# New Labour's Immigration Policy - The Audience, the 'Other' and the Institutionalisation of Policy Feedback

**A thesis submitted by**

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## Abstract

This thesis combines public policy approaches to the study of policy development with theories of migration and applies them to analysis of New Labour immigration policy between 1997 and 2007. In particular the thesis engages with the insights of Lowi and Pierson in examining the degree to which immigration policy can be seen to have made immigration politics, and then to relate such insights to the feedback effects of that politics impacting on future policy. Through the analysis of four Acts of Parliament and the debate around those Acts, it is argued that a dual policy was created, with the quiet encouragement of wanted migrants accompanied by a hostile discourse related to the unwanted, particularly asylum seekers. This is shown to have created an immigration politics in which hostility has been institutionalised and has expanded beyond those initially identified as unwanted to include other categories of migrants. This, it is argued, has implications for the Government's future aims with regard to the wanted migrants, but also for the lives of those migrants who live in Britain.

**Contents**

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To Julia I give thanks for everything, for making me realise that the best of life is now, and for making me happy. And finally, to my little boy Rudy who has already filled our lives with joy and whose future we look forward to sharing.

## List of Abbreviations

A8 – Accession 8
A2 – Accession 2
AIT – Asylum and Immigration Tribunal
ALO – Airline Liaison Officer
ARC – Asylum Registration Card
ATC – Authority to Carry
BIA – Borders and Immigration Agency
CBI – Confederation of British Industry
DEE – Department for Education and Employment
ECHR – European Convention on Human Rights
EEA – European Economic Area
EU – European Union
ELR – Exceptional Leave to Remain
HASC – Home Affairs Select Committee
HLWG – High Level Working Group
HSMP – Highly Skilled Migrant Programme
HRA – Human Rights Act
IAA – Immigration Appellate Authority
IAS – Immigration Advisory Service
IAT – Immigration and Asylum Tribunal
ICD – Integrated Casework Directorate
IND – Immigration and Nationality Directorate
IOD – Institute of Directors
IOM – International Organisation for Migration
JCWI – Joint Council for the Welfare of Immigrants
MAC – Migration Advisory Committee
MIF – Migration Impacts Forum
NAM – New Asylum Model
NASS – National Asylum Support Service
NGO – Non-Governmental Organisation
OISC – Office of the Immigration Services Commission
RPA – Refugee Protection Area
SAWS – Seasonal Agricultural Workers Scheme
SBS – Sector based Scheme
TGWU – Transport and General Workers Union
TLR – Temporary Leave to Remain
TPC – Transit Processing Centre
TUC – Trades Union Congress
UKBA – United Kingdom Borders Agency
UNHCR – United Nations High Commission for Refugees
WRS – Worker Registration Scheme

# Chapter 1 - Introduction

## Introduction

This thesis is an examination of New Labour immigration policy between 1997, when the new Government were elected, and 2007, when Tony Blair stepped down as Prime Minister. Since 1997 the immigration policy field has been characterised by various forms of crisis management. Control and lack of control have dominated developments, and have been accompanied by strong and trenchant rhetoric that have maintained a high public profile for the issue, in contrast to Downs' notion of an issue attention cycle (Downs 1972). This crisis perception has been a result of numerous symbiotic factors. While the number of migrants arriving in the UK has increased significantly over the past decade (see Appendix 2 for more details) numbers alone need not be seen in crisis terms. However, these numbers when combined with increased political salience and a construction of migration as a threat have created a different type of immigration politics in Britain. It is the relationship between this immigration politics and the New Labour Government's policies that is the basis of this thesis. While there has been a significant amount of research conducted on immigration matters over the past decade, there are few with the temporal ambition of this work and none that have sought to integrate theories on the relationship between policy and politics over a decade long empirical examination. In addition, the thesis raises new questions concerning theories of migration by addressing the issue of the political atmosphere into which migrants' move, which is given little attention in existing theoretical propositions.

## Research Questions

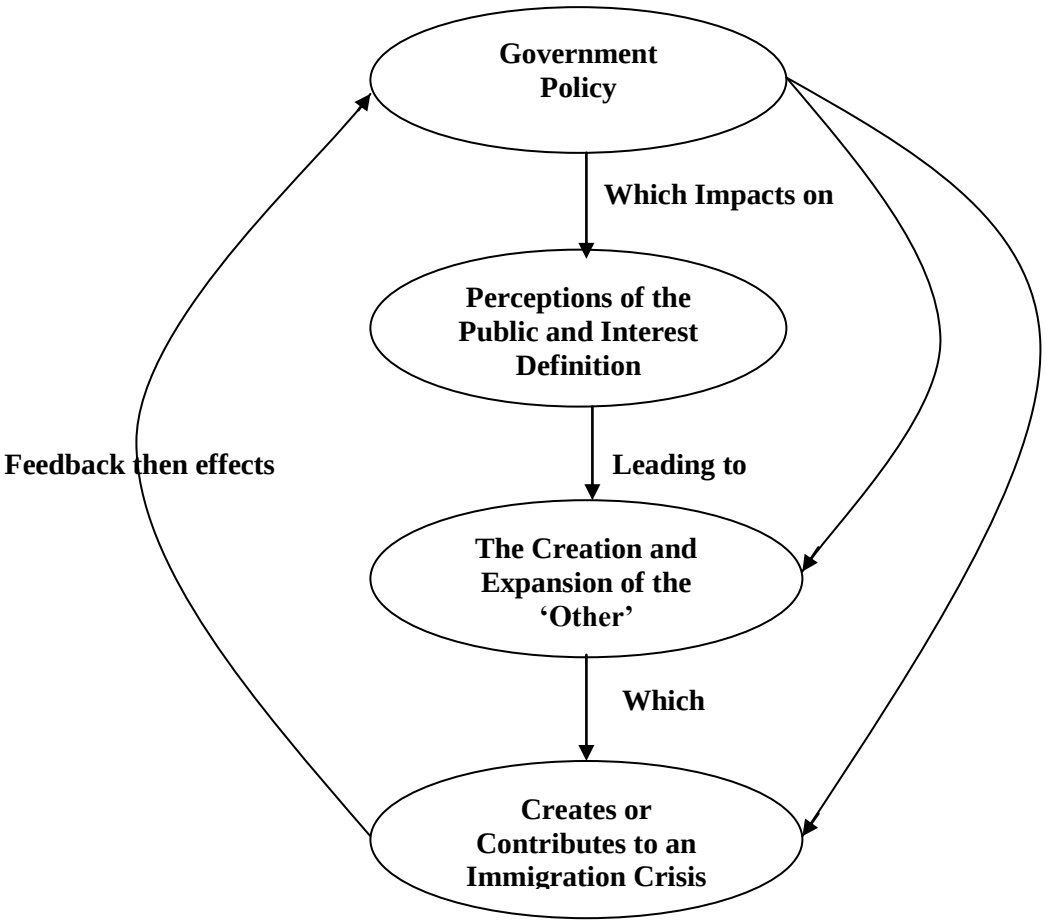
It is hypothesised in this thesis that *how an issue is framed in official discourse plays a key role in explaining the relationship between policy and politics*.

Consequently the key research question being addressed is;

*Has immigration policy created immigration politics?* The answer concerns the presentation of

policy as well as its substance and consequences. In order to answer such a question a long term case study was a pre-requisite. A decade long empirical study was capable of combining an examination of policy and its construction as well as its impacts, intended or not. Nevertheless there are clearly a number of other pertinent issues contained within such a broad research question. These include the following; how was the policy field described and presented by the Government? Did policy construct different types of migrants differently and if so what were the consequences of this construction? What processes allowed the crisis perspective to take hold? What role did non-nation state actors have in both constructing and enforcing immigration policy? Some of these research questions are shown in diagrammatic form in Figure 1.

**Figure 1** **The Policy Framework**




In the case of New Labour's policy on immigration, this thesis identifies a fundamental disjuncture between policies pursued in relation to wanted migrants, discussion over which was

initially ‘privatised’ (see Schattschneider 1960), and the perceived need of the Government to be seen as ‘in control’ of migratory movements and entry matters. The latter aspect of Government thinking or behaviour often resulted in the adoption of a hostile stance that was disproportionate to any statistical or factual evidence of a threat resulting from migration. Furthermore this stance stood in contrast to the actual policy practice of the Government which consistently increased migratory movements, creating excess supplies of labour for the good of the ‘economy’. It is argued throughout this thesis that the ‘feedback effects’ (Pierson 2006) of this bifurcated policy stance have had important and long term impacts in relation to both the trajectory of continuing policy developments, but also on the process of ‘othering’ (Said 1978) that has occurred pertaining to both wanted and unwanted migrants, as well as new and long-term settled minority ethnic communities in the UK.

**Methods**

This thesis adopts a single case study approach in the examination of policy and policy-making in immigration matters under New Labour. Goode and Hatt describe the case study approach as “a way of organizing social data so as to preserve the unitary character of the social object being studied” (Goode and Hatt 1952 331). A ten-year study of immigration policy, including four substantive Acts of Parliament, provided for rich empirical data that was able to idenitify numerous developments but which also allowed for the maintenance of its unitary character.

Single case study research is well established across a variety of academic disciplines. Yin highlights the utility of a single case study approach in much of his work, although he cautions against using a single form of data collection within such an approach (Yin in Blaikie 2000). Nevertheless Yin highlights three substantive forms of case study research. These are exploratory, descriptive and explanatory. This thesis broadly takes an explanatory single case study approach as it seeks to contextualise, explain and hypothesise about developments in policy-making over a ten-year period.

Yin describes a case study such that it is
“an empirical inquiry that

- Investigates a contemporary phenomenon within its real-life context; when
- Boundaries between phenomenon and context are not clearly evident; and

- Multiple sources of evidence are used “ (Yin in Blaikie 2000 217)

Creswell provides a fivefold definition of the case study which chimes well with the work being undertaken here. These are that a case study is a single, bounded entity, studied in detail, with a variety of methods, over an extended period” (Creswell in Blaikie 2000 215). Thus a case is time-bound and activity-bound (Blaikie 2000 216). In order that the results are not capable of being reduced to particularities it therefore has to be both in depth and not separated from its context. Stake adds that single case studies are especially valuable when the case itself is of special interest. We then look for the interactions between the case itself and its contexts. He highlights that single case study research is the “study of the particularity and complexity of a single case” (Stake 1995 x1).

For the purposes of this work those definitions are good ones. This thesis’s case study approach investigates medium term immigration policy and policy making within the context of the British polity and beyond. Further, the feedbacks evident show links between the policy itself and the policy-making environment in which it occurs. And finally, the thesis adopts both documentary analysis and elite interviews. This work, as all case study work should be, is far from being solely descriptive, as the culmination of the series of policies and their effects lead to the ability draw theoretical conclusions (Mitchell in Blaikie 2000 217).

Stake cautions that there are difficulties in not only conducting such work, but also in terms of the outcomes and claims that can be made as a result. However, he argues that despite the inability of a single case study in social or political research to make authoritative claims in the way natural science research can, it can still suggest important clues to possible cause and effect relationships (Stake 1995 69). The findings of this research and the framework adopted could be applicable beyond the single case being undertaken here. Such work would add to the theoretical claims being made.

The methods employed in this thesis were qualitative. There is no single method in qualitative research. Instead, Sharan and Merriam describe qualitative methods as an ‘umbrella’ concept whereby understanding and explanations for a social phenomenon cause as little disruption to the setting as possible (Sharan and Merriam 1998 5).

This thesis analysed ten years of parliamentary debates, speeches and newspaper reports. Such documentary analysis is a staple method of qualitative research although there are numerous methods of analysis. Discourse analysis and content analysis are among the most widely used forms of documentary analysis. However, the use of language and symbols in constructing certain migrants according to risk and crisis is a key part of this thesis. As it became evident early on that language and symbols were simultaneously embedding and evolving, content analysis was deemed incapable of capturing many of the dynamics of the case. The quantification of terms would have missed this evolution and focussed instead only on the more static elements of the policy debates. Similarly the full coding involved in much discourse analysis was considered inappropriate given the size and complexity of the documents being analysed (a decade of parliamentary debates, newspaper articles and speeches). Buzan et al suggest a simplified form of discourse analysis. "Read, looking for arguments that take the rhetorical form defined here as security" (Buzan et al 177). While Buzan et al were specifically looking for 'security'; the same approach is used here to look for answers to the key research questions. Therefore a simplified version of discourse analysis along with narrative analysis which puts the 'story' at the centre of the analysis was used (Kohler-Reissman 1993). Thus both the documents and the qualitative interviews were analysed with the proviso that both require 'selection and reduction' (see for example Thody 2006). Results therefore are not claimed as being entirely impartial or objective. Nevertheless the crossing of data from numerous sources reduces such concerns.

Analysis of both Hansard and the public debate in the form of newspapers pinpointed some of the key actors involved in policy-making over the decade under review. A list of potential elite interviewees was subsequently constructed. Elite interviews are a widely accepted method of data collection, although the use of the term elites and the connotations it carries are not universally accepted (Dexter 2006 18). Dexter highlights such concerns but accepts the terminology on the basis that the elite interview is 'non-standardised' due to its format. That is, it stresses the point of view of the interviewee, it encourages them to structure their account of the 'story', and allows the interviewee to put stress on what they feel to be important (Dexter 2006 18/9). Thus elite interviews involve those considered prominent, well informed or influential (Marshall and Rossman Gretchen 2006 105). This implies semi-structured interviews that allow for a more organic interview process, allowing certain issues and perspectives to be raised.

Dexter highlight the utility in using elite interviews as a data collection method when it is felt to be able to obtain either better or more data, or a combination of the two (Dexter 2006 23). Again the politicised nature of the case study here necessitated the use of such an approach. The rationales behind policy decision making were contested, so it was necessary to obtain varying viewpoints and high level explanations for decisions taken.

Interviews involved individuals at both the national and European levels and included campaigners in NGOs, civil servants and politicians. As the study was a longitudinal one, there were a number of people from the earlier period who could not be contacted. Nevertheless some 50 or so individuals were written to and asked to participate in semi-structured interviews. An outline of the research was sent to interviewees and for those who so requested it, an interview schedule was also sent. This process led to a good cross section of high calibre interviewees (The individuals involved are listed in Appendix 1). In total 16 interviews were conducted with 17 people, one being an interview with two people simultaneously. Some participants asked not to be identified. Where this is the case the position held is given in a way that would make identification impossible. All interviews, with the permission of the participants through the signing of an informed consent form, were recorded and transcribed. The transcripts were then analysed in the same way as other documents discussed above.

## The Contribution to the field

There are a number of contributions that this works seeks to make. First the thesis seeks to provide a detailed longitudinal empirical analysis drawing upon Lexis[1], Hansard[2] and interviews with elite actors[3]. Analysis is placed within its historical and theoretical context, while also providing examination of New Labour's own policy, identifying both continuity and change with both the previous Government's policy and with its own policies over the ten year period. It is argued that New Labour policy on immigration manifested a number of key characteristics; a dual policy, migration as a threat on one side and migration as an economic necessity on the

[1] Lexis-Nexis is an online data archive that stores articles from newspapers worldwide. For this thesis it was used to examine the media and public debates in immigration matters between 1996 and 2007.
[2] Hansard debates, both in the House of Commons, the House of Lords and Committees both looking at the Acts themselves as well as the Home Affairs Select Committee, were thoroughly examined between 1996 and 2007.

other; externalisation and diffusion of immigration controls; and crisis creation and management simultaneously. Underpinning New Labour policy throughout was a fundamental contradiction, the quiet, though numerically significant, encouragement of wanted migrants, and a much more public and open position emphasising the need for control, and a problematisation of the 'unwanted'.

Secondly, the thesis utilises a public policy approach in order to identify the key characteristics of New Labour's approach to immigration policy and the impact of that policy on the broader political environment. Following Lowi (Lowi 1972), it is argued that elements of New Labour policy, even many of those that sought to minimise the sense of crisis in relation to immigration, in practice fed the perception of crisis within the broader political and policy environments. The consequences, often unintended, are explored in full. Thus one of the key consequences of the New Labour dual immigration approach was that the aim of the Government to encourage wanted migration was consistently undermined by the more socialised public face which sought to be seen as in control of the movement of unwanted migrants. This led to a gradual process of the institutionalisation of migration as a threat, consistent with much of the work on the securitisation of migration (See Bigo 1998 and Huysmans 2000). However, this is also shown to have had 'feedback effects' (Pierson 2006) which have resulted in the institutionalisation of hostility due to the construction of migrants as a threat. There have been a number of commentators who assume a 'hostile public', that is, a majority population hostile towards migrants. These arguments posit a gap between the closed border preferences of the public, with continuing migratory movements facilitated by Government (see for example Freeman in 1998). However, other studies have argued that elite views essentially lead mass views with regard to immigration (Statham and Geddes 2006 and Lahav 2004 to name two). Such assumptions

[3] For a full list of interviewees see Appendix 1

question the notion of a hostile public, instead arguing that the public view reflects or is led by the elite view. Missing from this up until now is the role of unintended consequences and feedback effects. This, it is argued, has had a significant effect on both wanted and unwanted migrants and their lives in the UK, but has also had an impact on community cohesion more generally, with existing long term settled migrant communities also being problematised.

Finally, this thesis makes a theoretical contribution to existing theories of migration. By utilising a public policy approach it is argued that in addition to the broader 'push and pull' theories of migratory movements, key aspects of specific policies *and* the policy environment play a fundamental role in shaping the context within which migration occurs and within which the individual migrant is required to operate. The factors which influence migratory movements are strongly contested (see Massey et al 2006 for a synopsis). The work being undertaken here suggests that the costs and benefits of movement to migrants themselves go beyond economic and labour market factors identified by Government and many migration theories. Indeed, even where positive policies exist to encourage and support wanted migration, it is argued that if an atmosphere of crisis and control becomes institutionalised, and the issue of migration is framed in public discourse as a 'threat', then feedback effects in relation to all migrants in the host country conforms to a form of 'othering', which may impact upon both 'wanted' and 'unwanted' migration.

**Structure of the Thesis**

The structure of the thesis is as follows. Chapter 2 establishes the theoretical framework for the thesis, in particular, the contribution that the public policy approach can make to traditional theories of migration. This chapter begins by highlighting the existing theories of migratory movements. The chapter examines some of the key arguments pertaining to the role of the state,

and crucially also the impact of globalisation. However, the main emphasis in the chapter is on the utility of using a public policy approach to the examination of migration. Beginning from Lowi's hypothesis that 'policy makes politics', key concepts such as framing (see Rein and Schon 1991) and issue definition (Hogwood 1987), are introduced. It is argued, for example, that utilising the concept of securitisation whereby immigration is seen to be constructed in the language of security, allowed extraordinary measures to be implemented 'against' a 'foe' that need not be identified, as it was constructed as an 'existential threat' (Bigo 1998).

The chapter goes on to examine the importance of symbols and symbolic action, and relates these developments to the creation of an immigration 'crisis' (see Edleman 1985 for discussion of symbolic politics). The key work of Shattschneider is used to integrate the importance of the 'audience' as well as the power relations in policy making that impact upon policy content (Schattschneider 1960). The chapter then highlights some of the work of institutionalist writers in relation to both path dependent policy-making and the impact of the institutionalisation of policy and practice (see Hall 1992 and Reich 2000). This leads finally to discussion of the 'feedback effects' (Pierson 2006), of politics on policy, and of the impact that particular policies and the policy environment can have. The chapter concludes by returning to its beginning and highlighting the contribution of this perspective for existing theories of migration.

Chapter 3 examines the historical development of immigration policy in Britain. Throughout this chapter it is emphasised that there has always been a continuum of wanted-ness in immigration policy. Thus while some people or groups of people have been actively sought, largely for economic reasons, others have been less wanted. Key to this thesis is the concept of a dual immigration policy, with one side aimed at the wanted labour migrants and one at the unwanted asylum seekers, and later the 'illegal' migrants. This process is put in its historical context in

Chapter 3 through an examination of immigration policy throughout the 20th century. This places the Labour Government's policies within their historical context. Relevant developments at the European level are also introduced in Chapter 3. Such developments are tracked and linked to key concepts raised in Chapter 2, particularly that of securitisation.

Chapters 4 to 7 contain the detailed empirical study of New Labour immigration policy from 1997-2007. These chapters are temporally organised and analyse the first four Immigration Acts under the New Labour Government. The main content of all of these Acts, as well as accompanying provisions, are highlighted in tabular form at the beginning of each chapter. However, the analysis of the Acts in these chapters also integrates developments evident in the theoretical framework. Thus the symbolic importance of provisions in the Acts and the way in which these provisions, and the 'rules of the game' below the level of policy, are highlighted throughout. They are further shown to have contributed towards the feeling of crisis. In addition the balance between continuity and change will be seen throughout these 4 chapters.

Chapter 4 examines the 1999 Immigration and Asylum Act, the first major piece of immigration legislation implemented by the New Labour Government, which exhibited significant continuity with the policies of the previous Conservative Government as well as signalling a move away from Labour's position on many issues while in opposition. Chapter 5 then goes on to analyse the following Act, the 2002 Nationality, Immigration and Asylum Act. This chapter identifies and contextualises the formalisation of a dual immigration system, with the managed migration agenda emerging, but accompanied by increasing attempts to control the 'unwanted'. The following chapter is an examination of the 2004 Asylum and Immigration (Treatment of Claimants) Act, a far less substantive Act looked at in isolation. However, this was also the period of the initial European enlargement as well as the Five-Year Strategy which had wide

ramifications for immigration in Britain. This Strategy led on to the final piece of legislation examined in this thesis, the 2006 Immigration, Asylum and Nationality Act. All four of these chapters contain arguments made by the Government as well those in opposition to it. Each chapter also seeks to contextualise developments within the European context when they are of relevance to UK policy and policy-making.

Chapter 8 provides an analytical overview of the empirical study in relation to the public policy approaches to policy analysis identified in Chapter 2. The duality of New Labour's immigration policy is highlighted, as is the externalisation and diffusion of the immigration control regime. In addition, the means by which important international institutions were circumvented is also highlighted in some depth. Key to this chapter is both the legislative activism of the Government, with 4 Acts in 9 years, but also the ubiquitous use of targets in Labour policy-making. Such a process is shown to have set up targets for opponents of immigration to show a Government lacking control of the system, prompting further attempts to exert control through both policy and discourse. This then led to policy making that was reactive to events and assumed hostility and acted to heighten the sense of crisis. It is also argued that this then acted to increase the hostile immigration 'audience'.

In Chapter 9 it is argued that the need to be seen as 'in control' of immigration aided the hardening of discourse, and further exacerbated perceptions of a system in crisis when such control was seen as being unenforceable. Furthermore it is shown that even where active policy is encouraging of migrant movements, if the rhetoric in the socialised side of policy creates the perception that immigration is unwanted, illegal or a threat which needs to be controlled, then the politics of immigration may be dictated as much by this rhetoric within the official discourse, as by the existing policies. In turn, as this rhetoric becomes institutionalised, it has feedback

effects on subsequent policy actions. It is finally suggested that the political atmosphere created by policy and symbolic politics has consequences that migration theory should take account of.

# Chapter 2 - The Public Policy Approach and Immigration Theory

## Introduction

The complex interrelationship between ideas, interests and institutions has long been a concern for students of public policy. In this chapter it is suggested that key insights from these debates offer a new perspective on traditional approaches to the study of migration. The key research questions raised in this chapter are; what is the 'state of the art' with regard to theories of why migratory movements take place? What can public policy perspectives potentially add to such explanations? How should theories of migration adapt to public policy approaches?

This chapter begins with some reflections on the existing theoretical debate regarding migratory movements. It then highlights the importance of the nation state to all existing theories prior to integrating key public policy perspectives within such debates. In particular, this chapter examines the way in which 'feedback' (see Pierson 2006) from government policies may impact upon understandings of how the issue of migration and the very concept of a migrant are framed. As these 'issue definitions' or 'frames', implicit in Government policies, create new audiences, the symbolic images – of crisis, threat or opportunity – which they embody become institutionalised. These in turn, it is argued, have long-term effects on concepts of the 'other' and the place of othered groups in society, which should be taken into account in any theory of migration.

