loro.

## APPENDIX 15

### ORIGINAL QUOTATIONS CHAPTER 7

- (7.1) sistema molto politico ma molto apartitico
- (7.2) ...se la spinta fosse venuta solo da sindaci di centro-sx probabilmente sarebbe andata [male]
- (7.3) principio ... e ideologia
- (7.4) perdere il controllo della cabina di regia
- (7.5) emanazione storica del Partito Comunista Italiano
- (7.6) per quanto riguarda il lavoro di lobby si può sintetizzare in niente
- (7.7) una legge molto colorata sul piano politico
- (7.8) Nel 2001 se si pronunciava la parola asilo si pensava alla scuola materna ... già sembrava un miracolo trovare una persona sensibile
- (7.9) Tocco di umanità
- (7.10) Preistoria
- (7.11) grande gioco delle parti dove io mi alleo
- (7.12) l'obiettivo era cercare di convergere verso ... condivise
- (7.13) fasi dove avevamo ... *fora* ... più strutturati
- (7.14) tutto nasceva allora, tutto più o meno nello stesso momento, non c'erano momenti di coordinamento, non c'erano tavoli, non c'era esperienza, non c'era abitudine a discutere, non c'era abitudine da parte dell'ACNUR a coordinare le ONG. ... magmatico
- (7.15) in coda alla Conferenza XY, al Convegno Z, al Seminario X ... in Italia avviene sempre in maniera abbastanza disordinata
- (7.16) Periodi più caldi
- (7.17) Sarebbe ingenuo
- (7.18) un percorso ... più ripiegato su se stesso
- (7.19) chiarire i rispettivi mandati
- (7.20) voi chiedete solo per alcuni e non chiedete per gli altri
- (7.21) troppo di profilo modesto rispetto all'importanza del tema
- (7.22) con la attuale maggioranza governativa, assai poco disponibile ad ascoltare le istanze umanitarie o garantiste
- (7.23) valutazioni strategiche

- (7.24) dal paleolitico al neolitico
- (7.25) interlocutore principe
- (7.26) pressioni dell'ACNUR checche' ne pensino le altre organizzazioni
- (7.27) organismo accreditato presso il Ministero degli Affari Esteri
- (7.28) tavolo trasversale da Rifondazione Comunista sino al Papa
- (7.29) Prima del termine previsto per la presentazione degli emendamenti in Aula
- (7.30) Dilagato fra tutti i componenti dell'opposizione
- (7.31) Dopo una seduta della Commissione affari costituzionali durata fino alle 3 di notte ... non consentirà al Ddl di vedere un voto finale
- (7.32) Pervicaci bolscevichi
- (7.33) Frutto di audizioni
- (7.34) Sulla base di intese con gli enti locali e l'ACNUR
- (7.35) Fase intermedia
- (7.36) insicurezza perchè l'immigrato la cui Permanenza è legata al bisogno dell'imprenditore non ha nessun interesse ad integrarsi
- (7.37) braccia
- (7.38) Utile solo se e fino a quando produce ricchezza ... riducendo l'immigrazione a una questione di ordine pubblico
- (7.39) Rinunciato alla loro identità
- (7.40) .. fare una legge ... sia per gli italiani ... per gli europei ... e per quegli immigrati che entrano in Italia in modo regolare e in Italia rispettano le leggi e lavorano onestamente
- (7.41) Funzionale al meccanismo della produzione, e viene "smaltito" ... non appena questa utilità viene a cessare
- (7.42) differenza sostanziale ... sanatorie del passato [si limitavano a prendere in considerazione] la presenza ... [d]i disoccupati, garantendo loro soltanto le iscrizioni alle liste di collocamento. La regolarizzazione ... ha richiesto un rapporto di lavoro reale ... formalizzato in un contratto di lavoro con un salario regolare
- (7.43) Ipotesi e scenari che per ragioni obiettive non lasciavano tranquilli
- (7.44) Esposti al rischio di lavoro illegale
- (7.45) Nozione rudimentale della nostra lingua e del nostro diritto
- (7.46) Nel 2000 oltre 1200 lavoratori sponsorizzati hanno trovato occupazione



(7.47) Impone ... a carico dei soli datori di lavoro la soluzione del problema ... di assicurare una sistemazione decorosa ai lavoratori extra-comunitari, problema che, invece dovrebbe essere, affrontato con il concorso delle parti sociali e delle comunità locali

(7.48) È giusto ... sapere con chi si ha a che fare

(7.49) stranieri sono tutti potenzialmente criminali o, comunque, soggetti da tenere sotto controllo

(7.50) hanno percepito con l'avvio di un sistema pubblico di accoglienza basato sui comuni come una sorta di concorrenza ... tradendo in questo modo una impostazione tipica italiana .. le misure di supporto ... non debbano essere gestite dallo stato ma gestite da enti privati ... la nostra storia cattolica ... la solidarietà, la carità

## **APPENDIX 16**

### **ORIGINAL QUOTATIONS CHAPTER 8**

(8.1) di commentare o di intervenire

(8.2) non c'erano tavoli, non c'era esperienza, non c'era abitudine a discutere, non c'era abitudine da parte dell'ACNUR a coordinare le ONG

(8.3) l'avvio di un sistema pubblico di accoglienza ... come una sorta di concorrenza

(8.4) Una fetta della torta nuziale

(8.5) era l'ente di punta ad avere rapporti con noi, con il legislatore e anche con il governo. Era quella piu' attiva, era anche quella piu' identificabile, la piu' riconosciuta. Aveva una serie di qualificazioni che la rendevano affidabile, piu' affidabile di altre

(8.6) un ascolto totale

(8.7) un contributo estensivo ... è stata un legge che ha coinvolto molta gente intesa come società civile

(8.8) perche' il governo rischia di perdere il controllo della cabina di regia

(8.9) galassia

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