## The Concepts of Migrant and Migration

There are numerous contestable definitions of migrants and migration. Migrants can be seen from the meta-level as anybody living outside of their country of birth or citizenship for a period of 12 months or more (Sasse and Thielemann 2005 656). Short-term labour migration, which

plays an increasing role in British and European migratory movements, would be missed by such a definition. In addition this definition would prescribe migrant status onto individuals who emigrate but who spend the rest of their lives in their new countries of residence and/or citizenship. Thus migrant status would be permanent. Broad definitions also have sub categories that are based on the motivations, on the part of the migrant, for living in another country. These are economic, forced and family migrations (Sasse and Thielemann 2005 656). Although such categorisations are a useful analytical tool, the distinction between economic (voluntary) and forced (involuntary) are not clear-cut, "political and economic causes (and related pressures such as environmental ones) frequently impinge on an individual's decision to migrate" (Sasse and Thielemann 2005 656/7). According to Harris another distinction can also be drawn, that issues concerning economic migrants are characterised in terms of economics while those of refugees are about ethics. However, he concurs that such distinctions are not absolute, and that they are "being blurred by governments" (Harris 1995 119). What is more, pressure points and Government policies can displace one set of arrivals with another. The people involved in such movements could conceivably remain the same while their labels are changed.

There are a number of both complimentary and competing theories with regard to why population movements take place. Massey et al provide a useful summary of some of the main theories in the field;

> Neoclassical economics focuses on differentials in wages and employment conditions between countries, and on migration costs; it generally conceives of movement as an individual decision for income maximization. The 'new economics of migration', in contrast, considers conditions in a variety of markets, not just labor markets. It views migration as a household decision taken to minimize risks to family income or to overcome capital constraints on family production activities. Dual labor market theory and world systems theory generally ignore such micro-level decision processes, focusing instead on forces operating at much higher levels of aggregation. The former links immigration to the structural requirements of modern industrial economies, while the latter sees immigration as a natural consequence of economic

> globalization and market penetration across national boundaries (Massey et al 2006 35)

The more econometric neo-classical theories, although there are differences within them, all use forms of rational choice calculations and analysis on the part of the individual migrant. Such an approach has a long history in migration analysis and can be seen in work that goes back to Ravenstein in the 19th century. Zolberg argues that Ravenstein's work "has taken the form of a functionalist, microanalytic theory that is little more than a formal model of voluntary individual movement in response to unevenly distributed opportunities" (Zolberg 2006 63).

There are clearly problems with such individualised micro-analytic arguments, some of which are addressed by dual labour market theory. Massey et al elaborate

> standing distinctly apart from these models of rational choice, however, is dual labor market theory, which sets its sights away from decisions made by individuals and argues that international migration stems from the intrinsic labor demands of modern industrial societies (Massey et al 2006 40).

Thus economic demand plays a key role and opens up the possibility of such demand becoming self-perpetuating (see Castles 2004 below). Castles and Miller add that dual labour market theory is better able to encompass the role of the state, which neo-classical theory takes as an aberration, an interference with the market system (Castles and Miller 2003 24).

From a world systems theory perspective, migratory movement is viewed as a natural consequence of the capitalist world market. For Massey et al, this perspective sees flows of labour follow flows of goods and capital but in the opposite direction as economic change leads to people being uprooted (Massey et al 2006 42/3). World systems theory would also allow for the influence of colonial histories as a contributory factor in migratory movements and thus is capable of incorporating some notion of path dependence (Massey et al 2006 42).

Although Network theory comes to some rather different conclusions with regard to the reasons for migratory movements it adds a useful complexity to world systems theory. That is, once it begins, network connections reduce costs of migratory movement and so, going back to neo-classical theory, the size of the flow is not correlated to differentials or employment rates which are overshadowed by falling costs and risks. Migrations become institutionalised and become progressively independent of structural or individual factors (Massey et al 2006 44/5).

Massey et al propose that there are integrating factors within these theoretical perspectives as they "all suggest that migration flows acquire a measure of stability and structure over space and time, allowing for the identification of stable international migration systems" (Massey et al 2006 49). However, this stability is joined by conflicts between interests, defined by Zolberg as "a process generated by structural unevenness attributable to capitalism organised on a world stage" (Zolberg 2006 63).

Zolberg sees problems with such broad approaches as there are, for him, numerous complexities that remain unaddressed. For him the missing dimension is essentially politics. "It is the political organization of contemporary world space into mutually exclusive and legally sovereign territorial states which delineates the specificity of international migration as a distinctive process and hence as an object of theoretical reflection" (Zolberg 2006 64). Thus the economic and the political must be seen as interacting, and concepts of state sovereignty are of utmost importance.

> From the vantage point of the states, the concerns that enter into play in the determination of exit and entry policies are likely to be founded on two distinct perspectives as well. Populations are viewed as actors in markets (producers and consumers), but they are also inevitably considered actors in the political sphere, with all the implications this perspective entails (Zolberg 2006 69)

The most basic analysis of migratory movements can be summed up as the use of *push* and *pull* factors which are bound up with the categories of voluntary and involuntary movement. People are either pushed to migrate through social, political or economic circumstances, or are pulled by what is on offer in the nation or region of destination, or indeed migrations take place due to a combination of the two. These concepts can be seen in present day asylum policy where the removal of so-called pull factors is assumed to reduce non-forced movements. It is also worth adding that refugee status is not available for those fleeing economic turmoil, even life threatening famine, as such threat is not encompassed within the Geneva definition of refugee. Amato and Batt, in looking at the movement of new citizens of the EU, argued that the large movement west was "'pushed' mainly by the economic gap between the CEEs and the EU average." (Amato and Batt 1999 2). The needs of the economies of the west, though, are also seen as important in the form of "the demand for cheap and flexible labour in the EU" (Amato and Batt 1999 2). Thus there is a symbiosis whereby conditions, opportunities and demands interact with one another to produce migratory movements.

Piore argues that international migration is caused by a permanent demand for immigrant labour (in Massey et al 2006 40) and Castles implies that such demand can become self sustaining - the more a labour market relies on immigrant labour the more it will *come* to rely upon immigrant labour (Castles 2004 209). In a sense the migratory movement becomes institutionalised due to the demands of capital. A combination of government and employers, as the key and most powerful interests in the process, involve themselves in the recruitment, either openly or not, of migrant labour. Such an argument is also of relevance to the changed contours of immigrant movement, as arguably economic migrants sought new means in which to move once active labour recruitment had ended in the 1970s (see Chapter 3). This perspective would also imply

availability of work and a demand for workers in the nations of destination.

## The State and Immigration Policy

The nation state is integral to any study of immigration and immigration policy. Bigo points out that "controlling people at frontiers is a basic function which determines most cross-border practices. It involves the founding myths of the nation-states" (Bigo 1998 149).

Lahav sees an increasingly complex web of immigration procedures which involve a "formalization and institutionalization relying on third-party actors, such as industries, services, companies, local governments, and particularly other states" (Lahav 2006 308). States can maintain legitimacy by diffusing costs, while simultaneously deflecting hostile anti-immigrant public opinion to other bodies. "The state may thus contain the political fallout of migration controls through a diffusing strategy that relies on a variety of third-party actors" (Lahav 2006 308).

Legitimation, seen in the work of Habermas (Habermas 1975) and Majone (Majone 1998) that relates more to governance, is also of importance to work on immigration policy, as the legitimacy of entry and exit procedures are required to maintain public acquiescence for policy decisions. Control of who is allowed entry as well as who 'belongs' are also seen as crucial nation state functions. Koopmans and Statham use the work of Habermas in arguments concerning the supposedly endangered nature of the nation state. They highlight both the external and internal threats to the nation state, the external being the forces of globalisation and the internal as "the increasing pluralization of modern societies" (Koopmans and Statham 2000 189), particularly with regard to 'special rights groups' within those societies. That is, multiculturalism. They point out that both sets of challenges are bound up in immigration

debates,

> although the normative evaluation of these real or supposed trends differ widely, immigration is invariably seen as one of the main driving forces behind both the external erosion of sovereignty and the internal cultural differentiation of liberal nation-states (Koopmans and Statham 2000 189).

Despite the centrality of the nation state, international migration is increasingly portrayed in a way that views the state as a more or less passive receiver of migrants. One postulated element of restriction on the ability of states to pursue their own self-interest is the notion of the universality of human rights. Joppke describes the argument as, "regarding immigration, the universality of the human-rights regime has put two major limits on state discretion: the right to asylum and the principle of racial non-discrimination. Both have matured into customary international law that is binding on states" (Joppke 1999 265). Soysal sees human rights in relation to immigration as less of a political regime than a global discourse and argues that we are witnessing a 'post-national' model of rights that are guaranteed by international conventions and subsequently implemented by states (Joppke 1999 4). Sasse also advocates the optimistic notion of post-national citizenship in developing the concept of a duality in immigration, or the 'security–rights nexus' (Sasse 2005 673). The security approach, where immigration is viewed in terms of the potential threat, which is dealt with in more detail below, is balanced by the concept of 'post-national citizenship' (Sasse 2005 678), where certain 'rights' are essentially globalised.

However, it is important not to overstate the impact of such human rights concerns on national policy, particularly in a nation such as the UK with few constitutional restraints on governmental behaviour, (see Chapter 3). There has been an increasing trend to counter pose such 'rights' with both the 'rights' of the majority and the responsibilities owed (see for example the work of Etzioni 1993). This development will be emphasised where relevant throughout the thesis.

These processes also highlight the existence of dual or multiple audiences with policy and practice having to assuage all or both. Additionally, principles can be diluted by events or crises that are used to demand or justify changes to the prevailing regime, sometimes in a post-hoc way.

Nevertheless this idea implies some loss of power on the part of nation states, a proposition that Joppke takes issue with. Such claims are summarised by Joppke thus, that the capacity of states to control immigration is declining and that such decline is related to the rise of an international rights regime. For Joppke the first notion implies an increasing willingness and insistence among states to maintain their sovereignty over entry and expulsion (Joppke 1999 109), while the second is questionable in at least two regards; it is both too pessimistic about nation states' human rights principles and simultaneously too optimistic about the effectiveness of an international human rights regime (Joppke 1999 109).

Lahav would appear to agree that states remain the key players in immigration policy and practice. She argues that "states seek to reduce the costs of immigration and to control migration at the same time that they allow the free flow of trade and goods" (Lahav 2006 291). It is argued that globalisation pressures touch upon immigration but, contrary to other global movements, the movement of people is more limited. Such limitation is not and has never been absolute though. There has long been a global market for the high skilled and the wealthy and thus restrictions tend to be focused more on 'unwanted' migrants. Such issues are an integral part of the empirical work developed in chapters 4 to 9.

For Zolberg "globalization fuels the free exit versus restricted entry dualism", bringing into the

open the “fundamental tensions between the interests of individuals and the interests of society” (Zolberg quoted in Joppke 1999 3). However, this is not to argue that globalisation processes make the nation state redundant in relation to immigration. Indeed for Joppke states remain key and have the ability to re-nationalise immigration policies as an antidote to the denationalising logic of globalisation (Joppke 1999 3).

Freeman also points out that the nature of the ‘problem’ and both the propensity and ability of nation states to deal with it varies according to numerous meta-factors including geography, political systems and history, but also which stage of the policy process the policy is at (Freeman 2006b 228). Freeman conceptualises two propositions in relation to a decline in national sovereignty, traditional efforts to control national borders and determine numbers getting in no longer work, and popular reaction in rich states results in systematic backlashes and so leads to restrictive policies. However, neither are valid for Freeman who argues that “liberal democracies have much more capacity to control immigration than most commentators seem to believe” (Freeman 1998 86). Indeed he goes further in arguing that “state control of migration is undeniably increasing over time, not decreasing” (Freeman 1998 88). Joppke also argues that the capacity of states to control immigration has increased “but for domestic reasons, liberal states are kept from putting this capacity to use. Not globally limited, but self-limited sovereignty explains why states accept unwanted immigrants” (Joppke 2006 529). So why would states deliberately limit their capacity to control immigration, and thus arguably their sovereignty?

Joppke agrees with Freeman about the reasons for this: The benefits of immigration such as cheap labour and reunited families are concentrated, while the costs such as social expense or overpopulation are diffused. “That poses a collective action dilemma, in which the easily organisable beneficiaries of concentrated benefits (such as employers or ethnic groups) will

prevail over the difficult-to-organise bearers of diffused costs, that is, the majority population" (Joppke 2006 529). Freeman adds that "the chief obstacles to immigration control are political, not economic, demographic, or technical" (Freeman 1998 88).

There have been a number of studies that posit a generally negative, even xenophobic proclivity among the public regarding migrants but without attempting to explain either their conception of 'the public' or the way in which the conclusions are reached (Statham and Geddes 2006 249). Nevertheless Joppke highlights the key concept of the 'restrictionist gap' in policy whereby the restrictions desired by nation states, or at least their 'hostile public', are compromised by more liberal policy outcomes. Joppke sees hostility in policy towards immigrants as emanating from the public. The result, for him, is that political elites in a sense pre-empt any political damage that could be caused by immigration. He argues that the lesson for political elites is "never to tinker with the public's no-immigration mandate, and to prevent the eruption of racial hostility by anticipatory, ever vigilant immigration controls; and to remove this sensitive issue from the realm of partisan politics" (Joppke 1999 103).

Statham and Geddes see the causality operating in the other direction. For them any hostility has tended to move from the elites *towards* the public. They argue that immigration is "an elite led highly institutionalised field with a relatively weak level of civil society engagement…elites dominate the field and hold a decisively restrictionist stance" (Statham and Geddes 2006 248). In a sense the issue of restrictive policy and the direction in which it moves is seen as creating immigration politics, more on which below.

The link between immigration movements and the logic of the capitalist system is re-emphasised by Zolberg. He argues that immigration policies are shaped by the dynamics of world capitalism

on the one hand and the international state system on the other (Zolberg 1999 1276). Not surprisingly given the fundamental nature of the capitalist system "in the perspective of capitalist dynamics, immigrants of any kind – including refugees – are considered primarily as workers" (Zolberg 1999 1277). In this sense forced movement would be seen as something of an anomaly, except that the demarcations between forced and unforced are not clear. For example the increase in asylum related movements coincided with the shutting off of legal economic migration and so an under-researched potential causal relationship could exist, that of increasing displacement effects. Wallerstein argued that the nature of the capitalist system produced types of labour resources that were controlled in different ways, "free labour is the form of labour control used for skilled work in core countries, whereas coerced labour is used for less skilled work in peripheral areas. The combination thereof is the essence of capitalism" (Wallerstein in Cohen 2006 17).

Dale highlights the contradictory nature of migration policy within the rubric of capitalist accumulation. While the interests of ruling elites are seen as broadly similar, there are differences between the political and economic elites, at least on a rhetorical level. Although a complete free market in labour is supported by many employers, the state is seen as having an intrinsic interest in restricting mobility due to the perceived threat migrants pose to national unity and state power (Dale 1999 281). Thus in a sense the imperative of labour demand is somewhat restricted by other political imperatives and so Zolberg's demand that politics be taken seriously in theoretical analysis is highlighted. In addition the importance of legitimacy re-emerges.

**The Public Policy Approach**

In the subsequent sections, it is suggested that key insights from the public policy perspective

may provide a more nuanced understanding of the factors influencing the process of migration. In particular, the ways in which migration and migrants are defined and the framing of immigration as a threat, an opportunity or a crisis, and of the migrant as 'wanted or unwanted' or 'good or bad' are raised. It is argued that the way in which the issue is defined has a profound influence on the 'audience' to which policy is addressed and, in turn, on the demands of the 'audience' with regard to subsequent policy. How this 'feedback' effect impacts upon and institutionalises particular conceptions of the 'other' is a key and largely absent concern for theories of migration.

Framing

Issue framing (see for example Rein and Schon 1993 and Richardson 2000) and issue definition (Hogwood 1987, Alink 2001 et al, Huysmans 1999 and Weir 2006) are important parts of policy making which are of relevance to the examination of immigration policy. Rein and Schon describe framing as "a way of selecting, organizing, interpreting, and making sense of a complex reality to provide guideposts for knowing, analyzing, persuading and acting. A frame is a perspective from which an amorphous, ill defined, problematic situation can be made sense of and acted upon" (Rein and Schon 1993 146). Thus the process by which something is seen as being a policy issue, as well as the way it is subsequently defined and conceived, can set the framework into which policy debates then must fit.

Lavanex argues that there is a competition in EU immigration policy between a realist restrictive policy frame and a liberal humanitarian one. She argues that "these frames contain both 'factual' information about causal relationships and empirical facts and 'normative' devices with prescriptive value as to the 'goodness' and 'badness' of political action. Once established, policy frames shape the actors perceptions and interpretations and influence the course of political

action" (Lavanex 2001 26). Policy frames can thus establish the parameters of debate, but they can also become self promulgating, escaping the confines of their original purpose. Indeed some authors see frames developing an independent life once they have become institutionalised; that they can become to some degree independent of the power relations that initially ascribed them importance (see Lavanex 2001 and Kastroyano in Christiansen 2004).

In a sense then framing can be seen as a weapon used to either create images and symbols sympathetic to their view, or as post hoc weapons, used to justify rather than explain decisions already taken (see Majone 1989) The concepts of the 'good' and 'bad' migrant often revolve around their role in the labour market and their potential use of social facilities. According to Geddes, much of the distinction made in public policy between the good and the bad migrants, or the wanted and unwanted, relates to the perception of the implications they may have on national resources, particularly the welfare state. Symbolism in this sense is important. Geddes points out that it is perceptions that are deemed important due to the centrality of perceptions to the politics of migration generally. He goes on that "the politics of migration becomes less a set of arguments about why migration *occurs* and more a series of arguments about how it is *understood* and *interpreted*" (Geddes 2003 153).

Geddes also sees causality often being placed back to front with migration being viewed as challenging welfare systems while the real direction of challenge is that of changes in welfare systems challenging understandings of international migration (Geddes 2003 154). For Geddes

> This is more than an arcane point of method. If migration in its various forms is taken in such terms as a dependent variable – and if this point of departure is followed by examination of the institutional and organisational arenas from which understanding of it as 'wanted' or 'unwanted' emerge – then it can be demonstrated that these are not solely immigration questions (Geddes 2003 154).

Nevertheless the framing of migration as representing potential threat allows a series of other political perspectives to be incorporated into immigration policy. From a realist perspective, for example, there are also seen to be political advantages in translating complex problems into the language of security. One of the leading lights in the Copenhagen School of Security Studies argues that

> Security is a practice, a specific way of framing an issue. Security discourse is characterised by dramatising an issue as having absolute priority. Something is presented as an existential threat: if we do not tackle this, everything else will be irrelevant (because we will not be here, or not be free to deal with future challenges in our own way). And by labelling this a security issue, the actor has claimed the right to deal with it by extraordinary means, to break the normal political rules of the game (Waever in Walker 1998 173/4)

Thus as far as immigration policy is concerned the labelling of asylum as a security crisis creates political space that allows a range of prescriptive measures to be implemented *against* asylum seekers. Or, as Favell and Geddes argue, the explicit link has created the rationale for officials and politicians to promote the idea of the necessity of building a fortress to keep out the undesirables (Favell and Geddes 2000 417). Ghosh continues that "in a climate of crisis management quick and short-term responses take precedence, and the longer-term perspective is often forgotten or ignored. A vicious circle thus sets in" (Ghosh 2003 19). As decision-makers react in crisis laden language, practices of crisis prevention or crisis management become institutionalised within the immigration policy field.

What is more these processes are not confined to just one nation state. According to Dudley and Richardson, "policy ideas in the form of 'policy frames' can be transplanted across national boundaries and into supranational arenas via interests, in the form of advocacy coalitions, and individual policy entrepreneurs" (Dudley and Richardson 1999 225). Such a conception envisages ideas and frames as 'virus like' (Richardson 2000 1017/8) in their spread but also

uncovers the power of framing in influencing both policy and how interests compete to impose their own frames on policy discourse.

Symbolic Politics and Crisis:

Symbols and myths can order and change political life and are therefore central to the development of certain policy frames (March and Olsen 1993 744). Different parties in policy controversies will exhibit 'selective attention' concerning which 'facts' they select to make their case (Rein and Schon 1994 4). Thus the struggles over the naming and framing discussed above are "symbolic contests over the social meaning of an issue domain, where meaning implies not only what is at issue but what is to be done" (Rein and Schon 1994 28/29). This has links to the crisis theory of 't Hart mentioned below ('t Hart 1993). Rein and Schon argue further that "there is a reciprocal but nondeterministic relationship between the actors' interests and their frames…..nevertheless, interests are shaped by frames, and frames may be used to promote interests" (Rein and Schon 1994 29). Thus, as Gofas argues, there is a symbiosis between interests and ideas or frames (Gofas 2001). It is worth adding that there is an explicit link in much of the recent ideational work, between framing and ideas. For the purpose of this thesis frames are viewed as the linguistic or symbolic form of ideas as well as representing their institutionalisation.

Stone continues that politicians do not simply accept models given to them but "compose stories that describe harms and difficulties, attribute them to actions of other individuals or organizations, and thereby claim the right to invoke government power to stop the harm" (Stone 1989 282). In this sense the policy frame is a device or weapon being wielded by individuals or groups within what Cobb and Elder refer to as a 'pressure system' (Cobb and Elder 1971 896).

The use of language and symbols is therefore a key part of the political contest. According to Edelman, language can be utilised in a ritualistic way, in order to dull critical faculties and "evoke a conditioned uncritical response" (Edelman 1985 124). The means by which actors can use their powers to facilitate the desired response among the general populace is described thus; "mass publics respond to currently conspicuous political symbols: not to 'facts' and not to moral codes embedded in the character or soul, but to gestures and speeches that make up the drama of the state" (Edelman 1985 172). Such actor/interest behaviour helps to construct a specific type of framing of a policy issue, which then mobilises bias in that direction (Schattschneider 1960).

Symbols and metaphors are thus an important part of policy framing. Bliech points out that "in the realm of immigration policy, for example, aquatic metaphors of waves, streams, or floods of migrants have often been employed to justify turning off the taps of immigration to avoid swamping"(Bliech 2002 1064). Language is used as a reinforcing weapon, creating images of potential harm that can justify policy action.

The link between language, symbols and crisis definition is also highlighted by Munck who argues in relation to the rise of neo-liberalism that a crisis "only becomes one when it is narrated as such"(Munck 2004 3). This discursive strategy is presumably the work of actors and interests involved in the process, but can also involve those opposing it, where they use the symbols and metaphors of the progenitors. This can then act to legitimise the language or the framing being used (see for example the issue of opposition to securitisation discourse acting to institutionalise that discourse in the work of Huysmans 1999).

Language is therefore crucial. Although the language itself cannot prescribe a political event as a crisis, it can help powerful actors to create images in the minds of the populace, which can then

be used to justify or demand action, sometimes in a post hoc way (see Majone 1993). As ‘t Hart points out “those who are able to define what a crisis is all about also hold the key to defining the appropriate strategies for resolution” (‘t Hart 1993 41).

Boin further argues that an event that is routinely accepted by some is defined as a crisis by others (Boin 2005). Thus in order for the crisis perspective to take hold a degree of power and influence is required. Returning to the work of Edleman, he argues that “any regime that prides itself on crisis management is sure to find crises to manage, and crisis management is always available as a way to mobilise support (Edleman 1977 47).

Rein and Schon implicitly acknowledge the relationship between policy framing and interests, when they state that the course of action towards which a frame leads cannot be separated from the person, or presumably group, who may hold it (Rein and Schon 1991). Goldstein and Keohane argue “ideas may become important solely because of the interests and power of their progenitors” (Goldstein and Keohane 1993 13). For Garrett and Weingast, “it is not something intrinsic to ideas that gives them their power, but their utility in helping actors achieve their desired ends under prevailing constraints” (Garrett and Weingast 1993 178). In this sense ideas serve as both the focal point and the glue for coordination and aggregation of actor behaviour. For Dudley and Richardson, there is a path dependency in policy frames, as they can ‘bias the options search’ in future policy issues or problems (Dudley and Richardson 1999 225). Such mobilisation of bias should also be seen in both current and historical policymaking. Indeed the one sided nature of much policy is alluded to by Hall who argues that “like most kinds of policy, a macroeconomic strategy tends to favour the material interests of some social groups to the disadvantage of others” (Hall 1992 94).

Rosenthal et al posit the possibility of a crisis acting as a facilitator in that a crisis allows the opportunity for change or reform (Rosenthal et al 2001 21). In this sense then a crisis is "part and parcel of social and political dynamics" and thus "should be conceived as double edged phenomena; problems and threats may turn out to be opportunities and chances" (Rosenthal et al 2001 21). Thus crises can provide innovative opportunities, by creating the space for actors to herald a new 'solution' in the guise of policy change.

't Hart points out "for those who seek to instigate change, it is of vital importance to be able to aggravate the sense of societal crisis so as to foster a psychological and political climate receptive to non-incremental change" ('t Hart 1993 28). Nevertheless "precisely because crises challenge the primary political symbol of 'security' …. they also challenge the competence of the institutionalised (and self-proclaimed) guardians of security, the state and its political-administrative leadership" ('t Hart 1993 37). Or to turn the argument around, need or desire for security in all its forms bestows legitimacy and allows extraordinary measures, but can also lead to unintended consequences of exacerbated crisis if control does not appear possible.

The Role of the Audience:

In his seminal work 'The Semi-Sovereign People', Schattschneider points out that "at the root of all politics is the universal language of conflict" (Schattschneider 1960 4). Policy outcomes can be seen as a reflection of this conflict. However, enabling and constraining dimensions can be seen clearly in his work whereby the involvement of the 'audience' is of great importance. If the 'audience' is thought to support the decision maker they will be encouraged to involve themselves in the conflict, while if they are thought to be unsupportive the decision makers will seek to keep the issue away from the audience. Schattschneider referred to this process as the 'privatisation' and 'socialisation' of conflict (Schattschneider 1960 7).

Bachrach and Baratz (Bachrach and Baratz 1962) concentrate on the pre-conflict stage of policy. For them, analysis too often focused solely on the easily observable in decision-making, and not on control of the scope of decision-making itself. They use Schattschneider's concept of the 'mobilization of bias' in examining public policy formation. This is where the concept of non-decision making emerges, the deliberate limiting of the confines of overt decision making to 'relatively non-controversial matters' (Bachrach and Baratz 1962), a second filtering stage following Lukes ideological one (Lukes 1974). Cobb and Elder go further, stating that not only are choices limited by decisions made previously but so are issues regarding who are legitimate actors within the policy arena (Cobb and Elder 1971 902). Thus certain actors and policy decisions are privileged over others even prior to the audience's role being conceptualised. However, a policy can develop some independence from the ideas, institutions or interests that first created it, and more than that can also begin to set its own semi-independent 'rules of the game'. In this sense the policy may lead the politics (Lowi 1971).

According to Statham and Geddes, with regard to immigration matters, there is evidence that members of the public will take cues from the currently expressed elite position (Statham and Geddes 2006 250). Therefore as the elite view becomes more restrictive and prescriptive the public view shifts in tandem. Harris would appear to agree and points out that restrictions on immigration numbers preceded and created public concern rather than followed it (Harris 1995 104). This would question the idea of a gap between elite and public opinion as well as cautioning against seeing policies of restriction as being a reaction to an anti-immigration public. It also relates directly to issues around the asylum crisis, how and why the crisis was defined as such and whether a different discourse was possible.

This all allows for some degree of power analysis in relation to the elements of non-decision makers who become 'collective actors' in immigration policy. As Statham and Geddes point out, the diffused costs argument assumes that "political elites respond to those public actors who have the incentives and resources to organise and pursue their interests" (Statham and Geddes 2006 251). Koopmans and Statham add that collective action arises from more than merely objective interests but also that interests are mediated by the political environment. In addition, the power of political interests, and for this study also economic ones, can "shape opportunities for other collective actors to perceive their material and symbolic interests" (Koopmans and Statham 2000 251/2). Thus, the policy sector can become characterised by an accepted way of doing things even if that goes against the interests of some of those who appear to support it.

Statham and Geddes point out that "not all collective actors mobilise political demands. While some lack the material and symbolic resources to do so, others have their interests sufficiently represented by elites to make mobilisation unnecessary" (Statham and Geddes 2006 252). To extrapolate this to the global position for a moment, the same could also be seen regarding the overly optimistic views of an international human rights frame that contests the restrictive frame (see Lavanex above). However, such an argument would also be required to accept the dual nature of immigration policy. NGO's have concentrated their attention on the areas of increased restriction, particularly concerning refugees, and so the contest, if one does exist, tends to be focussed there, while labour or economic migration is met with almost unanimous support among interested or mobilised parties. Statham and Geddes see their findings as pointing to an explanation;

> Where the direction of immigration policies (restrictionist versus expansionist) is not an outcome of public pressure from an organised pro-migrant lobby winning over a resources-weak diffuse anti-immigrant lobby. On the contrary, we consider policy outcomes are more likely to be determined in a relatively autonomous way by political elites (Statham and Geddes 2006 258).

The interplay of ideas/interests and events is also added to by the need for some public acquiescence as breakthroughs in policy are only possible once "public opinion has been conditioned to accept new ideas and new concepts of the public interest" (Majone 1989 145). Thus conditioning cannot occur as a result of the ideas themselves but can only come about due to the promotion of ideas, policy problems and/or solutions by interests or institutions.

In this sense the changing constituencies or the 'audience' becomes increasingly important. How policy impacts on interests, whether in group form or among the public at large, is one key to policy change. Policy creates politics that then demand attention through further policy. In this sense the insights of Lowi are of utmost importance as new policy can create new politics (Lowi 1971).

Institutionalisation:

The historical institutionalist approach views problems, policy and politics as linked over a period of time. That is, earlier policies provide some groups with authority, conducive to an interest and power based approach, and also provides analogies and a range of solutions of an institutionalised type, based on the use of symbols, language and crises. This approach sees institutions as playing a key role in shaping politics. Goals, preferences and strategies are seen as something to be explained.

> Historical institutionalists would not have trouble with the rational choice idea that political actors are acting strategically to achieve their ends. But clearly it is not very useful simply to leave it at that. We need a historically based analysis to tell us what they are trying to maximize and why they emphasize certain goals over others (Thelen and Steinmo 1992 9).

In the case of immigration for example, there is both a predilection for excess labour supply and

a more restrictive disposition among many elements of both the institutions of the state and the powerful societal interests. The creation of policy that satisfies, or at least satisfices (Simon 1957) both is a fascinating example of interest definition and institutional channelling. For Thelen and Stienmo "the central importance of institutions is in 'mobilizing bias'", and historical institutionalism is able to bridge state centred and society centred approaches "by looking at the institutional arrangements that structure relations between the two" (Thelen and Stienmo 1992 10).

Lenschow and Zito posit that institutional structures are viewed in a variety of different ways, as intermediate variables, as bottlenecks and as vehicles for change. They argue that "the institutional framework shapes the flow of ideas, the construction of interests, the nature of power relations, and the form of interaction between (competing) actors/interests" (Lenschow and Zito 1998 419). The channelling role is a useful one in that it helps to create an image of the policy arena in which contestation may or may not occur.

With regard to the need to understand how ideas become influential Weir argues that "the way to do this is by tracking the development and paths to influence that ideas and material interests take within the institutional context of policy-making"(Weir 1992 188). Weir argues through the concept of 'bounded innovation' that some ideas are less likely to influence policy, thus a form of ideational filtering is evident. For Weir institutions channel the flow of ideas and create incentives for political actors to then adopt ideas (Weir 1992 189), although presumably only those that do not threaten the overall political/institutional structure. Thus there is not a 'battle of ideas' so much as a selection of prescribed policy choices most likely to maintain institutional legitimacy while perhaps also simultaneously creating new opportunities for interests and institutions to progress their own objective needs.

Weir combines aspects of political contestation with institutions and interests in stating that "rather than treat each policy battle as one in which all alternatives are equally plausible, these accounts show that conflicts over policy are structured by the interests and institutions created by earlier decisions"(Weir 2006 171). Thus, as it will be argued here, interests are involved in the construction of institutions that confine and help to define continuing policy interests. However, there are consequences that result from initial policy construction and these consequences can escape the control of the initial constructors of the policy.

The key concepts of institutional layering and institutional conversion are therefore essential to the understanding of institutional durability, even at times of change. For Thelen the survival of institutions is often strongly laced with elements of adaptation, or even transformation "of the sort that brings inherited institutions in line with changing social, political, and economic conditions" (Thelen 2004 293). The key point to emerge from the immutability of institutions is that reproduction and change must be studied together as "formal institutions do not survive long stretches of time by standing still" (Thelen 2004 293). Weir cites Schickler's view of reform as a process of layering whereby reformers do not attempt to abolish old institutions, perhaps due to the opposition that such a move may provoke, but instead place new institutions on top of the old ones (Weir 2006 174). In addition, there is the possibility of institutional conversion whereby old institutions are used to serve new purposes. Thus change can occur while the institutional landscape remains outwardly stable.

Such an approach is not only capable of encompassing both continuity and change and analysing incremental or bounded change, but it is also a more accurate means of reflecting the ways things work in the world of politics (Thelen 2004 36). Indeed "the dual notions of layering and

conversion open the door for a more nuanced analysis of which specific elements of a given institutional arrangement are (or are not) renegotiable, and why some aspects are more amenable to change than others" (Thelen 2004 36). In addition, for Thelen this approach avoids the trap of examining institutions merely according to the functions that they perform. She argues that the evolutionary nature of institutions is more clearly captured by looking at both layering and conversion and so it is 'more genuinely historical' (Thelen 2004 37). Such a process also allows for the incorporation of consequences rather than institutions being seen as stagnant and unchanging.

As Weir points out "elaboration of strategies that eschew outright revision but that nonetheless effect dramatic changes on the ground shows how powerful actors can work around institutional barriers to change…the success of elite strategies ultimately depends on insulation from, acquiescence of, or defeat of opponents"(Weir 2006 174). In Majone's terms then constraints to change can not only be removed but also avoided (Majone 1989). The use of symbols and metaphors are crucial to this process. For Cobb and Elder there is a bias in favour of existing arrangements in all systems and legal machinery and restriction to the pressure system will reinforce and defend that bias (Cobb and Elder 1971 902). Thus the system can reinforce itself by keeping opposing views away and prevailing interests will rally to the support of norms that fit their positions. However, in the case of crises institutional survival can be seen to protect elements of the status quo and so reform of the institution engenders support.

Thelen argues that

> "It is not sufficient to view institutions as frozen residue of critical junctures, or even as 'locked in' in the straightforward sense that path dependence arguments adapted from the economics literature often suggest. In politics, institutional reproduction can be partly understood in terms of the increasing returns effects to which this literature has drawn our

attention" (Thelen 2004 8),

but only partly as "institutional survival often involved political renegotiation and heavy doses of institutional adaptation, in order to bring institutions inherited from the past into line with changes in social and political context"( Thelen 2004 8). That is, institutions may have to adapt to changing power relations, or more broadly changing politics, in order to survive.

Eventual organisational forms, according to Thelen, often don't reflect either the tastes of their creators or power distribution but are the result of contest and conflict (Thelen 2004 35). The approach proposed by Thelen "suggests a model of institutional change through ongoing political negotiation. Elements of continuity and change are not separated into alternating sequences where one or the other (let alone 'agency' or 'structure') dominates, but rather are often empirically closely intertwined"(Thelen 2004 35). What this means methodologically is that looking at what an institution does and who it benefits does not necessarily tell us who created it and for what purpose. Equally, looking at the who and why of institutional construction would negate attention to continuing contestation that may lead to a changed trajectory for that institution. Thus institutions, like frames, can escape the confines of their original purpose.

There is also an implication, useful for this study, that policies are not necessarily constructed out of any rational choice analysis, but rather that certain policies are considered to fit more comfortably with existing institutions and prevailing interests, although clearly this shows some degree of bounded rationality. "Certain policies are regarded as more administratively viable than others or are argued to "fit" better with prevailing institutions (Bliech 2002 1059). Thus in the same way that only ideas congruent with the norms of dominant interests will be selected, so

too only policies that best fit the prevailing institutional set up will be supported, although they may also have unintended consequences.

Feedback Effects:

Politics is thus viewed as a contest for power but also as a struggle for the interpretation of interests. To see socioeconomic change or exogenous shocks as immediately shifting perceived interests or the way institutions confer power on some groups and neglect others "is to neglect the creative contribution that political contention can make to the definition of interests and, thus, misperceives the political process quite fundamentally. Interests must not be seen as givens, but as objects of contestation" (Hall 1997 197). It is this very contestation that theorists such as Thelen highlight as essential in our understandings of policymaking (Thelen 2004).

Thelen sees policymaking and institution building as reflecting political contestation. She argues that,

> Once in place, institutions do exert a powerful influence on the strategies and calculations of – and interactions among – the actors that inhabit them. As power-distributional theory suggest, however, institutions are the object of ongoing political contestation, and changes in the political coalitions on which institutions rest are what drives changes in the form institutions take and the functions they perform in politics and society (Thelen 2004 31).

Thus Thelen disregards deterministic path dependence and the notion of institutional lock-in in favour of an approach that underscores the contested nature of institutional development, recovering the political dynamics of the process (Thelen 2004 31). Nevertheless, what is missing is the fact that subsequent contestation can revolve around issues created by the policy itself.

Thus policy like politics is the subject of continuing battles and contestation rather than simply continuity, followed by changed, followed by further continuity. What is more the privatisation

and socialisation of policy conflicts (Schattschneider 1960) signifies the importance of symbols and language as well as power in order to gain acquiescence to make socialisation safer.

Additionally, the 'bundling' of issues raises questions that the contestation approach seeks to address. Thelen points out that "institutions designed to serve one set of interests often become 'carriers' of others as well" (Thelen 2004 33). Institution building is far more complex than some approaches allow for. Thelen points out that when an institution is created it is not just one thing that is built; there are a series of both intended and unintended effects. This approach is useful. Problem definition is in many cases political and thus policy prescriptions too are political. However, it is necessary to go further in avoiding seeing this relationship between policy and politics as a uni-directional one.

Huber and Stephens place the emphasis on capitalist interests and argue that previous policies are capable of shaping the distribution of preferences (Huber and Stephens 2002). Borrowing from Lukes, the shaping of wants and preferences is seen as the ultimate form of power. Thelen adds that we should not lose sight of the way in which preferences and strategies have been shaped by the prevailing structural and political context (Thelen 2004 288). Policies initiated at one point in time effect which actors are around to fight the next battle, how they define their interests and how and with who they will ally (Thelen 2004 288/9).

Policy disagreements are not settled by recourse to established facts or rules alone as they derive from competing frames. Rein and Schon point out that the same evidence can support different policy positions (Rein and Schon 1991 262). If immigration is examined in relation to two frames, that of a labour market imperative and that of a restrictive policy frame, there are clearly going to be crossovers between them. Such crossovers do not impede analysis and should be

expected in most policy areas. As Majone points out "it is a truism in policy-making that everything is related to everything else" (Majone 1989: 158). It may even be possible to see the restrictive and labour market immigration frames as being of a complimentary type rather than explicitly competing, acting to divert attention in what Hay refers to as 'the logic of crisis displacement' (Hay 1994).

Nevertheless, such displacement and policy making in general should not be analytically separated from its effects. Pierson has been one of the foremost thinkers in this area of policy consequences, effects and feedback. He states that "there is now considerable evidence that specific policy interventions often have very substantial and enduring policy consequences" (Pierson 2006 115). Pierson argues that public policies should be seen as institutions, providing for more direct analysis of effects (Pierson 2006 116), and that policies should not be seen as epiphenomenal (Pierson 2006 119), and thus secondary to a bigger and more important issues or developments. What is more policy can be seen to impact directly on public opinion, the so-called 'ratcheting effect' that creates new political constituencies (see for example Weir 2006). Such work links to Lowi's argument, that 'new policies create new politics' (Lowi 1972). The link between language and symbols, and policy and politics is also evident. While symbols and language can create images of harm and threat, that language *as well as* its implications can then become institutionalised.

<u>The Other:</u>

The political environment that is created by increasingly hostile discourse and restrictive policy clearly has ramifications for those who are the subject of such developments. While the concept of 'the other' is historically seen in relation to western perceptions of the Orient (see the work of Edward Said 1978), where 'they' were perceived as being inherently different from 'us', it has

gradually been used in relation to internal, national phenomena. The ‘other’ or ‘others’ are thus defined as being somehow different from the dominant or host ‘culture’.

Morris uses Brubaker’s concept of boundary drawing regarding membership and partial membership of a community with regard to migration. She points out that

> this phenomenon is largely to be understood as the management of contradiction, in which policy and practice seek to strike a balance between concern over national resources, which tends to limit entry, and continuing employer demand and the assertion of human rights, which potentially expand entry (Morris 1997 410).

The contest between the interests of capital, in the shape of employers, and the idea of the universality of rights is thus played out within the political arena. Morris, however, points out that the rights based approach is seldom absolute and that political contestation creates a hierarchy of absolute, limited and qualified rights “which is largely defined in terms of the national interest”, producing a “system of stratified rights”(Morris 1997 10).

Cohen defines this difference as being between denizens, privileged foreigners who nevertheless are denied voting and citizenship rights (Cohen 2006 59), and helots who are those workers who, although not indentured labour, are denied social and political rights and are seen solely as “disposable units of labour power”(Cohen 2006 151). Thus even ‘useful’ migrants are not entitled to the whole range of political and social rights, while the more absolute ‘others’ are subject to even more restrictions. The concept of stratified rights is also one indirectly used by Geddes. He sees a clear distinction not only between those perceived by decision makers as ‘good’ migrants, based on their skill set and thus likely economic contribution, but also a distinction within the ‘bad’ category (Geddes 2003 151). Thus a continuum rather than binary opposites exists.

Conceptions of citizenship, inevitably linked to migration, have had a long history of creating an 'other' or a series of 'others'. Indeed the very concept of citizenship necessitates it. Globalisation is seen by Young as adding to this process as

> all over the western world the process of economic globalization has been associated with the mass migration of labour from the Third World and from countries of the Second World…in every instance a social and spatial process of exclusion has occurred in the host country and, concomitant with this, the cultural 'othering' of the immigrant population (Young 2003 455).

In this sense immigration conforms to the dictates of citizenship whereby 'we' are defined by what we are not.

The creation of the 'us' in a territorial as well as cultural sense, requires the creation of an 'other' which relates very directly to relationships of power. Bigo sees frontiers as "an institution defining difference with the outside world and attempting, by influencing mentalities, to homogenise the diverse population inside the frontier. It is therefore a political 'technology' which records the balance of power at a particular time in space" (Bigo 1998 149). He continues that "frontiers of states became territorial based codes of obedience in binary form – one against the other, ones to be protected and ones to be mistrusted, friends and enemies"(Bigo 1998 149). However, 'othering' goes beyond mere territory. As Geddes points out migrants as a 'welfare threat' is also a part of the story (Geddes 2005), while the issue of migrants as a security threat, as mentioned above, has become a more ubiquitous part of the immigration story. Both lead to threat scenarios and both are aimed at 'them'.

Within nation states though, the othering of a population, and the potential for othering to expand to other populations, creates wider political problems. Not only are the 'others' required

to live within this increasingly hostile environment, as many citizens are also encompassed by this discourse, and cannot simply 'go home', the impact upon the wanted migrants and long term settled communities is also potentially negative.

## Conclusion and Significance for Theories of Migration

This chapter has suggested that existing theories of migration should take more account of the symbiotic relationship between policy and politics. In particular, it has argued that the public policy perspective suggest that there are certain dimensions missing from existing theories. The effect of policy on politics and the consequent impact on the audience could be seen as an institutionalisation of hostility within the political and policy environment(s).

Issues of both continuity and legitimacy can be seen across policy fields but are particularly pronounced in areas where the essence of the nation state or the health of the economy is seen to be at stake. Immigration policy is one such area, where the interests of 'the economy' and the 'cohesion' of the nation state interact with one another. Public policy approaches teach us that there is a bias in favour of the present way of doing things, while also indicating the importance of framing when change is sought. This means that institutions often have a propensity to reproduce themselves, either through path dependence or through conversion or layering.

Governments can create policy that then leads to a change in the world of politics, but it is not enough to leave it at that. The politics that are created by new policy can escape the direct control of their progenitors. A public constituency, or audience, can emerge as a result of policy that may make demands of Government that go against its initial policy disposition. The question emerges as to who policies respond to, be it mass public opinion or changes among elite groups (Pierson 2006 117). The circularity of the process is, however, evident in that

policies can impact on incentives and constraints which in turn affect publics.

While public opinion regarding immigration matters has been widely studied, this has not led to the integration of feedback effects on policy. Issue definition and framing, with migration largely contextualised in relation to threat scenarios, depending on their degree of wanted-ness, impacts upon the 'audience'. This then acts to institutionalise a certain form of policy and discourse that further policy then responds to in the same vain. This is one of the contributions of this thesis, that the politics created by policy could have an impact upon the decision making of migrants, and therefore contributes towards the 'push' and 'pull' factors influencing such choices.

# Chapter 3 - The United Kingdom's Dual Immigration Policy in Historical Perspective

## Introduction

Any review of literature relating to migratory movements and policies enacted by nation states that provoke and respond to them, is inevitably a somewhat circumscribed one. The study of the nature of migration lends itself to the involvement of numerous academic disciplines ranging from economics and history to law, sociology, anthropology and geography. There have also been an increasing number of interdisciplinary studies of immigration (for examples see Castles and Miller 2003 21). In addition, there are a variety of migratory 'types', based on both individual reasons for movement and the degree to which the nations of destination regard such individuals as 'wanted'. Thus there have long been different policy proclivities depending on the migrant type, and the study of migration has reflected these complexities.

While the history in terms of solid Acts of Parliament are of utmost importance, so too are constitutional settings and the position of migrants themselves. These all encompass both wanted and unwanted migratory movements, highlighting a contradiction inherent at the heart of a dual immigration process. As Bigo argues

> Immigration depends upon millions of decisions which cannot be totally regulated by governments without closing the frontiers. A 'double bind' is created: by deciding to control immigration completely and by aspiring to total security, we put at risk economic prosperity and political liberties associated with open societies so that the solution to immigration becomes worse than the problem. To fight against the illness, the patient has to be killed (Bigo 1998 160).

Harris implies that elements of this dual process are conducted by a slight of hand. His arguments concern the very nature of the state, that it must prevent the population from knowing

exactly what it is doing by creating a distraction on the other side of the migration regime. Such an argument envisages this dual process having explicit links to a dual immigration audience. Harris states that

> In practice, governments in the developed countries equivocate between preserving social homogeneity and taking in scarce labour. On the one hand, ministers insist on keeping the door open for selected scarce categories of labour, and, despite furious public assurances, also tolerate a measure of illegal immigration. On the other hand, they fiercely affirm the tightness of controls and institute periodic crackdowns. Tough talk on immigration woos one audience; soothing insistence on the need to integrate immigrants convinces another. The persistence of immigration is concealed to avoid offending one audience, while the often brutal and dishonest methods employed to exclude or expel people are hidden lest they offend another audience. The fudge feeds both sides (Harris 1995 90)

Thus while many commentators have argued that immigration policy has become more restrictive, Freeman states that "the restrictionist thesis is not so much wrong as it is incomplete, misleading, and under-theorized" (Freeman 1998 97). He adds that "restriction is a political phenomenon, obviously, but it is treated as epiphenomenal because it derives from underlying economic changes" (Freeman 1998 102). The argument fits in with those presented by the globalists, that economic perturbations determine the levels of restriction. Freeman, however, argues that "political factors should be at the centre of the explanation of comparative immigration policy" (Freeman 1998 102). Castles adds to this notion of policy containing both open and closed, or socialised and privatised dimensions. He states that

> "Politicians are content to provide anti-immigration rhetoric while actually pursuing policies that lead to more immigration, because this meets important economic or labour market objectives. This explains the *hidden agendas* in many migration policies – that is, policies which purport to follow certain objectives, while actually doing the opposite (Castles 2004 214).

This review contextualises these developments in historical perspective. It begins with an historical analysis of British immigration policy. The main questions addressed in the chapter are; does the history of British immigration policy show different migrants being constructed

differently? What does the history of British immigration policy tell us about the relationship between immigration policy and framing of the public debate? In addition, the chapter raises the issue of the oil crisis of the early 1970s and its impact on migratory movements. The oil crisis of is often perceived as having produced a halt on migratory movements, when nations of the developed world opted to 'close' their borders. Both the accuracy and relevance of such arguments are examined in this chapter. The importance of such arguments are discussed in relation to the ability, or willingness, of nation states to fully 'shut the door', on further migration. Thus the chapter raises questions as to the balance between a rhetoric of closed migration with a reality of continuing migratory movements.

The chapter also engages with developments in immigration policy at the European level prior to the election of the Labour Government. Immigration matters have become a key part of the European policy making agenda, despite certain limitations, and are therefore of huge importance to any work that seeks to engage with policy developments in any member state. The incremental approach of policy within the Union is shown to have also encompassed an external agenda, whereby the Union has built migration policy and controls into its external relationships.

These historical developments both at the UK and EU levels are shown to be of importance in providing the context of what follows in the empirical chapters of this thesis. The degree of continuity and change, the construction of migrant types and the importance of issues framing are integral to an understanding of New Labour policy making and allow a full analysis of the 'difference' between New Labour policy and what preceded it.

## Immigration Policy Making in Britain

The oil crisis of the 1970s is widely seen as representing a 'critical juncture' leading to attempts

to halt primary immigration across many industrialised countries, but perhaps most acutely in the case of Britain (see Ghosh 2003 and Hammer 2006). Indeed Layton Henry argues that Britain stands out as the worlds foremost 'would be zero immigration country' that sought to bring immigration to an 'inescapable minimum' (Layton Henry in Joppke 1999 100), primarily as a result of the oil crisis. Although part of the reason for effectiveness in doing so appears to be geographic, there are also constitutional elements as "a key difference is the absence of constitutional and judicial constraints on the executive, which allows the Home Office to devise and execute immigration policy as it sees fit"(Joppke 1999 10). Thus the relative success of the zero immigration goal is a result of "docile courts and the lack of constitutional protections for immigrants" (Joppke 1999 103). What is more

> "Sovereignty is firmly and unequivocally invested in Parliament, which knows no constitutional limits to its law making powers. In immigration policy, this institutional arrangement entails a dualism of extreme legislative openness and executive closure, which is detrimental to the interests of immigrants" (Joppke 1999 103).

There are also other historical reasons for any British exceptionalism in immigration policy. The concept of the 'co-national' empire created a distinct policy trajectory in both immigration and race relations policy. Therefore Britain initially rejected having an 'immigration policy' due to its political boundaries being beyond that of the nation state. British exceptionalism should not be overstated, however. Other former colonial powers have witnessed migratory consequences of empire and although their responses have often been different from that of the UK, they have also been different from one another (Freeman 2006 164), indicating distinctive and historical path dependence in immigration policy.

Joppke argues that

> The logic of British immigration policy was to carve out the historical British homeland nation from the vast empire, and to subject the rest to immigration control. That the nation was predominantly white, while large sections of the empire were non-white, is the root cause of racial bias in British immigration

policy (Joppke 1999 102).

In addition, although it appears widely accepted that Britain has been relatively successful in 'slamming the door firmly shut' (Hansen 2000 236), for Hansen there is a lack of academic and political reflection on how and why policy-makers succeeded to the extent that they can be said to have succeeded (Hansen 2000 236). He points out that although Governments are often seen as responsive to public concern, and they undoubtedly have a rational interest in being so seen, this does not explain national divergences in the face of similar concerns (Hansen 2000 236). Additionally, it is far from clear that policy makers have simply responded either to the oil crisis or the public, and could be seen to have often led opposition to immigration in the form of robust language and restrictive policy and practice (see Statham and Geddes 2006, Joppke 1999 and Sabatier 1988 on Advocacy Coalitions).

The difference between the 'rules of the game' and the law are highlighted by Hammar with reference to the oil crisis. He states that "most changes in immigration policy, for example the changes at what we call the 'turning point', have been made by changing the application of existing aliens laws and not by changing the laws" (Hammar 2006 240). The substantive difference between laws and rules and the way they impact upon UK practice is described by Joppke. He states that "the Immigration Act only defines who is subject to immigration control; the immigration rules provide the substantive criteria, terms and conditions for admission" (Joppke 1999 115). Returning to the argument of parliamentary sovereignty, changes in immigration rules do not automatically require parliamentary debate, while some are made without even being subject to press releases (see Simon in Hansard Jun 12th 2003 Col 921). Thus it is possible to substantively change the immigration regime without the need to instigate an Act of parliament.

The diffusion of immigration controls is one way that the regime can be changed. There are increasing attempts to place responsibility for immigration control outwith the central state through what Lahav refers to as the extension and redistribution of the liabilities of migration control (Lahav 2006 298). Employers now have more responsibility to police the immigration regime but also appear to have increasing influence on the construction of the central policy. Thus an upward and downward pressure exists as far as employers are concerned. As for who or what drives immigration policy Lahav argues that "coordination rather than competition, or, in political science terms, neocorporatist rather than pluralist, models of interest aggregation now dominate migration control in an interdependent world" (Lahav 2006 306). The neo-corporatist model

> focuses on reconciliation by the state and its interlocutors….an analysis of institutions and process-tracking norms allows us to see a complex playing field that includes a plethora of nonstate actors who may act on behalf of the state….these models capture this type of increased 'webbing' between various elements of society more than liberal-pluralist ones, which reduce the relationships to ones of power (Lahav 2006 307).

The executive and administrative discretion within the context of the UK is an interesting and important issue as it moves many of the enforcement mechanisms outwith public scrutiny and can be linked to both the non-decision making of Bachrach and Baratz (1962) and the privatisation of conflict of Shattschneider (1960) mentioned in the previous chapter.

## Immigration Policy Before World War Two

Hammar points out that immigration was an established fact before immigration policy (Hammar 2006 235), while Hansen argues that prior to the Aliens Act of 1905 the entry of non-citizens into Britain was largely unrestricted (Hansen 2001 73). Parallels to the present day can be seen in both the formation and implementation of this first substantive immigration policy. First of all it created a specific group of 'undesirable' migrants, in this case East European Jews.

Secondly it endowed ‘street level bureaucrats’ (Lipsky 1983) in the form of Home Office civil servants with an enormous amount of power which they, according to Hansen, used to develop the institutional rules on which subsequent law and practice would be based. This was a clear indication of the extent of power invested in those setting the ‘rules of the game’ below the level of actual policy making (Hansen 2001 73). The 1905 Act gave the Home Secretary the exclusive right to refuse entry, operationalised through these civil servants, and marked the beginnings of racially based policies at the turn of the 20th century.

Nevertheless even after the 1905 Act, immigration restrictions were under-developed, at least in part due to the lack of mass transportation systems. For Joppke the reason for fairly open access in the ‘era of mercantilism’ was labour scarcity, allowing a brief period of liberalism in immigration where there were few barriers to entry or exit (Joppke 1999 2). This indicates a clear historic link between the labour demands of employers and immigration policy. “Liberalism was the classic hour of immigration, with unprecedented population movements within and outside Europe” (Joppke 1999 2). Furthermore, Hammar points out that the Irish had long been used as a labour reserve by British employers, and there were no restrictions on their right to enter and work on the mainland (Hammer 2006 236). Nevertheless restrictions on some migrations were at this point being increasingly contemplated.

The 1914 British Nationality and Status of Aliens Act, which set a one-year residence minimum before individuals were entitled to apply for naturalisation, followed the1905 Act. More importantly for this thesis, the 1914 Act also further endowed the Home Secretary with complete power over immigration matters (Hansen 2001 73). As far as policy continuities are concerned it is interesting to note that the next piece of policy, the 1920 Aliens Order, which gave the Home Secretary the right to deport those whose presence was not considered ‘conducive to the public

good' was renewed annually right up until 1971 (Sales 2007 136). After that point the test took on a slightly different hue although the principle of 'public good' remained, and indeed has been extended to both the notion of immigration being driven by what is good for the British economy and the treatment of 'undesirables'. These issues will be highlighted in subsequent chapters.

**Immigration Policy After World War Two**

The Second World War witnessed increased migratory movements as large numbers of people were uprooted while others migrated for a variety of political and economic reasons. This encouraged an alteration in political context at the end of the war in 1945. British nationality was redefined in the 1948 British Nationality Act, which created six different categories of citizenship, but in an era still without means of mass transportation did not contain many restrictions on the rights of Commonwealth citizens to enter Britain. Instead "the goal was to bind the Empire/Commonwealth together by maintaining common rights in the UK – above all entry – for all British subjects"(Hansen 2001 75). However, this period of relatively full citizenship rights was to last just 14 years. During that period, 500,000 non-white immigrants arrived in the UK, prompting a reconsideration of these relatively open borders (Hansen 2001 76). "Both the 1951 Labour government and the Conservative governments in 1954 and 1956 considered limiting immigration, and a bill restricting the entry of British subjects was drafted in 1955"( Hansen 2001 76). Nevertheless up until this point legal restrictions on Commonwealth entry remained absent as there was a desire to maintain the travel rights of British subjects. The continuing existence of the empire and the symbolic importance of the rights of those within it were at this point more important than restrictions on entry.

The post-war period also witnessed large numbers of Poles and Italians arriving in the UK, many

being sourced as workers but also subject to Government funds to enable their integration, funds not available to Commonwealth migrants. Indeed in 1947 the Polish Resettlement Act was passed to aid the integration of Poles into British society. Thus there was help available to white migrants coming to the UK. However, by the late 1950s there was an increased groundswell of opposition to non-white immigration. The concerns at this point were presented as a cultural threat, related to conceptions of British identity (Somerville 2006 9). Public opinion hardened after racial disturbances in Notting Hill in 1958. Schuster and Solomos point out that the attacks by whites on blacks in Notting Hill "were explained in terms of the *number* of black people" (Schuster and Solomos 2004 268 original emphasis), and thus the proposed solution was to simply restrict those numbers.

One Labour MP at the time of the Notting Hill riots argued that "the Government must introduce legislation quickly to end the tremendous influx of coloured people from the Commonwealth" on the basis that they had "fostered vice, drugs, prostitution and the use of knives. For years the white people have been tolerant. Now their tempers are up" (Layton-Henry 1992 39). This argument explicitly tied immigration to questions of crime, as well as presenting future immigration as a growing threat. According to Joppke at least part of the reason for the 'illiberal' response to the 1958 disturbances was the racial unrest in the US at the time, which scared the political elite into action (Joppke 1999 107). By the end of the 1950s the Ministry of Labour began to see non-white and only non white immigration as a threat to indigenous employment. Freeman though, argues that the more open policies of the 1950s had never rested on any political consensus and had produced unintended consequences of permanent settlement and secondary migration (Freeman 1998 98). Such consequences then became the focus of political attack.

These developments culminated in the 1962 Commonwealth Immigration Act, which broke the basic association between nationality and the rights of citizenship. Three types of labour vouchers were created and aimed at Commonwealth citizens, the first was for those with a job offer, the second for those with sought after skills and the third for the unskilled, issued on a first come first serve basis. The Act was initially seen as a temporary measure, its intention to control rather than prevent immigration (Joppke 1999 107). To restrict migration for supposed labour market reasons at a time when the labour market needed more workers made little economic sense according to Joppke (Joppke 1999 102), and thus should be seen as a response to a perceived social issue whereby the politics of control overrode the economics.

The 1962 Act revolved around the notion of belonging and ancestry and was initially opposed by the Labour Party. However, by 1963 Labour leader Harold Wilson announced that the Labour Party "do not contest the need for immigration control" (Layton-Henry 1992 77). The new Labour government introduced a White Paper on their election in 1964 that called for even stricter controls on immigration "and signalled a growing convergence between Labour and Conservatives on migration" (Schuster and Solomos 2004 268).

According to Layton-Henry, the Labour Party "were so afraid of the electoral consequences of appearing weaker than the Conservatives on the issue of immigration controls that both in 1965 and 1968 they had introduced tougher measures than even the Conservatives, if they had been in power, would probably have introduced"(Layton-Henry 1992 79). As will be shown in the following chapters, parallels are evident with the present, with the Labour Party being far more liberal in opposition than in office.

There was, however, an internalised liberalism simultaneously taking place, conforming to the

notion of there being a difference between immigration policy, the control of entry, and immigrant policy, what happens to immigrants once here (Hammar 2006). External controls were accompanied by internal anti-discrimination measures in the form of the Race Relations Act.

Hammar adds that there was a coming together of immigration policy and immigrant policy from the 1960s when good community relations became predicated on control of entry (Hammar 2006 239). Although the two policy areas are seen as being different, Freeman argues that the difference is actually merely a difference in stages of the policy process rather than a distinction between policies themselves (Freeman 2006b 228). As arrival and settlement do have a chronological order, this view has some legitimacy and crucially re-integrates immigration with what came to be called 'community cohesion'.

Favell argues that a form of paternalist liberalism was the 'idea' behind the developing restrictive consensus, but that the idea needed a political vehicle to promulgate it (Favell 1998 339). There were two necessary developments, one was for the Labour government to volt face on its internationalist outlook and accept a new restrictionism, and the second was a need for a new trenchant rhetoric, which was ably provided by Enoch Powell. His extreme views allowed a consensus to his centre to develop. As Favell argues "the threat of continued majority population reaction against these groups, and the destabilising of the national political order, pushed the Conservative Party to join Labour in seeking to depoliticise the issue and take it off the mainstream political agenda" (Favell 1998 339). Nevertheless despite the supposed consensus, the 1964 election had seen the politicisation of immigration to a far greater extent than ever

before with the Smethwick campaign[4] and Conservative Prime Minister Alec Douglas Home claiming credit for stopping 300,000 potential immigrants (Hansen 2004 142).

The rising racial tensions of the 1960s, for Favell, led to the main UK political parties creating "a durable compromise of tight immigration control and self styled 'progressive' legislation that pre-empted the emergence of the kinds of racial and ethnic conflict seen across Europe in recent years" (Favell 1998 320). The removal of the passports and the right of entry for some 200,000 East African Asians in the Commonwealth Immigrants Act of 1968, sped through parliament in just two days "in an atmosphere of outright panic" according to Joppke, "stands out as the most blatant example of a policy dictated by public hostility towards coloured immigrants"(Joppke 1999 108).

The 1968 Act has been viewed in two different but not necessarily conflicting ways. Some consider it as a political response to rising white public fears of black immigration while others see the policy as conforming to the wishes of business by creating a controlled and exploitable migrant labour force (Schuster and Solomos 2004 268). This combination of restriction and openness, operating simultaneously but focused on ostensibly different groups of individuals can perhaps be seen as a precedent to the dual policy imperatives being examined in this thesis.

The controversial introduction of patriality in the 1971 Immigration Act was intended to determine who had a right to abode in the UK. Patrials were defined as citizens of the UK or the colonies born in or with an ancestral connection to the UK, residents of the UK for 5 years, or any Commonwealth citizen with a parent or grandparent in the UK. According to Joppke, the

[4] The Smethwick campaign became famous for the slogan used by the Conservative candidate Peter Griffiths, 'if you want a nigger for a neighbour vote liberal or Labour'.

1971 Act effectively split the world into two categories, the patrials with the right to abode and the non patrials with no such right, "their entry to Britain being contingent on an immigration officer's 'leave to enter' (Joppke 1999 134). The 1971 Act further endowed the Home Secretary with almost complete control of the procedures of immigration policy (JCWI 2003 21).

The racial distinction inherent in the concept of patriality gave preferential treatment to white old commonwealth settlers and according to Joppke "is the revenge of the empire, planting the virus of racial distinction deep into the heart of British immigration law" (Joppke 1999 134). The removal of any distinction between aliens and Commonwealth citizens with no blood links to the UK can be seen as the end of imperial distinctions in UK immigration law. The Act was the first to deal jointly with both Commonwealth citizens and aliens, replacing employment vouchers with the far more rigid work permit system already in place for aliens, increased deportation powers and provided for a less smooth transition from temporary residence to permanent abode (Hansen 2001 77).

Throughout the 1960s and 1970s there was also a trend of externalising the processing of entry clearance to far flung regions of the world. According to Joppke this system developed into an unofficial quota system, giving officials an enormous amount of power and independence in the decision making process (Joppke 1999 117). The admission of wives and children of primary migrants was subsequently cut from 47,000 in 1968 to 26,000 in 1970 (Joppke 1999 117). According to Hansen the early 1970s marked a watershed in the treatment of dependents (Hansen 2000 230). Discrepancies between the claims of husbands and wives were seized upon and claims of marriage were viewed with increasing suspicion. Most illiberal were the virginity tests that many women were briefly subject to as part of an investigation into their claims.

**The Early 1970s: A Turning Point?**

Conventional wisdom appears to be that the oil crisis of the 1970s precipitated a 'critical juncture', whereby the positions of governments in many areas fundamentally altered. However, as with many critical junctures, such perturbations should not be viewed as a singular cause of change. From 1973 the British government, partly as a response to the oil crisis but largely for domestic political reasons of maintaining party constituencies and under the guise of preserving good race relations, sought to end primary immigration (Hammar 2006 238).

The international 'turning point' is seen by Hammar as having been 'privatised'. He states that "though it was made with the consent of each national government, it was made without open political debate and without any formal, official decisions" (Hammar 2006 238). Ghosh argues that one of the effects was that "labour migration was virtually banned, and at the global level migration ceased to be a desirable objective" (Ghosh 2003 21). However, the decision to stop some types of immigration and the reality of those decisions is not clear cut, even in the realm of the 'unwanted' migrants. According to Hammar

> The total amount of immigration …. has not decreased substantially as a result of the 'stop' in labor recruitment, but has remained constant or in some cases has actually increased. Thus, there is a relationship between the imposition of the 'stop' and the change in the composition of immigrant population (Hammar 2006 239).

As with the current 'crack down' on asylum seekers, the removal of entry rights of one type of migrant can be seen to partly displace entry to another part of the system rather than end entry altogether. This can be seen in two different ways. First of all it could be a deliberate construction to appease an oppositional audience, where rhetoric and symbols disguised a more stable reality. Or alternatively it can be viewed as an unintentional impact. The 'unintended consequence' of primary migration was future family migration, and the stop in primary

migration led to a clamour to re-unite families before that stop became absolute.

The 1976 Race Relations Act was seen as the second pillar of a 'firm but fair' immigration policy. Alongside the restriction placed on those outwith the British state came changes to the position and status of those within it. The return of Roy Jenkins to the Home Office in the early 1970s 'heralded a restrained liberalism' (Hansen 2000 225), with an amnesty for illegal Commonwealth migrants and an increase in quotas, along with the third Race Relations Act. Hansen points to the consensus characterising immigration and immigrant policy in stating that "in the same way that strict immigration control has been the goal of every government, no government has considered the possibility of repealing or modifying the Race Relations Act" (Hansen 2000 228). Indeed deep into the rule of Margaret Thatcher such policies are perceived as one of the very few bipartisan areas to survive the 'war on all things consensual' (Hansen 2000 228).

The 1981 British Nationality Act emerged due to perceived contradictions in nationality law but was prompted by concerns over the recent controversy concerning East African Asians. The relatively small number of Ugandan Asians expelled by Idi Amin had allowed the government leeway to grant refugee status without too much concern. However, there was also a feeling that an anomaly in the law existed that required change, that "it was time to end the tradition of paternal descent" (Hansen 2001 79). Thus citizenship was codified for the first time and was defined as excluding the colonies. There was a departure from *jus soli*[5] and citizenship by descent was limited to second generation. The Act also introduced a language requirement and a need for applicants to be of 'good character', which reinforced the strong decisional authority of

[5] Jus soli was the principle that a person's nationality at birth is determined by their place of birth as opposed to jus sanguinis that relates a persons nationality to the nationality of their parents

the Home Secretary, and had links backwards with the 1971 Act and forward with the 'conducive to the public good' test to come.

The Conservative Secretary of State put it succinctly: "we have got finally to dispose of the lingering notion that Britain is somehow a haven for all those countries we once ruled" (Joppke 1999 112). The solution was to break citizenship into three different types, British citizenship, British dependent territories citizenship and British overseas citizenship, creating a new system of stratified rights. It is important to recognise however, that the 1981 Act actually followed on from the rationale of the previous Labour Government's Green Paper that argued that in the post imperial age an all-embracing citizenship made little sense (Joppke 1999 111).

By the early 1980s the Home Office had argued that facing the burden of proof for refusal of entry was problematic. This led to a provision in the 1981 Act where "the Conservative government responded with rules that tightened family reunification overall, and introduced the primary purpose rule" (Hansen 2000 232). Any applicant henceforth would be required to satisfy all requirements or face mandatory refusal and what is more the burden of proof would now be on the applicant. That is, the applicant would be required to 'prove' that they were entering the country for the reason stated rather than the Home Office being required to show otherwise. According to Hansen this led to 'intrusive and insinuating questions, subjective judgements by entry clearance officers, and a bias in favour of rejection" (Hansen 2000 233).

The uncontested control of the Home Office over the entry of aliens was challenged in the 1985 *Bugdaycay* court case over the status of Tamil refugees. However, the result was that the judiciary had to once again accept their lack of say in the determination of refugee status (Joppke 1999 133). This ruling allowed the Home Office to introduce visa requirements quickly on the

people of any country where there was an upturn in applications for refugee status. Joppke points out that "a hastily imposed visa requirement for Sri Lankans, the first ever for a Commonwealth country, was a first measure of realigning asylum admissions with immigration control; precedent setting deportations were the second"(Joppke 1999 130).

The 1990 British Nationality (Hong Kong) Act gave full citizenship to 50,000 Hong Kong Chinese and their dependents. The cabinet put a minimum financial resource restriction on those seeking citizenship status, meaning that only the wealthier would be able to move to the UK. The Government had actually considered a larger quota but balked due to a fear of the public reaction (Hansen 2001 84/5). Indeed the government borrowed from the Canadian points based system in awarding a place to applicants based on rewarding skills and entrepreneurial talent, an early version of the future points based migration system.

Joppke points out that between 1983 and 1992 asylum claims in Europe, North America and Australia rose nine fold (Joppke 1999 112). The link between the halt on legal channels of immigration and the rise of asylum claims indicates the less than clear distinction between asylum and economic migrations and perhaps points to a displacement effect. Joppke argues that "in Western Europe, the linkage between asylum and immigration was especially clear, because after the oil crisis of 1973 and the wide imposition of zero-immigration regimes, asylum remains 'the only significant remaining legal avenue' for new entrants" (Joppke 1999 112).

In Western Europe asylum numbers almost doubled in five years, rising from 3.6 per cent of international claims in 1985 to 6.1 per cent in the 1990s (Ghosh 2003 6). For the nations of the EU, migration issues became problematised while the global importance and magnitude remained stable. Ghosh argues further that the response of the nations of Western Europe was

"in the main reactive and essentially restrictive. Border control, internal law enforcement through more stringent employer and carrier sanctions, and punitive measures against trafficking have been the principle focus of attention"(Ghosh 2003 6). The sense that the nations of the EU generally, and the UK in particular, have responded to increased migratory movements towards their territory by fortifying borders and increasing internal prescriptive responses is recognised in many studies and is of relevance to the work being undertaken here.

**European Union Developments**

According to Hansen the EU played a very limited role in relation to immigration policy in the UK until fairly recently (Hansen 2001 87). Original members of the EU had developed an incremental approach to the free movement of workers whereas in 1961 workers in one member state were able to take a position in another if no resident could be found to do the job. By 1968 workers were given equal rights to employment in other member states (Koslowski 1998 161).

However, non-economic rights of movement were not to be seen until the 1986 Single European Act, which expanded the scope of free movement by referring to the free movement of 'persons' rather than 'workers'. The European Court of Justice has since rigorously applied the prohibition of discrimination in this area which has helped to establish a movement 'regime' (Koslowski 1998 161).

The Treaty of European Union took such freedom another step on by extending the free movement of workers/persons to the free movement of all nationals of member states. That is, the permission to reside in another member state would no longer be contingent on employment (Van Muster 2004 9).

For Koslowski the process of codification of this movement regime has elements of spill-over from the creation of an economic area without internal frontiers, as this had "pressured member states to develop common policies on visas, border controls, asylum applications, and illegal migration" (Koslowski 1998 154). EU member states, in this account, are seen as being prepared to cede some sovereignty in the movement of member state nationals within the EU but not for non member state nationals.

The Treaty of Amsterdam in 1999 moved immigration policy from the third to the first pillar, so from issues relating to justice to those more concrete EU issues of goods, services and persons, allowing the EU to make binding regulations. Since that Treaty a series of agreements and declarations has shown the political will of member states to move to a more common policy on migration, or at least some elements thereof.

The UK government took the position that the European Court should not have a role in immigration and policing matters in the UK. This principle led to a protocol being signed in 1996 which 'effectively took the form of an agreement to differ', where the UK would not recognise court jurisdiction but acknowledged the right of others to do so (Walker 1998 168). The UK government opt in or opt out negotiated at Amsterdam in 1997 could be seen as a continuation of this 'agreement to differ'. The core objective of the Treaty of European Union was

> to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime (Van Muster 2004 9).

The Dublin Convention, signed in 1990 but coming into force in 1997, was one of the first stages in the development of an EU wide asylum policy. It came to an agreement to halt

presumed ‘asylum shopping’ by dictating that the state of entry would be responsible for an asylum application. “In the wake of large-scale flows and even larger fears of refugees from North Africa and the Balkans, the Dublin Convention served as Western Europe’s defensive response to a perceived threat of mass arrivals”(Ghosh 2003 16). Such a provision clearly benefited those nations that were more difficult to reach directly, that is, those without direct border frontiers.

The Tampere Summit of 1999 then began the process of creating a common asylum system and identified four building blocks of that system: the determination of the state responsible for examining applications; conditions for the reception of asylum seekers; minimum standards of asylum procedures; qualification and content of refugee and subsidiary protection status (Hatton 2005 110). It also envisaged a two-stage common asylum system starting with the harmonisation of existing national systems before moving on to a more fully integrated EU wide asylum system.

The Hague Programme later outlined EU action in the areas of freedom, justice and security for the years 2005-2010. For Geddes it typifies the developing role for the EU in consolidating territorial borders through the prevention of unwanted migration (Geddes 2005 197). The Programme called for a common asylum system by 2009, measures on illegal migration and integration, partnerships with 3rd countries, expulsion of illegal migrants, funds to manage external borders, the Schengen information system, a database of those with arrest warrants and common visa rules (Geddes 2005b 798/9), most of which can be located within the immigration ‘control’ regime.

Much has been written on the securitisation of immigration policy within the EU. Huysmans

states that “security policy is a specific policy of mediating belonging. It conserves or transforms political integration and criteria of membership through the identification of existential threats” (Huysmans 2000 757). The threat need not be articulated but is taken as a given. This is related to immigration policy when migration is “presented as a danger to public order, cultural identity, and domestic and labour market stability” (Huysmans 2000 752). For Bigo the gradual development of EU agreements pertaining to migration issues signifies that “the countries of the European Union embarked on a course of transforming immigration from a political question to a technical one, by presenting it as a matter of security” (Bigo 1998 151).

A simplified form of the securitisation of migration is provided by Becerro. She points out that when migration is continually portrayed as an abnormal or negative phenomenon it becomes easier to demand that it must be controlled “in this way, migration is converted into a law-and-order question, a security threat”(Becerro 2004 16). Media coverage contributes to establishing an anti immigrant consensus, whereby ‘threat scenarios’ are constructed “in which (e.g. through the use of metaphors) migration processes were represented as a danger, and the social changes produced by it as disastrous and unmanageable” (Becerro 2004 17).

Huysmans points out that the existential threat is an internal as well as external one, that there are three overlapping themes in the securitisation thesis, internal security, cultural security and a crisis of the welfare state (Huysmans 2000 750). This has also meant that immigration has often been tied to concepts of ‘what can be absorbed’ or ‘how many we can cope with’ which rolls the concept further into community relations, or in the language of New Labour ‘community cohesion’.

There were also significant externalisation processes occurring. In 1999 a meeting took place in

Barcelona that involved not just the existing 15 EU member states but also 12 other states on the periphery of the Union. According to King, "behind the rhetoric and the elaborate language of compromise of the declarations of this meeting – about economic co-operation, cultural exchange and respect for human rights and fundamental freedoms – there lay a more simple, brutal message: trade and aid, but not migration"(King 1998 120) . Throughout this meeting and subsequently, migration issues have been explicitly linked to security ones. Indeed King continues that "the logic of the Barcelona meeting was to 'buy' security through economic development and to create conditions whereby emigration from the southern and eastern shores will be stemmed" (King 1998 120).

The linking of migration and security is also seen in the High-Level Working Group on migration and asylum (HLWG). It emerged from a Dutch initiative that produced 'action plans' in 1999 for Afghanistan, Albania, Iraq, Morocco, Somalia and Sri Lanka focusing on the 'root' causes of migration (Castles 2004 218). The Group was a cross pillar one with implications for foreign and security policy, Justice and Home Affairs and trade and development. It is perhaps worth asking whether it is merely coincidence that such action plans involved the very nations that had become the source of the largest number of asylum claims. Although the Group nominally sought to focus to a large degree on human rights issues in the source countries, according to Geddes "security has been the watchword" (Geddes 2005b 792).

This security and external agenda was furthered in 2003 when the UK government initiated a debate on the future of the international refugee protection system. The aim was to reduce the flow of asylum seekers to the EU by 'externalising the response'. The UK Government's suggestion was the creation of regional and transit processing centres outside of the EU, with camps suggested in Turkey, Iran, Iraqi Kurdistan, Somalia and Morocco. This was attacked by

UNHCR who re-affirmed that the core responsibility for determining refugee status should be with the nation states to which those fleeing arrive. Noll points out the flaw in the UK case that, "the injustice of the global refugee regime, so vigorously decried in the EU vision paper, is addressed by locating the refugee beyond the domain of justice", that is outside of the established mechanisms for assessing claims. (Noll in Geddes 2005b 795).

This work was added to at the Seville summit in June 2002, which called for a targeted approach using all foreign policy instruments, from trade deals to aid. Lahav points out that there is a lack of analysis of the compatibility of international and national norms in much of present policy. She argues that "when the interests of several nations coalesce, favourable conditions may lead to migration coordination in order to upgrade common interests" (Lahav 2006 306). The complex relationships between EU nations, or a critical mass of them, could be seen to conform to this picture. While the Seville suggestions were initially rejected, such a 'critical mass' of nations *did* develop, allowing its re-emergence at a later stage.

EU neighbourhood policy also sought to develop a 'ring of friends' around the borders of the Union, excluding those more directly influenced by being prospective members, and included Jordan, Moldova, Israel, Palestinian Authority, Tunisia and Morocco (Geddes 2005b 793). Becerro sees a utility in viewing the process in relation to concentric circles. She states that "the restrictive criteria guiding the community measures reflect such a perception and encourage a rigid management of the external borders. That could easily lead to the development of an 'exclusion zone' in the periphery around the EU" (Becerro 2004 x1). The post war movement of people in Europe is, for Hammer, not a movement from the south to the north but one from the periphery to the centre (Hammar 2006 236). Thus the notion of concentric circles around the EU, with the periphery changing according to political and/or economic imperatives is one not

specifically addressed by Hammer but one that can be taken from his work.

Once more the privatisation and socialisation of debate emerges as a key concern for policy makers. As some EU policies become harmonised, or states independently move towards a lowest common denominator, new restrictive institutions are established. Favell argues that "the critical element in establishing new institutions is the political dynamic which pushes policy-making out of the behind closed doors technocratic circles into a wider public democratic sphere"(Favell 1998 337) and although such a process is politically dangerous, the "opening up and heating up of the issue… provides the crucible for innovative ideas"(Favell 1998 337). Alternatively the use of rhetoric and metaphors can be used to 'soften up' the populace and 'dull the critical faculties' prior to the socialisation process, lessening the immediate political fallout (Edleman 1985 190).

**The Stretching of the Borders of the European Union**

Favell and Geddes link the core EU developments of free movement with increased cooperation in the field of asylum and immigration (Favell and Geddes 2000 407), while enlargement should also be included in these relationships. Geddes states that "whilst the location at which migrants encounter the territorial borders of EU states has changed as a result of, for example, forms of 'remote control' migration management, it is also the case that EU action has tended to focus on territorial borders and their consolidation on the edges of the Union"(Geddes 2005b 789). The transfer of responsibility to the edge of the Union is described thus

> The future Member States will become responsible for the internal security of the Union. Consequently there is a need to develop a coherent approach in close co-operation with future Member States, in extending actions undertaken by the European Union over the past few years (JHA council June 13th 2002).

Thus for Geddes the exercise of migration controls at territorial borders have moved up, down

and out to include supranational actors, third countries and private actors (Geddes 2005b 789). The Acquis[6] provided the institutionalised EU form of these stretched borders.

The conceptual borders of the EU are also of importance as they create notions of belonging that are capable of sending messages towards the potential 'good' and 'bad' migrants. Geddes sees such borders as "a set of more abstract but no less important concerns centred on notions of belonging and identity that can be tied to trans-national, national and/or sub-national communities"(Geddes 2005b 790).

The rather fluid relationship between identity and place is addressed by Joppke who points out that *"Citizenship* refers to the modern state not as a territorial organization, but as a membership association" (Joppke 1999 5). However, within a multi-level polity, despite citizenship demands of some degree of 'common culture', as a result of immigration there has been a multiplication of membership categories "defying the citizen-alien dualism of either full or no membership at all" (Joppke 1999 6).

The utility of distinctions between conceptual, organisational and territorial borders is that they provide a means by which it is possible to examine the domestic roots of external EU policy. Geddes argues that organisational borders of work, welfare and citizenship motivate the state to use the EU to project national wants to the European level (Geddes 2005b 790).

Thus the solid and conceptual borders of the EU gradually became more fortified, in an institutional sense, although there remained a fluidity regarding which migrants were 'wanted'.

[6] The term *Aquis Communitaire* refers to the existing body of EU regulations and practices to which candidate countries were required to conform prior to joining the Union. While there was significant funding available, the requirements for strong border

Lahav points out that between 1973 and 1983 little legislation was passed by EU members to facilitate return migration, yet the 1980s and 1990s have witnessed nearly all EU countries introducing more restrictive legislation.

> From different starting points, most advanced industrialized countries have been converging toward more restrictive policies, and most have rapidly accelerated the pace of new legislative and administrative reforms to control immigration in the 1990s (Lahav 2006 294).

The 'escape to Europe' thesis is also addressed in work by Favell and Geddes who add blame to the justification or impotence arguments national governments can use concerning EU policies. In controversial policy areas national decision makers can increasingly shift the blame for either policy imperatives or policy failures towards the European arena.

> The 'Europeanization of conflict' …. only really shows that 'Europe' can now be used in the media as an effective rhetorical source of blame for public policy failures, in the same way that national governments routinely blame 'Brussels' for their own policy failures or impotence in the face of globalization pressures (Favell and Geddes 2000 411).

Joppke adds that in some respects Europe is not a challenge to UK asylum policy but an aid to it (Joppke 1999 133). The main tenets of the 1993 Asylum and Immigration Appeals Act were the development of an EU asylum regime, the fingerprinting of applicants, carrier sanctions and the fast tracking of unfounded cases, all of which are now general EU member state policies. Indeed Joppke goes on to state that "if fortress Europe is being built on the foundation of its lowest common denominator, it is the Fortress Britain turned inside out"(Joppke 1999 133/4)

## Conclusion

This review has attempted to provide the context, both structural and historical, within which New Labour policies will be analysed in the following chapters. The existence of a dual

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controls and the large border with non EU nations placed prime responsibility for EU controls on the new member states.

immigration policy has a long history and can be summed up in Zolberg's useful metaphor of "the walls that states build and the small doors that they open within them" (Zolberg quoted in Geddes 2003 152). This paints a useful visual picture whereby the masses of the worlds poor, whether fleeing persecution or seeking improved economic opportunities, are held at arm's length by walls of restriction. Simultaneously openings of varying sizes and for varying time periods are created for economic migrants and a small number of refugees in order to pay symbolic homage to the requirements of international law.

In addition the historical framing of of migrants has been highlighted along with more recent developments in relation to the relatively new 'migrant type', the asylum seeker. The chapter has also raised the emerging importance of European cooperation on migratory matters. The intersection of national and European developments has been shown, a development that future chapters will also engage with.

This chapter has thus highlighted the historical and institutional context. The following is a case study of immigration policy under New Labour. This will integrate the lessons both of both this chapter and Chapter 2, providing a rich case study in which historical and theoretical lessons are examined.

# Chapter 4 - The Inherited Immigration Regime and the 1999 Asylum and Immigration Act

## Introduction

This chapter begins by highlighting the institutional structure inherited by the Labour Government, particularly regarding the final two Acts that they passed. The main questions addressed in the chapter are; how was immigration framed by the New Government? Which type or types of migrant was policy aimed at? What was the political atmposhere as a result of the first years of the new Government? Similarity and difference between the main political parties prior to the 1997 election are shown, along with the first pre-Act of Parliament steps taken by the Labour Government. Not only does this add context to the processes to be examined in the 1999 Act, it also highlights continuity and change in both policy itself and in the incoming Government's arguments and perspectives pertaining to immigration.

The chapter then analyses the incoming Government's policies, highlighting new directions prior to the passing of legislation, and then providing a detailed analysis of the 1999 Act itself. The chapter also shows the developing themes of the privatisation (or delegation) of migration controls as well as the diffusion, or uploading, of policy to the European Union. However, the chapter remains tooted in nation state policy and policy-making by showing that the new Government's interaction with Europe related to its own policy wants.

## The Inherited Immigration Regime -The 1993 and 1996 Acts of Parliament

### The 1993 Asylum and Immigration Appeals Act

The 1993 Asylum and Immigration Appeals Act was the first asylum specific legislation to be introduced into UK law. Until this point refugees and asylum seekers were subsumed within

Aliens legislation dating back to 1906, but were more directly handled by the 1971 Immigration Act and non-statutory immigration rules. Prior to this point there was a 'structural conflation of immigration and asylum' (Joppke 1999 133). The 1993 Act introduced the Geneva Convention[7] into UK law. However, the implementation of the Convention is at least in part determined by the criteria that signatories wish to apply to it and thus it should not necessarily be seen as a stringent international obligation. Nevertheless its incorporation was of symbolic significance.

Going somewhat against the requirements of the 1951 Convention, that each claim for asylum be examined on its own individual merits, the 1993 Act also created an asylum category of 'claims without foundation'. Together with a number of other provisions in the Act this reduced both the timeframes and the right to appeal for a number of categories of claimants (Stevens 1998 234). Essentially claims would be categorised as either standard or without foundation. A special adjudicator was expected to decide standard cases within forty two days and seven days for 'clearly unfounded' cases, although the reality was that such time limits were rarely met. As will be seen in subsequent chapters, this designation of cases as 'clearly unfounded' was to become an integral part of UK asylum law in the years to come. The Act did not allow access to the Court of Appeal or House of Lords for refused claimants but did allow access to judicial review so a degree of oversight was provided.

1996 Asylum and Immigration Act

**Table 1 - The 1996 Asylum and Immigration Act – Main Provisions**

| | |
|---|---|
| **Criminal sanctions** | Made it a criminal offence to employ anyone who did not have permission to work in the UK (Section 8). |

[7] The 1951 Convention and 1967 Protcol define a refugee as *"A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it"*

| | |
|---|---|
| | It was now an offence to attempt to obtain leave to enter or remain by deception, whether deliberately deceitful or not. This could include travelling with false documents.<br>Knowingly assisting an individual to enter the UK known to be an asylum applicant was also now a criminal offence. |
| **Case processing** | Expanded the number of cases that could be 'fast tracked' to include those who do not present a passport, those who fail to show a fear of persecution, or whose fear of persecution is 'manifestly unfounded' (these cases would be entitled to only one appeal to a special adjudicator). Established the 'white list' of safe countries where the Secretary of State believes there is no serious risk of persecution, and who would likely be placed in the fast track above. |
| **Appeals** | Removed in-country appeal rights for those deemed to have come through a safe third country on their way from the country of origin to the UK. Those who arrived via an EU country would have 28 days to lodge an appeal once they had left the UK (a non-suspensive appeal).The adjudicator would be required to decide standard cases within 42 days of receiving documents on the case from the Home Office, 10 days for an in-country fast tracked claim. |
| **Support** | Removed income support, council tax benefit, child benefit and housing benefit from asylum seekers who did not apply 'at port' or who were appealing against a refused application (immediately on arrival in the UK initially but within three days after a legal challenge in the Lords). With the exception of the removal of child benefit the government felt that secondary legislation would suffice. |
| **Housing** | The Government planned to restrict access to housing to those who had been granted refugee status or ELR. Ruled unlawful by the Courts. |

Social Security Secretary Peter Lilley had announced at the 1995 Conservative Party conference that 'Britain should be a safe haven, not a soft touch' (Stevens 1998 218). This speech was indicative of a hardening of language, evident throughout the period under review. In addition the fact that the Minister for Social Security had made a major conference speech about asylum was an indication of the benefits issues about to be addressed in the 1996 Act. One aspect of immigration was 'framed' in relation to 'benefit tourism' and thus the creation of threat scenarios relating to welfare began.

Some of the detail of the 1996 Act is contained within the above table. One of the most important aspects was that accelerated appeals provisions extended the categories that could be 'certified', and so fast tracked. Certification essentially involved the assumption of the falsehood of claims and could be applied to all citizens of particular countries. For example all of those on

the ‘white list’ of safe countries were likely to be certified. The ‘white list’ was established for nations where it was considered that there was ‘in general no serious risk of persecution’ which, according to Stevens, implies that some risk was permissible (Stevens 1998 212). Similar lists had begun as a fast track assessment in Germany, Finland and Switzerland and had been incorporated into a 1992 European resolution *‘On A Harmonized Approach to Questions Concerning Host Third Countries’* (Kjaergaard 1994 649). Although the UK was not required to introduce such a provision, the Government perceived it as a method of rejecting claims and thus asserting control. Appeals in such cases relied on the applicant being able to persuade the adjudicator that the certification was wrong, while the adjudicator was unable to oppose certification on grounds that serious risk in the country of origin exists. Thus appeals in such matters were unlikely to reach a successful conclusion, although a form of displacement can be seen in the rise in the number of cases then going to judicial review. In addition, certification could also be applied to those without travel documents, those who failed to show fear of persecution and cases where evidence was found to be false or fraudulent. In terms of examining the outcomes of such cases there are severe limitations regarding analysis, as Home Office statistics do not allow cohort analysis.

Establishment of safe-third countries meant that the authorities could return an applicant to a designated safe country without first hearing the case. Where the country was another EU state or designated, they would have no in-country right of appeal, that is, the appeal would be ‘non-suspensive’. Those coming from another EU country would be required to leave the UK immediately and would have 28 days from the time of departure in which to lodge the appeal. For the JCWI

> Because decisions to refuse asylum came to hinge upon interpretation of fine details, the scope for contesting adverse decisions by applicants through appeal procedures became greater. Add to this the undoubted increase in the numbers

> applying, the result became a near breakdown in procedures by the middle of the 1990s (JCWI 2003 19).

One of the most controversial aspects of the 1996 Act was the introduction of Section 8 provisions. This made it an offence to employ somebody 'subject to immigration control' with a maximum penalty of £5000, although the employer had a defence if they could produce documentation showing they had checked the status of employees. There were concerns, including among the Labour opposition, that the provision would lead to racial prejudice through profiling and would be in contravention of race relations legislation, as only certain parts of the community would be subject to questioning (see for example Stevens 2003 and Hansard June 16th 1999 Col 484). Nevertheless Section 8 was implemented despite such concerns.

Another key part of the 1996 Act was the distinction made between those asylum seekers who apply 'at-port' and those applying 'in-country'. Only those applying immediately on their arrival to the UK would be entitled to financial support. Two Conservative Local Authorities had gone to Judicial Review concerning the removal of benefits for in-country applicants, as they were then left to provide for such asylum seekers. The Courts affirmed that Local Authorities were liable to support those facing destitution under the National Assistance Act of 1948, putting considerable strain upon Councils in the South East of England where most asylum seekers arrived.

Mr Justice Collins stated that this duty remained and that the Government was required to provide "the basics for survival" for those in need. He further argued that he 'found it impossible to believe' that in passing the legislation Parliament had intended asylum seekers to be "left destitute, starving and at risk of grave illness and even death" (Guardian October 9th 1996).

The Court of Appeal also condemned the removal of benefits as 'uncivilised' and 'inhumane' and ruled that Poor Law provisions to prevent starvation could be invoked. In addition the Court ruled that the move was contrary to the principles of the Geneva Convention as it prevented asylum seekers from being able to pursue their claim, due to the implications of a lack of money on the appeal process (Independent June 22nd 1996).

Figures from June 1996 show that the in-country / at-port dichotomy was not based on statistical evidence. In that month 54 per cent of grants of asylum were made to those applying 'in-country' (Observer July 14th 1996). Thus the idea that the vast majority of in-country claims were 'unfounded' was not statistically evidenced.

While the Government had rushed through legislation in order to overcome a previous judicial defeat, the Appeal Court argued that the result of the legislation "contemplates a life so destitute that no civilised nation can tolerate it" (Guardian Sept 5th 1996). In an attempt to assuage opposition the Government responded that retrospective application of the in-country / at-port distinction would not be applied.

However, the Home Office continued to argue that those applying for asylum 'in-country' had shown a means to support themselves and so should not be in receipt of Government support. A spokeswoman argued that "it cannot be right that people who enter the UK on the basis that they can maintain and accommodate themselves without resort to public funds should become eligible simply by claiming asylum" (Guardian Sept 9th 1996).

The process of increasing restriction on the right to be granted asylum can be seen in the proportion of successful claims. It is of significance to the whole asylum system that the right to

make a claim for asylum has some legislative foundations but the right to be granted asylum does not. The percentage of claimants granted some form of protection dropped from around 88 per cent in 1989 to just 20 per cent by 1996 (The Times Dec 9th 1997). The increasing number of rejections was rationalised in a circular way by the Conservative Government, as well as the incoming Labour Government after the 1997 election. Essentially their argument was that fewer asylum claims were successful, thus an increasing number were characterised as 'bogus', which meant tougher measures were required to 'weed out' illegitimate claims which would inevitably lead to a smaller proportion of claims being granted.

An interesting point raised by the JCWI is that the opening up of more nations of the world to the very pressures and forces that the west purports to support, liberal free market ones, has a link to migratory movements. They point out that "the effectiveness of immigration controls in the West had depended to a large extent on the existence of repressive regimes in countries of origin with a capability for controlling the movements of their citizens" (JCWI 2003 18). Once restrictions on exit were removed or reduced, the liberal democracies of the west reacted by seeking other means of control.

**The Influence of Europe**

Stevens points out that a number of procedures contained within the 1993 and 1996 Acts were rooted in European developments, which although not binding were gradually incorporated into the systems used by member states (Stevens 1998 210). Intergovernmental fora called for carrier sanctions, fingerprinting and the expulsion of third country nationals working illegally. The 1987 Carriers Liability Act provided carrier sanctions while the 1993 Act allowed for widespread fingerprinting. The 1996 Act reflected a degree of congruity with European developments by extending criminal powers in immigration and asylum through new offences and increased

powers of arrest, as well as employer restrictions.

Alongside these control measures were a series of discussions on other issues such as common methods for processing asylum claims, a common visa list and a single EU visa (Independent April 22nd 1996). Earlier in 1996 the EU had also adopted a restrictive definition of a refugee, one that only concerned persecution from Governments or state institutions, reflecting the criteria used by France and Germany (96/196/JHA Mar 4th 1996)

The importance placed on the issue of immigration by the institutions of the EU can be seen in the outcome of a meeting of Foreign Ministers in September 1992 where the British Foreign Secretary Douglas Hurd said that migration "among all other problems we face – is the most crucial"(Koslowski 98 153). Koslowski points out that "the mere fact that foreign ministers, rather than labour ministers, were discussing migration demonstrated that migration in Europe had moved from the 'low politics' of international economic relations to the 'high politics' of international security"(Koslowski 1998 153). In addition its level of importance with the public and issue salience had risen significantly in the view of the Government.

Migration therefore now encompassed everything from classic social policy issues such as social benefits, with threats to the welfare system being identified, to international relations issues within international forums. This shows the multi-pronged nature of migration that would contribute to its complexity in the years ahead. It also shows that despite the widespread belief that Britain under the Conservatives did not engage in EU activities where issues of national interest were concerned, and immigration had become one of those, the Conservative Government in a restricted number of areas showed some willingness to pull control measures.

**The Labour Opposition**

While party differences existed over this period, the Labour Party in opposition did not seek to contradict the main tenets of the Conservative Government's arguments on the nature of the immigration 'problem', with the need to tighten controls seen as the 'solution'. Labour's assumed vulnerability on the issue of immigration meant that instead of confronting the overall understanding of the issue, any opposition focused only on 'the letter of the law' (Schuster and Solomos 2004 271). This congruence extended to an almost mono-focus on issues of asylum. Indeed beyond the primary purpose rule, attention among both parties at this time solely concerned asylum.

Overall congruence aside, the 1996 Act contained a series of measures that were criticised by the Labour opposition at the time, but on which they gave little commitment to repeal. Criticisms included the extension of accelerated appeals procedures, the withdrawal of social security benefits from asylum seekers applying 'in-country', the prevention of illegal working and the removal of certain in-county appeal rights (Stevens 1998 207). While these criticisms were general, there were three areas where there *was* a positive commitment for change during the 1997 election campaign. These were the use of the white list of safe third countries, the withdrawal of benefits for those applying in-country and the Section 8 sanctioning of employers.

With regard to the removal of benefits for 'in-country' claimants Shadow Social Security Minister Chris Smith argued that such removal was belied by statistical evidence that contradicted the in-country/at-port dichotomy. He condemned removal and timescales of applications within three days thus

> They will ensure that many people legitimately here in this country, many of

> them genuinely fleeing from repression and torture, unless they submit their application for asylum at the point of entry and prior to determination, will receive no benefit whatsoever……. The Government, quite simply, are driving people, including children, some of them sick and disabled, into destitution (Hansard Jan 23rd 1996 Col 232).

In the debate on the 1996 Act Jack Straw, argued that "the white list, and the country assessments on which the list is based, are partial, defective and profoundly unfair. They will hit the genuine applicant as hard as the bogus applicant and they will damage the United Kingdom's reputation as a defender of human rights" (House Of Commons Research Paper 99/16 1999 17).

In addition, Shadow Home Secretary Jack Straw and Shadow Minister of State at the Foreign Office Doug Henderson argued that "Labour will restore the right of in-country appeal to those who have travelled through a so-called 'safe' third country. Removing people before they appeal undermines justice" (House Of Commons Research Paper 99/16 1999 27).

At the Committee stage in the examination of the 1996 Act the Labour opposition pressed for safeguards to the summary treatment proposed for would-be refugees from countries on the white list. Labour MP Keith Hill stated that "in their absence, we are putting at risk the lives and the bodies as well as the liberties of applicants for whom we get it wrong" (Independent Jan 10th 1996). Thus there was opposition to the existence and operation of the white list. However there were also concerns as to its mechanics. Doug Henderson for example, questioned Pakistan's place on the list. Overall he also argued that the 1996 Act would "cause untold damage to race relations" (Hansard Dec 11th 1995 Col 789).

The white list and the removal of people to safe third countries were also condemned as being against the requirements of the Geneva Convention. Straw stated that

> Our obligations under the United Nations convention require that each application should be considered individually, but the proposed white list would treat applicants from the countries on the list in bulk unless an individual could meet what could, even in well-founded cases, be an almost impossible burden of proof (Hansard Dec 11th 1995 Col 719).

One of the most racially contentious aspects of the Bill was that of employer sanctions through Section 8. Straw argued that "The employer checks will be neither firm nor fair. They have been questioned by the Secretary of State for Education and Employment herself. In a letter of September this year, she said that she believed that they could result in "racial discrimination". She is right" (Hansard Dec 11th 1995 Col 721). Thus the Labour opposition were clear as to the implications of Section 8 and stated that they would not implement it, that it would be subject to repeal.

There was therefore a commitment not to implement the white list, Section 8 or the in-country/at-port distinction. The reason was not only about international obligations though. Straw argued that the legislation had "the unique feat of damaging race relations whilst leaving it entirely unclear which countries would be on a white list, how employers are to carry out checks on illegal immigrants and what class of asylum seekers are to be denied housing benefit" (Guardian Dec 1st 1995).

The Labour Party also maintained its longstanding opposition to the primary purpose rule and committed themselves to its abolition in their 1997 manifesto, more on which below.

**A Pre-Legislation New Immigration Regime?**

Labour was elected to office on May 1st 1997. While there had been significant parliamentary battles over the 1996 Act, the only mention of immigration in their manifesto for the election

stated that they would deal with asylum applications quickly, regulate immigration advisors, streamline appeals and abolish the primary purpose rule. Other than these issues, which were not fleshed out, the only other mention of immigration was in relation to the retention of the veto in European negotiations regarding immigration matters.

**The Primary Purpose Rule**

One of Labour's key pre-election promises pertaining to immigration procedures had been the abolition of the hugely controversial primary purpose rule. This rule essentially allowed immigration officers to ask a series of questions in order to ascertain whether the primary reason for a newlywed entering the UK after having married a UK citizen, was the marriage and not the evasion of immigration controls. Primarily directed at arranged marriages from the Asian sub-continent it was widely seen in the Labour Party as a longstanding discriminatory practice. It was repealed on June 5th 1997, just weeks after the election of the new Government.

However, Immigration Minister Mike O'Brien argued that separate from the primary purpose rule was the continuing need to police marriage in order "to prevent foreign nationals from using sham marriages as a means to obtain settlement here. The primary purpose rule affected genuine marriages" (Hansard June 30th 1997 Col 2). The logic of this position appeared to be that some enquiry into the genuineness of a marriage was still required and thus an element of primary purpose remained. Indeed the 1999 Act would later contain a statutory requirement on Marriage Registrars to report any suspicious marriages for the first time. A 'sham' marriage was defined as one entered into "for the purpose of avoiding the effect of one or more provisions of UK immigration law or the immigration rules" (Stevens 2001 420).

**Asylum Amnesty**

Strong indications were given in the early years of the Labour Government that 10,000 asylum applicants waiting for a decision for more than five years would be allowed to remain, although the Government, for political reasons, refuted claims that this amounted to an amnesty. Such a policy shows some continuity with the policies of the previous administration who had given 'exceptional leave to remain' to 15, 232 people in 1992 who had been waiting for the outcome of their cases for some considerable time (Guardian May 12th 1998). The Labour plan was that where an asylum application was made before the implementation of the 1993 Act, delay would be justification for the grant of indefinite leave to enter or remain. In addition, applications made between 1 July 1993 and 31 December 1995, some 20,000 cases, would be looked at more compassionately as a result of the long delays.

## The Challenge of Kosovo

The changing contours of policy pertaining to refugees from Kosovo in the early years of the Labour Government are illustrative of the overall conflict between a need to conform to human rights norms and a desire to keep numbers to an inescapable minimum. Although the Government eventually agreed to take a small number of Kosovan refugees, their initial reluctance was predicated on the notion that to allow large scale humanitarian movement from Kosovo "would only have assisted Milosevic's objectives" (Hansard March 31st 1999 Col 1090). Under pressure from UNHCR and the EU, the Government eventually agreed to take a small number of designated refugees. However, this new perspective only extended to those labeled as bonafide refugees while still in their region of origin. Those who had arrived in Britain by their own means were dealt with according to the more restrictive practices of the 1996 Act.

An Amnesty International spokesperson talked of a dual policy in relation to Kosovan refugees

> There are two government policies on Kosovan refugees…the high-profile one that involves the evacuation of the camps in Macedonia and another hidden policy which applies to the vast majority, who are treated as if they are criminals when in fact they are just seeking our protection (The Observer May 9th 1999).

**Race relations**

Shortly after the election, the Government announced a review of immigration as part of the more general review across all departments: the Comprehensive Spending Review. Immigration Minister Mike O'Brien argued that 'all pre-election commitments would be upheld' (Stevens 1998 220). This review process produced two consultation papers – C*ontrol of Unscrupulous Advisors* and *Review of Appeals*, which were then followed by the White Paper, *Fairer, Firmer, Faster; a Modern Approach to Immigration and Asylum* published in July 1998. A Bill was put before Parliament early in 1999.

In introducing the second reading of the Bill Jack Straw argued that

> we want a fairer system that reflects our commitment to race equality and human rights; we want a faster system that is able to deal quickly with all applicants, whether visiting this country or seeking to remain here longer; and we want a firmer system, with strong control at ports and effective enforcement against those not entitled to stay (Hansard Feb 22nd 2000 Col 37).

The triple goals of fairer, firmer and faster were seen by some, among them the President of the Immigration Appeals Tribunal Judge David Pearl, as potentially incompatible with each other (Stevens 2001 437). He argued that fairness demanded full examination that speed could inhibit.

One institutional change to policy-making was the establishment of the Special Standing Committee to examine the Act. This came about as a result of pre-election criticism of Conservative legislation and the lack of scrutiny therein, and so from March 1999, shortly after

the Second Reading of the Act, the Committee met for the first time. Over the following 10 weeks the Standing Committee would take evidence in 25 sessions from a variety of interested parties. During both Committee and Report stages the Government were to add a large number of amendments, increasing the size and complexity of the Bill considerably. Many of these later additions were not added in time to be discussed before Committee and thus its scrutiny function was somewhat undermined. Such a situation was not helped by the use of the guillotine which imposed an end point after which the Bill would no longer be debated but instead would be voted on.

While labour migration continued to rise, the only mention of it in the White Paper was one line outlining an objective to grant entry to those who qualify for periods of work in the UK. Thus the Act itself focused almost entirely on the asylum side of the immigration equation. Where non-asylum aspects were raised, they will be discussed below.

**Table 2 - The 1999 Immigration and Asylum Act – Main provisions**

| | |
|---|---|
| **Establishment of National Asylum Support Service** | Establishment of the National Asylum Support Service (NASS) was one of the main innovations in the 1999 Act. It was responsible for both the dispersal and voucher aspects of the new system and operated as a separate social security system. In practice, a form of sub-contracting to local authorities and elements of the voluntary sector replaced local authority support. |
| **Support** | The replacement of cash benefits by a system of vouchers that could be used at participating retailers on a no change basis, was established to remove the 'pull' of cash benefits for asylum claims. Vouchers were set at 70 per cent of income support levels accompanied by a small cash payment of £10 |
| **No choice dispersal** | The strains placed upon Local Authorities in the south east of England, where the majority of asylum claims were lodged, were to be alleviated by 'clusters' of Councils across the country being given financial incentives to house groups of asylum seekers. If asylum applicants refused the no choice location they would not be entitled to help with accommodation while their case was being heard. |
| **Appeals** | Limits placed on the levels of appeal allowable through the establishment of the 'one stop shop', one appeal in which all grounds for appeal must be established. This included the limiting of the right to judicial review. |
| **Detention** | The detention estate was to be extended. From having the facilities to detain about 1000 individuals, the Bill planned to quadruple this to over 4000. |
| **Case processing** | The backlog of cases was considered to be the main reason behind the |

| | |
|---|---|
| | inability to deal with new cases quickly. This Act and associated provisions aimed to make initial decisions within two months and appeals within a further four months, while also making quicker headway with existing cases. More staff were employed in order to make decisions and part of the backlog was dealt with by the granting of Exceptional Leave to Remain for those waiting a certain length of time for the results of their cases to be finalised. |
| **Carrier liability** | Civil penalties of up to £2000 per stowaway were introduced. Lorry drivers would have to show that they had taken reasonable precautions to ensure no illegal entrants had hidden in their trucks. |
| **Employer sanctions** | The Government accepted Section 8, although it was to be accompanied by guidelines for employers with the aim of reducing the problems of discrimination. |
| **Deportations** | Targets were established for deportations and the right to appeal against deportation was now 'non-suspensive', meaning that appeals would only be heard after the individual had been removed from the country. |
| **Immigration advisors** | Much was made in the Act on the role of unscrupulous advisors making large sums of money helping to stretch out the appeals system. The solution envisaged was to narrow the range of organisations legally entitled to provide advice to asylum seekers. |
| **Civil controls** | A duty was imposed on marriage registrars to report any suspicious marriages |

## Reform and Retrenchment – The 1999 Immigration and Asylum Act

The above section has highlighted a degree of continuity in Labour policy with that of their Conservative predecessors, while also indicating some areas of difference. However, Labour's policy up until this point largely consisted of rule changes and secondary legislation. It was not until the Government undertook its first piece of immigration legislation that the real direction of policy became evident. As the following sections will show, the 1999 Act involved both a degree of change from what had gone before, but also large elements of continuity. The main elements of the Act are highlighted in Table 2, while the context is developed below.

### The Asylum and Appeals Process

There was an assumption of pull factors in terms of migratory movements by the Labour Government and these were used as a means to justify restrictions both within the 1999 Act and within changes to non-statutory rules. Indeed the Government was reactive to public events as well as in pursuance of their own restrictive agenda.

The Government was able to change the immigration rules in response to population movements from particular geographic locations. An increase in refused claims by Czechs and Slovaks, extensively highlighted by the media, led to a reduction of the time in which refused claims could make known further information in support of their claim. Straw informed the House of Commons that these tough measures were being taken against 'abusive' claims from the Czech and Slovak Republics (Hansard Oct 27th 1997 Col 570).

The Government tried to cut off the 'supply' at source by broadcasting on Czech and Slovak television that those 'trying to abuse the asylum procedures' would be subject to the harshest treatment allowable in UK law (HASC July 22nd 1998 Question 43). The issue also highlighted the overly bureaucratic nature of the Dublin Convention[8] and crucially allowed the Labour Government to pass responsibility for the self proclaimed 'crisis' on to its predecessors.

The time given to asylum seekers to gather supporting evidence appeared prohibitively tight. The use of the terms 'abuse' and 'bogus', in a sense framed refused asylum seekers as being abusers of the system, de-legitimising their claims, but with the consequence of de-legitimising all asylum claims. Integral to the decision making process was the target for waiting times which Straw described thus

> We believe that speed is one part of the essence of an efficient and effective system. That is why we have set targets to be achieved by April 2001 for most asylum decisions to be made within two months of receipt and for asylum appeals to be dealt with within a further four months. We are determined to achieve those targets. Average waiting times for appeals are already less than four months (Hansard June 16th 1999 Col 475).

[8] The Dublin Convention, signed in 1992 and coming into force in 1997 sought to determine the country responsible for hearing an asylum claim. The first country of arrival was theoretically supposed to hear any claim but the determination of that country led to horse trading and disputes over responsibility.

Results from the *Review of Appeals* were published in July 1998. This review argued for two sets of changes, one right of appeal and a restructuring of the Appellate Authority, both of which were then transferred into the 1999 Act. Under that Act, if the Home Secretary certified a case and the adjudicator agreed with that certification, there would be no further right of appeal. "The appeal would be held quickly after the initial decision had been made and there would be no separate appeal against removal" (Home Office 1998c Chapter 7). The aim was also to hear the appeal within six months of the initial application. Investment in the decision making process was intended to 'reduce the decision backlog to frictional levels by 2001' (Home Office 1998c Chapter 8). The Government also decided against initial plans to re-introduce an in-country right of appeal for certified cases, despite Straw's earlier condemnation of non-suspensive appeals.

A late amendment introduced by the Government meant that no appeals would be allowed for those not complying with procedural requirements. This meant that any non-compliance in the complete answering of questions and filling in of forms could be subject to automatic refusal. According to Stevens this opened up the possibility of more recourse to judicial review, a displacement effect of one route of appeal being shut off, resulting in the increased use of another (Stevens 2001 429). However, for the majority of cases, sections 74-78 introduced the single right of appeal envisaged in the White Paper. At this appeal all possible grounds had to be raised. Mike O'Brien argued that the number of appeal routes led to delay in removals. "What we need to do is to try to narrow down the opportunities for abuse of the appeals system" (Home Affairs Select Committee May 12th 1998).

The introduction of a single right of appeal can be seen as an incremental step in the narrowing of appeal rights. Speeding up the system and deterring applications were seen as fundamental to

both the backlog of cases and the moral justification for the harsher treatment towards asylum seekers. Jack Straw for example argued that "fundamental to our overall strategy is the need to speed up the system. There are too many avenues of appeal, so in future there will be a single right of appeal for those lawfully present in the United Kingdom at the time of their application" (Hansard July 27th 1998 Col 37).

It was also proposed that legitimate asylum seekers would not be concerned whether they were supported in cash or in kind. This led to one of the most controversial parts of the 1999 Act, the replacement of cash support with vouchers redeemable only in certain shops and on a no-change basis (this is further detailed below). Opponents argued that this would stigmistise asylum seekers. Straw however, argued that "we judged that the only way to run an effective system was by paying benefits in kind, because that would not deter genuine asylum seekers who are fleeing persecution and want shelter, food and accommodation in this country, but it would deter economic migrants" (Hansard July 27th 1998 Col 46). The link with the speed of the process was an internal Labour Party one. Only if such treatment would occur for just a short period of time could the Government justify it to elements of their own Party. Thus the speed of the process and harsh measures aimed at making the time in that process more uncomfortable were inextricably linked.

One additional right of appeal in the 1999 Act concerned the right to appeal on human rights grounds. As a result of the passing of the Human Rights Act in 1998, the Government accepted that human rights appeals should be allowable and would be heard by an adjudicator. The ILPA successfully argued that this should also concern cases of entry clearance made by officers based overseas (Stevens 2001).

A final change relating to appeals was a contraction of the range of advice available to applicants, framed as a fight against 'unscrupulous advisors'. Essentially the plan was two-fold a register would be kept of 'reputable' advisors, with the Law Society being asked to play something of a policing role, and simultaneously only two organizations' would receive funding to provide advice, to be accompanied by the removal of Legal Aid for asylum appeals.

In debating many of the Bill's provisions relating to appeals, the Government was quick to emphasise the continuities with what had gone before. Mike O'Brien stated that "We are not extending the appeal rights beyond what we inherited from the Conservative Government" (Hansard June 15th 1999 Col 270). In debates concerning the 1999 Act, the Conservatives consistently accused the Labour Government of being 'soft' on immigration. Mike O'Brien countered that

> Any reputation…that Britain may have garnered under the previous Government, is now being addressed. Britain will not, in future, be a soft touch. ….. This primarily means making decisions much more quickly than we have in the past; not allowing the substantial delays that have taken place. It also means putting in place protections for our borders (Hansard Standing Committee July 22nd 1998).

**Externalisation - The White List and the 'Safe Third Country'**

In the 1998 White Paper, Labour argued for the removal of the white list and also that no unfairness had resulted from its operation. They decided that they would therefore maintain the list until the new appeals system had been established (Home Office 1998c Section 3.9). More complete information about countries of origin was suggested in tandem with the abolition of the 'white list'. However, 'manifestly unfounded' cases would still be placed within an accelerated appeal procedure.

The concept of the safe third country, key to the previous Act, was extended by the 1999 Act. Like the increased use of judicial review as a result of the 1996 Act, it was recognised that the limiting of appeal rights in third country cases could lead to the forms of displacement mentioned above. The passing of the Human Rights Act in 1998 provided a new avenue for non-suspensive appeal rights. Thus there was a need to circumvent these restrictions to some degree.

The 1999 Act allowed the Home Secretary to invoke safe third country provisions if one of two conditions applied: another EU member state had agreed that for reasons of the Dublin Convention that they are responsible, or if the applicant is not a national of the state to which they are being sent. The Certification criteria themselves were similar to those contained in the 1996 Act. Section 11 of the 1999 Act did not require the Home Secretary to certify a country as safe, but merely that the country had accepted responsibility for the individual asylum seeker. In conjunction with the Dublin Convention, the benefits to a nation such as Britain, with no border links to non-EU countries, was clear. Thus the UK was successfully managing to transfer its obligations elsewhere. The main difference in certification between the 1996 and 1999 Acts was that the 1999 Act did not contain the white list.

**Enforcement and Removals**

Many of the Government's arguments concerning deportation issues were predicated on the argument that removals were necessary for the legitimacy of the overall asylum system, while those opposed to removals were in a sense acting to undermine that legitimacy. In the debate on the 1999 Act O'Brien argued that

> The Government were elected on the basis of their promise to establish firm immigration controls, and that sometimes means removing people who have been here for some time. People must face up to that unpalatable fact…… Our

> job as lawmakers is to make good laws and then to ensure that they are enforced. Some people do not like enforcing laws because they may be unpalatable, but we have a responsibility as lawmakers to do so (Hansard June 15th 1999 Col 285).

A new offence was established in the 1999 Act regarding deception in facilitating entry. Anybody found staying in the UK on the basis of an unfounded asylum claim involving deception could be fined £5000 or be subject to 6 months in prison. Section 29 also amended Section 25 of the 1971 Act, concerning assisting illegal entry. The maximum penalty for assisting illegal entry would be raised from seven years to ten years, although an exception was made for bonafide asylum organisations. Restrictions on legal entry in the future make this a significant development.

Immigration lawyers condemned the "the imperatives of exclusion" they saw as still dominating policy, highlighting the continuity with the previous Government policies (Independent Dec 15th 1997). After the provisions of the Bill were published opposition became even more acute. Nick Hardwick of the Refugee Council argued,

> "We are on the brink of committing a moral outrage with this Bill and the Government should take the chance to pull back. To press ahead would be madness. What better argument against the bigots and racists could there be than taking in destitute refugees and acting with tolerance towards them?" (Observer May 9th 1999),

while Hope Hanlon of UNHCR argued that the Bill was "fundamentally unacceptable and even inhumane" (Observer May 9th 1999).

**Detention**

Wide powers to detain emanated from the 1971 Act that placed few restrictions on the ability and length of time in which those subject to immigration control could be detained. Jack Straw

stated that "we shall not hesitate to use detention where necessary to ensure the integrity of immigration control" (Hansard July 27th Col 38). Straw would go on to argue that "there are many more people who ought to be detained than can be detained" (Hansard July 27th 1998 Col 48), essentially that detention was more about capacity than principle. Government Ministers consistently refuted allegations of a more generalised approach towards detention, and argued that it existed only for certain categories of immigrants, namely those to be deported and those thought at risk of absconding (see for example Mike O'Brien Hansard Jan 15th 1998 Col 281).

While continuing to argue that detention was only for certain categories of asylum seekers, Immigration Minister Mike O'Brien argued that "The idea that we are anxious to detain anyone is simply wrong. I think detention is a regrettable necessity" (Hansard Standing Committee July 22nd 1998). This claim was refuted by the Chief Inspector of Prisons Sir David Ramsbottom who argued that the selection of those to be detained had "little or no consistency or logic' (The Scotsman April 17th 1998).

Nevertheless there were plans to increase the detention estate from 1000 to 4000 in the 1998 White Paper, while the Government also rejected statutory maximum periods for detention. Essential for this increase was the opening of the Oakington Detention Centre. This privately run centre would take 4000 asylum seekers having their cases processed as part of the 'fast track' procedures each year, meaning that contrary to earlier arguments, they were not due for deportation or at risk of absconding. New Immigration Minister Barbara Roche argued that

> The reception centre planned for Oakington will assist in several ways. It will provide support and accommodation for people who would otherwise be turning to hard pressed social services departments in the south-east. It will facilitate more rapid consideration of applications and a faster turnaround will help deter prospective abusers of our asylum system (The Guardian October 22nd 1999).

Over and above the numbers and types of people to be detained, changes to the existing practice of detention were minor, the main change concerning the issue of bail. Previously immigration officers had wide powers to detain but no equivalent power to release. A detainee could apply for release and bail to a chief immigration officer or higher as long as s/he had been in UK for more than seven days. The onus was on the applicant to provide two witnesses of good standing who had evidence of their means, could provide a place of residence, and could provide a sum of money, at the discretion of the adjudicator or officer but commonly £1000 per witness, as bail.

Bail hearings would be heard a maximum of ten days after detention, with a second within thirty-eight days. However, such rights did not apply to deportation cases or those not detained under immigration powers. For those attending bail hearings there was a new presumption in favour of bail written into the Act, re-balancing the onus of proof away from the asylum seeker to some degree. The original Bill had contained no such presumption, with NGOs and refugee organisations successfully arguing for this liberalising measure. Although the Government was initially somewhat reluctant, demands of the European Convention on Human Rights were presented and eventually accepted as requiring such an assumption. The increasing use of detention was accepted as being 'expensive' and potentially an 'abuse of human rights' (O'Brien in Home Affairs Select Committee July 22nd 1998 Question 125) but its use continued nevertheless.

It is also interesting to note the acceptance of private prison contractors which Labour had opposed in opposition. While debates regarding detention aspects of the 1996 Act had received little support from the Labour opposition, just a year into their period in office had witnessed a

complete turnaround in that position.

**Asylum Support**

As far as support provided to asylum applicants was concerned, the White Paper highlighted three Government objectives. These were to ensure that genuine asylum seekers could not be left destitute, while containing costs through incentives to asylum seekers to look first to their own means or those of their communities; to provide for asylum seekers separately from the main benefits system; and to minimise the incentive to economic migration, particularly by minimising cash payments to asylum seekers (Home Office 1998c).

The introduction of vouchers for asylum seekers instead of cash payments was one of the most controversial aspects of the Bill. Provision was directly tied to a new dispersal policy. Straw argued in the debate on the White Paper that this did not represent a u-turn in policy.

> In opposition, I said that, in a civilised society, genuine asylum seekers could not be left destitute, and I am honouring that commitment today. We need a system that reduces the incentive to economic migration, and recognises that the genuine asylum seeker needs food and shelter, not a girocheque. Support on the basis that I have outlined will therefore be separated from the main social security benefits system, and will principally be provided in kind, not in cash. Where accommodation is needed, it will normally be provided directly, with no choice about location. We will also consider the extent to which support for food and other basic needs can be provided by vouchers or other non-cash means (Hansard July 27th 1998 Col 38).

Asylum seeking was thus being framed as an economic and welfare threat with the focus remaining on pull factors. Institutionally this meant a parallel social security system being established in the form of the National Asylum Support Service (NASS), a clear sign of a reformulation of deservedness. While Straw had opposed the removal of benefits as being too stringent in the 1996 Act in which he had argued that 'the denial of social security benefits to

asylum seekers is inhumane' (The Guardian October 5th 1999), he now argued that the reason for that opposition had been that they would not have fixed the problems that existed. The Minister for Public Health, Tessa Jowell argued that

> It is unacceptable that any asylum seeker should be left destitute, but, equally, we are conscious that a balance must be struck between reducing the benefit incentive for economic migrants to make unfounded asylum applications and the need to support asylum seekers while their applications are considered (Hansard July 10th 1998 Col 1414).

The 1999 Act gave the Home Secretary the *power* to provide support to asylum applicants but did not require him to do so. Essentially the decision to provide support hinged on whether the applicant was destitute or likely to become destitute without such support. The National Assistance Act was amended to exclude from its auspices people subject to immigration control, thus removing the requirement on local authorities to provide support and aid and leaving NASS as the only potential state support available. The amendment to the 1948 legislation was intended to remove the 'burden' from Local Authorities. As O'Brien argued

> We are seeking to put a national system in place, taking the burden off local authorities, many of which find it difficult to cope—especially if they have to make special provision for a small number of asylum seekers. The national system will allow them to be dealt with on a national basis (Special Standing Committee April 20th 1999).

The link between benefit removal and an assumed reduction in 'pull factors' was repeatedly made by Labour ministers in parliamentary debates and in media interviews. When the Government was questioned on the link between cash benefits and pull factors they were able to provide little non-anecdotal evidence. Nevertheless the symbolic importance of this framing was that it institutionalised the assumed link, despite the lack of empirical evidence. In evidence at Committee O'Brien argued that

> There is a need to ensure that we have proper mechanisms for support of asylum seekers but that we do not create what are called pull factors. That is the abusive asylum seeker, the economic migrant, may well see incentives in coming to a particular country because of the benefit available there (Home Affairs Select Committee July 22nd 1998 Question 72).

Vouchers were set at 70 per cent of income support levels, which had been deliberately set to reflect poverty levels. A late amendment by Neil Gerrard proposed scrapping vouchers, and the Government, fresh from facing a large back bench rebellion on the Welfare Reform Bill, agreed to a 'compromise'. This involved an increase in the cash based element of the support from £7 to £10 and the promise that families would not have to wait over six months on vouchers. Although a small concession, it was able to head off a rebellion with just seven Labour MP's voting against, and the Conservatives abstaining.

The 1999 Act also introduced a quicker time period in which all support would be removed from successful asylum applicants. Those gaining refugee status would now have just 14 days to find other means of support and housing.

**Non Asylum Provisions - Family visits**

Changes were also made to the appeal process concerning family visits. Many Labour MPs had been critical of the removal of appeals for those denied visas for family visits. The White Paper argued for streamlined rights of appeal in such cases, although a financial bond scheme pilot was also mooted. Visitors appealing against their denied entry would, thus, be required to fund that appeal themselves.

**Non Asylum Provisions - Nationality and Settlement**

Although the White Paper had little to say on settlement issues there were a couple of points

raised. International obligations were cited as the reason for a reduction in the qualifying period for those given exceptional leave to remain to be entitled to settlement, after four years instead of seven. The Government also changed settlement rules to allow immediate settlement on the granting of refugee status while there was also a commitment to reduce the length of time for the processing of applications for citizenship.

**The Domestic Delegation of Asylum Controls**

Both the domestic delegation of immigration controls, whether welcome to those charged with new responsibilities or not, and the ability to alter immigration rules with no required scrutiny can be seen in the extension of carrier liability to trains arriving from Belgium. Jack Straw said in a written answer that "We have today by Order extended the Immigration (Carriers' Liability) Act 1987 to Eurostar services arriving from Brussels to reduce the large numbers of inadequately documented passengers using this route over recent months" (Hansard April 8th 1998 Col 256). The 1999 Act took this a stage further and repealed rather than added to the Carriers Liability Act. Within the 1999 Act there was recognition that the types of vehicles being used to transport people into the UK had changed and thus the legislation too required change as a result.

The introduction of civil penalties for lorry drivers of up to £2000 for each stowaway was also included in the 1999 Act, against the lobbying and advice of employers' organisations. For example the Road Haulage Association urged a rethink arguing that it "will do nothing to tackle the problem and just add to the burden of innocent drivers" (The Guardian Dec 22nd 1998). The Act also gave the authorities the right to seize vehicles until such time as the fines were paid.

In addition, individuals accessing the country via these routes would be subject to a fine and/or a period of imprisonment in line with the provisions mentioned above. During the passing of the

Act a court decision by Lord Justice Brown ruled that Britain would be in contravention of the Geneva Convention for prosecuting and jailing asylum seekers who arrive here with false papers. This prompted the Government to introduce a late mediating factor: the asylum seeker could provide a defence that they had presented themselves immediately to the authorities directly on arrival from the persecuting country, an extension of the in-country/at-port dichotomy.

Such a process re-emphasises the issue of cutting off access routes as a responsive measure. Just as visa requirements were quickly imposed on nationals of potential EU member states in response to migratory movement from those states, the case of Eurostar highlights that the placing of obstacles on migrants' ability to arrive in Britain formed one of the most basic of immigration controls undertaken by the Labour government but also signifies again that in the run up to the 1999 Immigration Act, continuities were evident in both immigration policy and practice.

While Labour had been opposed to the implementation of Section 8 prior to the election, and indeed during the election campaign had vowed not to implement it, by the time of the White Paper the Government had decided that they would keep Section 8 but issue a code of practice to employers in order to lessen the admitted potential for racial discrimination resulting from the clause. In a parliamentary debate the Immigration Minister argued that the 'mischief' that would result from its removal would be greater than the mischief caused by its use (Hansard Jun 16th 1999 Col 491). Although there had been no prosecutions since the provision came into force its removal was seen as too problematic to attempt.

A number of enforcement measures were also suggested in the White Paper. As noted above,

these included enhancing both the powers and responsibilities of marriage registrars to report suspicious marriages but also an extension of the powers enjoyed by immigration officers who were given powers of entry, search and arrest. There were concerns that police powers were to be given to an organisation not subject to police training, nor subsumed within the requirements of race relations legislation. However, not only did the Government ignore such claims, they decided to go even further in allowing immigration staff to use 'reasonable force' in the carrying out of their duties.

**The Diffusion of Responsibility - The Influence of the European Union**

In a parliamentary debate on the Amsterdam Treaty, signed in June 1997, Prime Minister Tony Blair succinctly described the aims of the UK negotiating team as "to protect our essential interests over immigration, foreign policy, defense and a central role for Britain in Europe" signaling that immigration for the New Labour Government was very firmly within the realm of 'high politics'. He went on that

> We have obtained legal security for our frontier controls, through a legally binding protocol to the treaty. That is an achievement of lasting value, attained for the first time. The key point in the protocol says: *"The United Kingdom shall be entitled . . . to exercise at its frontiers with other member states such controls on persons seeking to enter the United Kingdom as it may consider necessary for the purpose" (Hansard June 18th 1997 Col 314).*

Thus the negotiation of the so called 'opt in' allowed the UK to participate in areas 'of interest' but the Government argued that national traditions and geography put the UK in a different position from other EU nations. Indeed later in the debate the Prime Minister would state that "the rest of Europe has a genuine, different interest" (Hansard June 18th 1997 col 326).

Jack Straw furthered such an argument concerning Schengen developments[9]. He stated that

> Our intention to maintain our frontier controls has implications for our participation in the direct operation of external frontier controls. For similar reasons, enhanced visa co-operation raises difficulty for us. But, within this constraint, we shall seek discussions with European Union colleagues to maximise the scope for mutual operational co-operation in combating illegal immigration, without prejudice to the maintenance of our national immigration controls. We shall also look to participation in immigration policy where it does not conflict with our frontiers-based system of control (Hansard March 12th 1999 Col 382).

Thus the Government was prepared to cooperate in joint action to restrict and prevent migratory movements but only those that did not dilute the overall principle of frontier control. This was again apparent in Labour's negotiations at the Tampere summit in 1999. Reporting on the result of Tampere Tony Blair argued that

> on asylum and immigration we agreed: a common approach to the way in which member states deal with applications for asylum, to remove the incentive for asylum seekers to shop around, and to ensure that asylum seekers are dealt with in the first European Union member state that they enter (Hansard October 19th 1999 Col 254),

part and parcel of the Dublin agreements.

The Labour Government condemned the Dublin Convention as having been 'appallingly negotiated' in that it had "made the return of asylum seekers to European Union member states a more complex and time-consuming process" (Hansard April 2nd 1998 Col 639). Safe third country provisions had led to 1000 asylum seekers being returned in 1998, mostly to other EU states (Home Office 1998c Chapter 11). Despite this, plans to reform the Dublin Convention to make such returns easier continued in the 1998 White Paper. Increasing international cooperation in the field of migration control is also highlighted in this period. Joint British and

[9] The Schengen Agreement was estebalished by Convention in 1990 and provided for the removal of systematic border controls

French border operations was said to have prevented 2000 illegal immigrants from reaching Britain in just a 6 month period (Hansard Feb 15th 1999 Col 497). Such reform was a key priority for the Government during their presidency of the EU in the first half of 1998. Appeals against returns to other EU states were also to be non-suspensive after the passing of the 1999 Act. Another key priority, and linked to Dublin negotiations, was the establishment of the Eurodac fingerprinting system[10]. The newly negotiated Dublin Regulation included Eurodac and would also make disputes over responsibility justiciable for the first time.

Both the Labour and Conservative Governments had been amongst the most enthusiastic supporters of EU enlargement. However, the warmth of the Government's approach to the enlargement of the EU can be contrasted with its approach to citizens from prospective member states. Robin Cook pledged to "throw open the doors of the European Union" to the Czech Republic but counter-posed such an embrace with a warning that

> We have a very clear message to anyone contemplating travelling to Britain. Britain does not have an open-door policy to those who allege persecution and cannot then prove it.....Britain has a clear duty to get across the message that it is not and cannot be a soft touch for those claiming asylum on the basis of false claims (The Independent Nov 28th 1997).

Government ministers appeared and took out advertisements on Czech and Slovak Television to pursue the point. The mere fact of being a member of the EU was now seen as evidence of the falsehood of claims from those states. The approach towards labour in the years to come would provide a significant contrast. Such a move can also be contrasted with Straw's earlier condemnation of asylum cases not being determined wholly by their own individual merit.

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between all participating countries.

[10] In December 2000 the European Council established a system for comparing the fingerprints of asylum seekers and illegal immigrants.

In mid 1998 Austria, holding the Presidency of the EU, submitted proposals for a uniform immigration and asylum policy that explicitly confronted the basis of the Geneva Convention, with only temporary protection being an option and the notion of external camps given some thought. The argument that Geneva was out of date was not solely an Austrian one. Indeed the British Government has made similar pronouncements and would continue to do so for a number of years to come, following an Austrian suggestion that Geneva be 'supplemented, amended or replaced' (Guardian Oct 20th 1998).

## Conclusion

This chapter has highlighted the institutional structure inherited by the incoming Labour Government, but has also shown that that new Government adopted a similarly hostile policy stance towards asylum seeking as the previous administration, while labour migrants were not addressed in policy despite their numbers (see Appendix 2). Indeed as far as asylum seekers were concerned the trajectory of policy was almost entirely consistent with that which had gone before. Restriction and externalisation, often through the use of the European Union, developed into the fundamental goal of policy. The problematising of asylum seekers and asylum seeking, and the framing of asylum according to illegitimacy dominated. With control of asylum seeking taking precedence, seen in both internal and external measures, the extension of the number of actors given roles in migration control was also highlighted.

The next chapter highlights continuity in relation to these developments but also indicates a more explicit conceptualisation of a dual migration regime with labour migration emerging more prominently in Government framing and practice. Nevertheless, as will be shown, policy was to remain dominated by control measures and a problematising and criminalising of the unwanted migrants in the shape of asylum seekers. However, after the passing of the 1999 Act, policy, or

at least rhetoric, did begin to change to some degree. This change, along with further continuities, is now addressed.

# Chapter 5 – The 2002 Nationality, Immigration and Asylum Act

## Introduction

This chapter develops some of the themes raised in Chapter 4, particularly the framing of asylum seekers and asylum seeking. However, the chapter also raises key issues with regard to a dual immigration policy. While policy and framing continued to be focussed primarily on those migrants characterised as unwanted, this chapter also highlights the emerging counter to that conceptualisation, that of the good or wanted migrants, understood according to their potential economic contribution. Thus one of the key questions rasied is; to what extend did the emerging concept of managed migration represent a new paradigm in British immigration policy?

Additionally, with the number of both wanted and unwanted migrants increasing, accompanied by negative framing and symbols as well as events, other key questions are; what impact was policy-making having on the political environment, particularly regarding the crisis perspective in the immigration field; did framing have an impact on the emerging debate about nationality and what did this mean for the concepts of integration or cohesion? The chapter also continues to track the delegation and diffusion of immigration responsibilities to non-state actors. At the domestic level this involved both actors carrying out immigration control functions, but also highlights those powerful actors capable of influencing policy developments, primarily employers.

The chapter also continues to develop the European dimesion of control policies, explicitly aimed at asylum seekers. However, Chapter 5 also covers the initial period in which the debate on European enlargement was taking place and so a labour dimension of migration policy at the European Union level is also raised.

## The Impacts of the 1999 Immigration Act

### The Emerging Asylum regime

Prior to detailing the contents of the 2002 Act it is important to examine both the political climate in the lead up to its introduction and the effects and implications of the 1999 Act. In addition, a number of significant rule changes were introduced which impacted on immigration matters, and numerous important signals regarding the future direction of Government policy were being sent out. These signals particularly concerned issues of labour migration and 'community cohesion

Continuing policy intervention in the field of immigration policy had been characterised by Home Secretary Jack Straw as a sign of policy failure in the early years of the Labour Government. He stated that "twice in the space of three years the Conservative Government tried to reform the asylum system. If their first Act--the Asylum and Immigration Appeals Act 1993--had worked, the second would not have been necessary" (Hansard Feb 2nd 2000 Col 1064). The Government had been keen to characterise the 1999 Act as being the natural successor to the 1971 Act. Roche argued that "The Immigration and Asylum Act 1999 represents the most comprehensive overhaul of immigration legislation for three decades, and it is essential to deliver our fairer, faster and firmer system" (Hansard Feb 10th 2000 Col 249W*)* . However, just three years after this fundamental reform, another was deemed necessary.

With regard to the effects of the 1999 Act Flynn argues that "the legislation had minimal impact as a deterrent against further asylum-seekers", although he points out that progress in clearing asylum backlogs was made. There were concerns, however, that this was being achieved at the price of suspected lowering of decision-making standards (Flynn 2005 474). Indeed Spencer points out that the speed of decision-making was contributing to the number of successful

appeals, more than one in five by 2002 (Spencer 2007 344). This was indication of some displacement effects from success at initial decision to success at appeal.

There were rising applications for asylum in the aftermath of the 1999 Act, but these were linked to political and economic turmoil around the world. Tony Blair argued that "Most of the cases that are coming in are from countries such as the Federal Republic of Yugoslavia, providing a very good reason why the numbers have risen in the United Kingdom and elsewhere in Europe" (Hansard Feb 2nd 2000 Col 1036). Home Secretary Jack Straw re-emphasised the point, arguing that Yugoslavia, Somalia, Sri Lanka and Afghanistan together accounted for almost 31,000 asylum applicants the previous year, more than 40 per cent of the total (Hansard Feb 2nd 2000 Col 1059), indicating the dominance of push factors and the Governments awareness of the causes of much of the recent movement.

However, the Government's developing perspective was that the authenticity of a claim was not the sole rationale for preventative controls. Straw argued that "there is a limit on the number of applicants, however genuine, that you can take" (Schuster and Solomos 2004 278). This perspective not only had ramifications for the direction in which debate was to move, it can also be contrasted with Blunkett's statement in September 2004 that he could see 'no obvious upper limit' to labour migration (See Chapter 5). Straw argued that the prime reason for the failure of Government policy, the prevention and control of numbers, was due at least in part to the wide Geneva definition of a refugee (Speech to IPPR Feb 6th 2001).

The de facto continuation of the White List is also evident in this period, and was condemned by refugee organisations who argued that it meant summary decisions were made (Schuster and

Solomos 2004 274). While Labour had supported such criticisms in opposition, "a White List continued to operate unofficially, and was reintroduced in 2002" (Schuster and Solomos 2004 274). Thus a gap can be seen between rhetoric and reality. Much is made of the abolition of draconian legislation while its actual abolition is absent. It is then re-introduced in a much wider piece of legislation that has other measures tied to it, which to some degree inhibits opposition to the measure. Similarly the abolition of vouchers was tied to asylum seekers having to carry ID cards. The internal Labour opposition to vouchers was such that they were prepared to accept another control measure in order to have it removed, more on which is further highlighted in this and subsequent chapters.

There was criticism of the effects of the 1999 Act by a coalition of Race Relations organisations. A dossier submitted to the UN's Committee on the Elimination of all forms of Race Discrimination (Cerd) argued that the 1999 Act had "created racial tensions rather than racial harmony" (The Herald August 14, 2000). Such tensions were to become an important facet of the Government's developing outlook regarding immigration and nationality, particularly the developing notion of 'community cohesion'.

Jack Straw at this point compared the UK asylum controls favourably to other EU nations. He pointed out that "In the three months from July to September last year, UK asylum applications increased by 6 per cent. On the previous three months. Sweden saw an increase of 48 per cent., Belgium 52 per cent., Germany and Austria 24 per cent. Denmark 23 per cent. and the Netherlands 16 per cent" (Hansard Feb 1st 2001 Col 481). In terms of per capita figures within the EU, the UK was now the 8th largest recipient of asylum applications (Hansard Feb 1st 2001 Col 481).

**Detention**

Criteria for detention were altered in March 2000 to accommodate the recently established Oakington Reception Centre. Oakington was in a sense a precursor to the end to end detention regime planned in the 2002 Act. It was viewed as a centre to process straightforward claims that had been fast-tracked by the Immigration Service. Barbara Roche later presented reductions in claims from Central and East European countries as a success for detention measures such as Oakington. She argued that "applications from countries in respect of which many unfounded applications were previously made--including the Czech Republic--are decreasing, because of measures such as those introduced at Oakington and elsewhere" (Hansard Jan 8th 2001 Col 703). Expansion of the detention estate also continued during this period. Just as plans for the opening of a 400 person detention centre at Oakington were progressing, Straw announced plans for a further three centres to house 400 more asylum applicants.

However, in 2001 Mr Justice Collins questioned the legality of Oakington in the Administrative Court. Four Kurds detained there since their first arrival in the UK brought the case on human rights grounds. The Court ruled that their detention was illegal as it violated the right to liberty enshrined in Article 5 of the European Convention on Human Rights (Scotsman Oct 30th 2001). However, the Home Office won on appeal and thus the legality of detention was affirmed. Nevertheless, the incorporation of the ECHR would continue to have some impact on Government policy in the years to come.

This appeal win served to encourage the overall capacity-building project. Indeed Immigration Minister Barbara Roche argued in February 2001 that the Government were seeking to expand "the number of detention places, to increase and speed up the removal of failed asylum seekers".

She went on to announce that a plan "to deliver around 2,000 new detention places by the end of 2001 is well on track" (Hansard Feb 15th 2001 Col 250W).

**Removals**

Removals accelerated in the early years of the Labour Government, and had been accelerating prior to the introduction of the 1999 Act. Whereas 26,000 people had been removed in 1996, this had grown to some 37,000 by 1999 (Hansard Jan 8th 2001 Col 702).

Three removals projects were established and funded by the Government under the auspices of the European Refugee Fund and implemented by Refugee Action and the International Organisation for Migration. The *Voluntary Assisted Return Programme 2000* sought to aid the return of people who could not afford to return to their country of origin of their own accord. The aim was to return 1200 people between September 2000 to September 2001, as well as provide help on arrival. The *Somalia Project* also sought the return of Somalian refugees to areas considered peaceful, with some re-integration help also available. Finally the *Voluntary Assisted Return Programme (VARP) 2001* aimed to continue the work done by the 2000 scheme mentioned above. All aimed at contributing to the removal of refugees to their countries of origin (Hansard Oct 18th 2001 Col 1326W). By the summer of 2001 the Government created something of a problem for themselves in setting removals targets of 2500 people per month by 2003-04, and then bringing the target forward to early 2002 (Hansard Jun 27th 2001 Col 658), only to then have to admit that neither the new nor the old target would be met.

**Support**

Prior to being replaced by David Blunkett, Home Secretary Jack Straw was quick to compare the

voucher system favourably with what had gone before. He argued that "if civilisation means anything, it means that we do not leave people destitute--unable to eat, with no accommodation whatever--regardless of the foundedness or unfoundedness of their claim" (Hansard 12 Apr 2000 Col 438). While the 1999 Act had produced considerable opposition, particularly amongst NGOs and the Trade Union movement regarding vouchers and dispersal, the restoration of benefits to in-country asylum seekers, a move to be reversed in the 2002 Act was welcomed by the same groups. A review of the operation of the voucher scheme began in late 2000, prompted by considerable opposition to it. Although a review had been established, the Government's perspective remained that a no-change voucher system at this point was still required. The rationale was spelt out by Roche who argued that "We remain of the opinion that the 'no change' policy is an essential part of our strategy. It is designed to be an economic disincentive for those who seek asylum for economic reasons" (Sunday Telegraph November 19th 2000).

As far as asylum is concerned, the 2002 Act was very much marked by continuity. New Home Secretary David Blunkett, much like Straw, focussed on control measures, the prevention of arrival and disincentives once here. As asylum seeker numbers rose during this period the media were increasingly hostile with almost daily headlines warning of floods and waves of migrants coming and taking from 'us'. Ann Karpf pointed out that in the year 2000 the Daily Mail ran 200 stories about asylum seekers contributing to a lack of accurate understanding among the population (Guardian June 8th 2002).

Readers Digest found in a survey that the British population believed that asylum seekers received £113 per week in benefits when the real figure was £36. In addition, "80 per cent of adults believed that refugees come to Britain because they regard it as a "soft touch", 66 per cent

thought there were too many immigrants in Britain, and 63 per cent considered too much is being done to help immigrants" (Guardian June 8th 2002). The results also showed a belief that 20 per cent of the population were immigrants while the real number was just 4 per cent, and that 25 per cent of the population were from an ethnic minority when the real figure was 7 per cent (Guardian June 8th 2002). This misinformation allowed for the emergence of Migrationwatch, an independent 'think tank'. The Daily Mail regularly carried commentary from its Chair Sir Andrew Green, a former diplomat. Migrationwatch argued for an end to migration, and that stresses and strains placed on the social system, particularly housing, were becoming intolerable[11]. This focus on asylum 'abuse' and numbers continued to paint threat scenarios that the Government responded to rather than confronted, although they did initially attack Migrationwatch's use of statistics.

While the initial debate concerning the opening up of economic migratory routes was in its infancy, the link with work as a pull factor for asylum applications was again being emphasised by the Government. A decision to abolish the right to work, or the 'employment concession', for asylum seekers awaiting their case decision was put into place on July 23rd 2002, presented as the removal of a pull factor.

**Labour Migration – An End to the 'Zero Immigration' Years**

As mentioned in the Literature Review, from the early 1970s onwards, Britain had been characterised as the would be 'zero-immigration' country. The aim of policy was said to be to keep immigration to an 'inescapable minimum' (Layton-Henry quoted in Joppke 1999 100), although movement was always more substantial than such rhetoric would allow for, with labour migration, family reunion and the working-holidaymakers scheme maintaining significant

[11] Letter from Migrationwatch to the author.

movements.

Righter highlights the importance of labour migration prior to it being an officially espoused policy of the Labour Government. “Of those who came to Britain in 1997….a full 50 per cent were "workers" and another 20 per cent were their dependants. Only about 5 per cent were refugees” (The Times June 13th 2000). Despite the numerical imbalance most attention remained focussed on that 5 per cent. Nevertheless, changes were occurring during this period that was to have an increasingly important role in both policy terms and in the debate surrounding them.

However, the rise in work permits issued and the lack of public debate surrounding it is apparent. Not only were the total number of permits increasing annually, and had been doing so since the mid 1990’s, but the skill ranges being accepted as part of the various schemes were also expanding. In the year 2000 some 102,174 work permits were issued, 18, 259 for IT workers (Hansard Jun 26th 2001 Col 81W*)*. Within these broad figures over the period between October 1999 and May 2001 44, 413 permits were issued in respect to skills shortage work permits, 25 per cent of the total over that period (Hansard Jun 26th 2001 Col 82W*)*. Employer requirements were the sole issue on which such permit issuance was based. Indeed Home Office Minister Angela Eagle put it quite clearly, “the system has recently undergone a comprehensive and successful review to ensure that it responds quickly and effectively to labour market needs” (Hansard Jun 26th 2001 Col 82W).

In late 2000 and early 2001 changes were made to facilitate the entry of highly skilled workers. The 2000 Budget announced the funding of a review of the work permit system and reached the conclusion that measures required streamlining. Although such changes at this point were

predominantly employment specific, and related for example to IT and e-commerce specialists, these developments can also be seen as both a codification of the previous changes to labour migration and a precursor to the more fundamental changes to come. In addition a skills shortage list was established that made access to non EEA residents easier.

The 'Highly Skilled Migrants Programme' (HSMP) was established in January 2002. Grid measurements were used to calculate the applicability of potential migrants. The criteria included qualifications, earning power, age, and English proficiency. Initial projections were that between 5000 and 10,000 skilled migrants would be able to enter and work in the UK as a result of the programme and would be allowed to enter without employer sponsorship for the first time.

However, it was not just the high skilled end of the market that migrants were sourced to serve. Home Office research had pointed out that migrant workers tended to be concentrated at the top and bottom ends of the employment market (RDS Occasional paper No 82 2002 12). For example in 2000 the number of permits issued under the Seasonal Agricultural Workers Scheme (SAWS), available to non EEA students aged 18-25, was raised from 10,000 to 15,200. Discussions regarding reform of SAWS and the creation of a new short term unskilled scheme were underway at this point. Plans were also developing to reform the working holidaymakers scheme (WHS) (Flynn 2005 477). "The common denominator across the range of these different procedures is that employers would call the shots in determining the shape of a labour market that made more effective use of migrant workers"(Flynn 2005 477).

The 'social partners', the TUC and the CBI, were broadly in favour while the media concentrated their attention on the issue of asylum, allowing labour migration to slip under the radar to some degree. The CBI argued for a 'flexible and mobile workforce', in that "we want

employers within the UK to have the right and the ability to within reason employ the best people from wherever in the world" (Duvell and Jordan 2003 321/322). Indeed, a number of authors have noted that the interests of employers were seen as the only legitimate interest in the construction of this policy; "to the exclusion of all other interests" (Duvell and Jordan 2003 478 see also JCWI 2003). Although employers supported and welcomed access to low skilled migrants, they appear to have applied little pressure "suggesting that they were experiencing little difficulty finding irregular migrants" (Spencer 2007 351).

One report in June 2000 that would have implications for immigration policy with the change of Home Secretary, was David Blunkett's desire as Minister at the Department of Education and Employment to allow foreign students studying IT in Britain to be allowed to stay and apply for jobs. Although the plan was opposed by the Home Secretary Jack Straw, it trailed the wider policy of allowing students more generally to apply for jobs in the UK. New rules allowing current students the right to seek work as well as allowing foreign workers to apply for jobs where there was a labour shortage represented significant change. While the first two appear to have been conceived as purely economic matters, the latter was also seen as operating as a deterrent. One Home Office official argued that "at the moment many of these jobs are filled by illegal immigrants, meaning that they get very low wages, undercut British workers and have no health and safety protection….we want to undercut the gangs who feed off the black economy" (Observer Sept 30th 2001). Thus by allowing the entrance of a variety of varying skilled individuals, not only would economic migrants posing as asylum seekers be undercut, but the illegal entrance and black economy would also be dealt a blow.

**The Diffusion of Responsibility - The European Union**

Tony Blair argued in October 1999 that increased harmonisation and cooperation on asylum matters at the European level was necessary. He argued for "a common approach to the way in which Member states deal with applications for asylum, to remove the incentive for asylum seekers to shop around, and to ensure that asylum seekers are dealt with in the first EU state they enter"(Blair cited in Buonfino 2004 19)

In addition to these moves to harmonise asylum procedures, there were also other developments whereby the Government sought to prevent the arrival of asylum seekers to the UK. Jack Straw launched the 'Lisbon initiative' in 2000 which argued for reform of the Geneva Convention, suggesting that "the Convention needed to be overhauled by applying the principle that asylum protection be provided in the regions adjacent to the conflict zones" (Flynn 2005 479). The rationale was that conditions had changed since 1951 and that the Geneva Convention had not been designed to deal with the present mass movement of people. Jack Straw's opposition to the Geneva Convention was particularly acute concerning Article 31 which states that asylum-seekers should not be penalised for illegally entering a country in search of protection. The Lisbon initiative was later condemned by other European leaders such as German Interior Minister Otto Schilly and Swedish Prime Minister Goran Petersson, leading to its apparent dropping, although the idea remained and would later re-emerge (Schuster and Solomos 2004 282).

**Events**

According to Schuster and Solomos, a number of exogenous events had an impact on New Labour's policy in the latter part of their first session. They state that "if Labour's first term in office was notable for attempts to address racial injustice and construct a multiethnic society,

2001 saw a shift to a much harder position in relation to ethnic minorities" (Schuster and Solomos 2004 274). Such events included the disturbances in Northern English towns, 9/11 and pictures of refugees attempting to enter the UK from the Sangatte refugee camp in France (Schuster and Solomos 2004 274). Young adds hostility to asylum seekers in Dover to this matrix (Young 2003 449).

Of all of these events, Flynn argues that David Blunkett's agenda was most affected by 9/11 (Flynn 2005 474), that helped push through the Anti-terrorism, Crime and Security Act, giving the Home Secretary the right to indefinitely detain foreign nationals (Flynn 2005 475). The link between migrants and security issues was thus given full legislative force. "Ideas about surveillance and intelligence-gathering activities among immigrant movements would, in the months ahead, lead to a drive towards closer collaboration between UK, European Union and United States police agencies"(Flynn 2005 475).

While 9/11 problematised certain foreign nationals, Sangatte became an increasingly important symbol at this time. Entry through the Channel Tunnel in the early months of 2001 was an issue of huge political debate. Roche described Sangatte as "effectively a holding centre for people who are seeking to enter the United Kingdom clandestinely to apply for asylum or work illegally" (Hansard Mar 22nd 2001 Col 576).

Blunkett responded by putting pressure on the French Government to close Sangatte. However "the French had argued that that Sangatte was a problem of British making – that the right to work and the absence of identity cards made Britain more attractive than France"(Schuster and Solomos 2004 278). The removal of the employment concession which had given asylum

seekers the right to apply to work was seen as key. Nevertheless in the summer of 2002 bilateral talks between Britain and France led to the closure of the camp, with the issue of the employment concession still under review.

Bilateral discussions with France also had other impacts at this point. More airline liaison officers were being deployed and juxtaposed controls were developed in late 2000 with the help of the French Government, meaning British immigration officers performed UK immigration operations in France. This was later heralded as the single most important step in the control of irregular migration during the period under review (Guardian July 24th 2003). The concept of irregular migration was becoming a key one due to the focus on issues of control. Essentially irregular migration encompassed all forms not explicitly 'allowed' by Government. This clearly includes those illegally in the country but also, due to the externalisation process, included those who managed to reach the UK and lodge a claim for asylum. Such control issues continued to treat overall migration as being controllable, which would have ramifications for legitimacy when it turned out that it was not.

**Home Office Reform**

Internally the management of the immigration process was subject to huge and seemingly permanent reform. Not only was policy constantly changing, but management structures within the Immigration and Nationality Directorate (IND), a part of the Home Office that was later to become the Borders and Immigration Agency (BIA) and then the UK Borders Agency (UKBA), was also subject to huge change. Within the first year of David Blunkett's tenure in the Home Office, NASS had had three directors, one of whom, David Craske, Blunkett had brought with him from the DEE. This change at the top was accompanied by reforms further down the IND hierarchy.

Eagle confirmed in late 2001 that the Immigration and Nationality Directorate had increased its staffing levels to 10,580 staff, 4,180 more than in April 2000 (Hansard Oct 24th 2001 Col 111WH). By late 2001 responsibility for asylum casework had been transferred to the newly established Integrated Casework Directorate, and away from the core activities of the immigration service. The ICD would be capable of making asylum decisions themselves at port rather than being required to send asylum seekers to the immigration service, and as a result the immigration service would be free to concentrate on enforcement. By late 2001 the Government were able to report that the previous financial year had seen 132,840 decisions made, up from 52, 040 the year before (Hansard Oct 24th 2001 Col 111WH).

## The 2002 Nationality, Immigration and Asylum Act – Reform and Retrenchment

**Table 3 - The 2002 Nationality, Immigration and Asylum Act**

| | |
|---|---|
| **Asylum Registration Card** | Asylum seekers would be required to carry a new Asylum Registration Card (ARC) that would have some biometric details on it. Such cards would also indicate whether the individual had the right to work.<br>Asylum seekers would also be required to report to one of a series of nationwide centres on a regular basis. |
| **Support** | The ARC would be used to obtain cash which would then be used to redeem goods and so would eventually replace the voucher system, although still at just 70 per cent of income support.<br>Support would not be given to those who do not apply at port or as quickly as practicable, set at three days. Removal of support could also occur in cases where applicants cannot provide a coherent story of how they came to the UK or otherwise are not co-operative. |
| **Nationality** | Applicants for citizenship would be required to pass an English language test, followed by a citizenship ceremony that required the swearing of an oath of allegiance.<br>The Home Secretary would also be given the power to remove citizenship from people deemed to have done anything against the interests of the country. |
| **Employment** | The employment concession, allowing asylum seekers to apply for the right to work if they have been waiting for six months for a decision on their claim, was removed on the basis of this acting as a pull factor.<br>Enforcement officers were given the power to enter business premises without a warrant.<br>The obligation on employers to show they had taken necessary precautions against illegal working was extended.<br>Fees for work permit applications were introduced |

| | |
|---|---|
| **Resettlement** | While the UK already had two programmes run in tandem with UNHCR regarding the resettlement of refugees, this Act proposed that an annual quota of designated refugees be established and they would receive more help in their settlement in the UK. These would be individuals designated as refugees by UNHCR while still in their regions of origin. |
| **Detention** | Although it was in the White Paper rather than the Act, plans were to have a series of induction centres with full board accommodation for new asylum seekers were envisaged. It was predicted that asylum seekers would be required to stay in such centres for just 7 days.<br>Plans were made to build accommodation centres which would provide for the possibility of end to end detention.<br>Repealed automatic bail hearings in the 1999 Act, so the decision to detain was no longer subject to independent judicial review.<br>Renamed detention centres as reception centres.<br>Detention in prisons would be ended |
| **Exceptional leave to remain** | ELR was to be replaced by a new status of 'humanitarian protection', granted for three years rather than four. |
| **White list** | While the White List of safe countries had been abolished early in the Governments period in office, it had continued unofficially through the safe third country and 'clearly unfounded' categorisation. Few details were given but there were plans to establish a panel to examine 'country information' on which decisions would be partially based. |
| **Appeals** | Introduced non-suspensive appeals for more than just deportation cases, meaning an applicant could be removed from the country while their appeal proceeds. This was applicable for cases set as 'clearly unfounded' and cases involving the removal to a safe third country.<br>People refused leave to appeal to the Immigration Appeals Tribunal would be entitled only to a statutory review rather than a judicial review and the appeal could relate only to matters of law rather then also including issues of fact. |
| **Return** | The Act provided statutory support for existing voluntary return schemes |
| **Border controls** | Juxtaposed controls allowed for UK immigration officers to work in any EAA port but were specifically aimed at Calais.<br>The authority to carry scheme placed more emphasis on private companies to ensure that all of those on route to Britain had a right to so do. Individual names could be checked against a Home Office database |

Almost immediately on becoming Home Secretary David Blunkett began to look at immigration policy again, just two years after the passing of the 1999 Act. The main difference was the shift from a sole focus on asylum, although as will be shown below, this remained a key issue and was subject to yet more restriction. What was new was consideration of opening up of the issue of economic migration to greater debate, although actual numbers had already been changing (see Appendix 2), and a new focus on the issue of nationality.

**The 2002 Immigration and Asylum Act – Introduction**

The 2002 Act had eight parts covering nationality, accommodation centres, support and assistance, detention and removal, appeals, procedures offences and other miscellaneous provisions. Although some detail was provided, as with most immigration policy, much of it would be fleshed out in the form of secondary legislation. Nevertheless the content of these sections does highlight the importance of control once more. Details of the main provisions along with some of the supplementary plans will be described below, and can also be seen in tabular form in table 3.

Although not initially fleshed out in detail the announcement would lead to the White Paper *Secure Borders, Safe Haven,* published in February 2002, which largely formed the *Nationality, Immigration and Asylum Bill.* On April 11th Blunkett announced that "I do not intend to tinker with the existing system but to bring about radical and fundamental reform" (Schuster and Solomos 2004 278). The Bill was introduced in the House of Commons on 12th April 2002.

David Blunkett announced his intention to establish a system "which will provide a comprehensive approach to asylum, nationality and immigration. At the heart of my asylum proposals is the presumption that, from the moment people present themselves, they will be tracked as well as supported" (Hansard Oct 29th 2001 Col 628).

In the foreword to the White Paper David Blunkett prefaced the Act in terms of the costs and benefits of migratory movements. He stated that

> The tensions, as well as the enrichment, which flow from the inward migration of those arriving on our often wet and windy shores, must be understood, debated, and addressed. Migration is an inevitable reality of the modern world and it brings significant benefits. But to ensure that we sustain the positive contribution of migration to our social well-being and economic prosperity, we

> need to manage it properly and build firmer foundations on which integration with diversity can be achieved (Home Office 2002b Foreword).

Thus the concept of *managed migration* began to be developed. This, it was argued, "combines rational and controlled routes for economic migration with fair, but robust, procedures for dealing with those who claim asylum" (Home Office 2002b Foreword). Widely seen as forming a new era of migration policy, one in which the zero-immigration maxim of the previous 30 years was being confronted, the move can be traced back to a speech made by Immigration Minister Barbara Roche in September 2000 in which she stated that the UK was in competition for the 'brightest and best talents' and that migration policy had to reflect this reality (Speech to IPPR Sept 11th 2000).

A new emphasis was also placed on citizenship. As with the previous Act and policy making more generally in the UK, much had been done prior to the Act's passing. As far as nationality and citizenship were concerned the process of acquiring British citizenship had already been sped up, and plans to institute English language tests and citizenship ceremonies had been made. David Blunkett would later argue that these issues were all informed by his progressive form of British nationalism (David Blunkett Programme on 'The Big Ideas that Changed the World' Channel 5 May 14th 2007). While at the DEE he had introduced a citizenship programme into British Schools. Thus the form of British nationalism that he was incrementally introducing to policy set a tone for not just what was to come in the 2002 Act but also looking forward to the 2006 Act.

In terms of enforcement, resources had been increased to speed up decision making, the first induction centre had been established and Application Registration Cards (ARC) had begun to be issued. Opposition to vouchers had prompted a rethink but the Government remained

convinced that cash benefits acted as a pull. The compromise as they saw it was to remove vouchers and make cash available on the production of an ARC. The Government were increasingly supportive of the use of ID cards and the ARC was to be used as the first step in their more general introduction. The White Paper implicitly identified such cards as a means to increase supervision (Home Office 2002b 54-55). Indeed Home Office Minister Lord Rooker later stated that

> The ARC is one of several new proposals outlined by the Home Secretary last October for radical and fundamental reform of asylum and immigration policy…..By introducing the card, the Government is at the forefront of making the most of up-to-date technology to combat fraud and to ensure that asylum-seekers are identified rapidly at all stages of their application (The Independent Feb 1st 2002).

**Detention**

The White Paper highlighted the already increasing capacity of the detention estate, where numbers had expanded from about 900 in 1997 to just under 2,800 by the end of 2001. The plan was for detention to be increased further to some 4000 places, although a date for completion was not provided (Home Office 2002b 51). Along with this increase came new criteria for detention. Prior to 2002 families were only detained immediately prior to deportation or removal. The 2002 Act allowed for the detention of families for 'other reasons', some of which were covered by the rules pertaining to accommodation centres and others that remained unspecified.

A new form of detention in the shape of induction centres was also introduced. Asylum seekers could be required to stay at a specified centre during the initial period of their claim. The stated purpose concerned the processing of cases and information as well as the prevention of abuse regarding support (House of Commons Research Paper 02/25 62). The creation of these induction centres was intended as the first port of call for a large proportion of asylum seekers.

On departure from the induction centres, asylum seekers would be provided with the ARC. These were intended to replace the Standard Acknowledgement Letters (SALs) which had previously been used for identification of asylum seekers. At this point asylum seekers would be dispersed and required to report on a regular basis, or would be placed within accommodation centres that were to be trialled.

Blunkett argued that

> The accommodation centre trial is designed to give people the support that they need and to give them full education, health and language provision on the premises. The humanitarian requirements under the 1951 convention will be met at the same standard or, in some cases, at an even higher standard because centres will be able to take account of people's very specific language requirements.....The trial is designed to find out whether, if we can do that, we can ease the challenge posed to schools and GP practices in areas through which large numbers of transient people pass (Hansard 24th April 2002 Col 351).

Although such centres were envisaged as being fairly open they would have reporting and residence restrictions. The original proposal, subject to much criticism from Lawyer's organisations, NGOs and Labour backbenchers, was that asylum seekers would not be expected to spend more than six months in such a centre, although the Government rejected an amendment to have a statutory limit of six months applied. However, despite this period in detention being seen by many as the first interview in the asylum process, no legal representation was thought necessary for asylum seekers within these centres. The Government initially planned four 750 bed facilities. However, in the summer of 2002 these plans too were rejected by Local Authorities (The Times Aug 1st 2002).

Accommodation centres were intended for just a selection of asylum seekers. Others would continue to be dispersed in the existing way while others still were fast-tracked to Oakington.

The Home Secretary would still have to apply the destitution test, only those destitute or likely to become destitute would be 'offered' a place in an accommodation centre. Anyone being offered and refusing such a place would forfeit any right to another form of support. The definition of destitution in the past had been that an individual was not able to meet their needs relating to accommodation *and* food and essentials. The 2002 Act defined destitution in more narrow terms, "when a person has accommodation but does not have food or other essential items, he will not be considered destitute, and presumably therefore, not entitled to support" (House of Commons Research Paper 2002/25 34).

Although it was criticised as a 'cosmetic' change, the 2002 Act also renamed detention centres as removal centres (for criticism see for example Refugee Council comments in House of Commons Research Paper 02/25). Their function remained the same but with the Act also introducing induction and accommodation centres it was decided that this reformulation more accurately reflected their role.

**Support**

The voucher system was fully abolished in April 2002 and payments were thenceforth made in cash with the ARC being used as evidence of status and entitlement. While Blunkett attempted to portray the ARC in a liberal light, as a symbol of entitlement (Hansard Oct 29th 2001 Col 645), the first parliamentary announcement was that they would operate to "guarantee identification and tackle fraud. Using new biometric techniques, including fingerprinting and photographs, we will provide both security and certainty" (Hansard Oct 29th 2001 Col 629). This combination of entitlement and control exemplifies its dual purposes, a means of assuaging dual audiences.

Among the most controversial of the measures contained in the 2002 Act were sections 54 and 55. Both created categories of asylum seekers not entitled, or no longer entitled, to state support. While section 54 removed support from adult asylum seekers failing to comply with their removal, this did not apply to children who would be cared for under the 1989 Children's Act, and so the prospect of families being split up emerged.

More contentious still was Section 55, which was introduced as a late amendment to the Act. Essentially Section 55 reintroduced the in-country/at-port support dichotomy established by the 1996 Act and abolished by the 1999 Act. The Secretary of State could refuse support to anyone that is deemed not to have made their claim "as soon as reasonably practicable after the person's entry to the United Kingdom" (Nationality, Immigration and Asylum Bill Part 3 page 5). The only avenue of appeal against a ruling to remove support was by judicial review, as appeals to adjudicators were prohibited in the Act. One of the reasons for the further legislation proposed shortly after the coming into force of Section 55 in January 2003, to become the 2004 Act, concerned the surge in applications for judicial review that resulted from the implementation of Section 55, another displacement effect (see Chapter 6 for more on this).

In the first major court case regarding Section 55, Lord Philips found that although it was not unlawful for the Secretary of State to remove support, Article 3 of the European Convention, the right to be protected against cruel, unusual and degrading treatment, *was* contravened (Stevens 2004 621). However, the Court of Appeal found that the Home Secretary was only required to act in relation to Article 3 at the point in which the appellant could show that they had no means of fending for themselves. Such manoeuvrings inevitably led to judicial review, with Lord Justice Sedley arguing that increases in judicial review was a direct result of this removal of

benefits. It was only "thanks to the safety net of the Human Rights Act…and perhaps also the judiciary's unwillingness to pass by on the other side, that these people are not starving in the street" (Stevens 2004 622).

**Asylum and Appeals Process**

The White Paper specifically related all other aspects of the hardening of the immigration system to the need to speed up the asylum process. It stated that

> The effect of improved induction, accommodation and reporting will be limited if we do not address delays within the appeals system. The Immigration and Asylum Act 1999 introduced a one-stop appeal system requiring an adjudicator considering an asylum appeal also to deal with any other appealable matters raised by the applicant. The principle has worked well but the provisions of the Act have not always been as easy to understand. The introduction of human rights appeals also meant that some of those who had exhausted all other appeal rights before the coming into force of the Act in October 2000 used them simply as a means to delay removal…..We will make it clear that there will be a single right of appeal (Home Office 2002b 62).

Blunkett argued "the whole system is riddled with delay, prevarication, and, in some cases, deliberate disruption of the appeals process" (Hansard 24th April 2002 Col 356). The 2002 Act established an exhaustive list of issues on which appeals could be made, which amounted to seven forms of appeal. The aim was to prevent appeals being made on a wide variety of grounds, narrowing options as well as attempting to confront some of the impacts of the Human Rights Act.

Any appeal would be made first to the Immigration Appellate Authority (IAA). Under the new legislation only appeals on points of law would be allowed to go on to the higher Immigration Appeal Tribunal (IAT). A large proportion of appeals rejected by the IAA prior to the 2002 legislation, then went forward to the IAT, 38 per cent in the first half of 2001 (Hansard Jan 23rd 2002 Col 971W). This means that there would be no grounds of appeal for applicants arguing

that the initial decision pertaining to their case decision was wrong. According to Stevens the one main liberalising measure with regard to appeals concerned the introduction of appeal rights in certified cases to the Immigration Appeal Tribunal (Stevens 2004 628).

Increased streamlining of the appeals process was also suggested through other means. The White Paper argued for a more structured use of 'fast-tracking' as well as making the IAT a Court of Superior Record. While the Government argued that the existence of a high court judge justified such a move there were concerns among NGOs that the move was more about restrictions in appeal rights. The re-designation of the Tribunal as such would mean that there would be no scope for judicial review of its decisions. Instead the Tribunal would "focus entirely on the lawfulness of adjudicators' decisions rather than their factual basis" (House of Commons Research paper 2002/25 68).

This was also linked to a reformulation of the 'one-stop shop'. Essentially the requirement on the asylum seeker to raise all relevant matters at a single appeal hearing was a reaffirmation but also strengthening of the procedures in the 1999 Act. In one important area the powers of the Secretary of State were enhanced. S/he could certify that the one-stop procedure had not been followed, that not all details had been disclosed and that therefore the appellant would lose any right to further consideration. In addition no appeals would be allowable in cases where an application was refused on grounds of national security or the public interest. Indeed the denial of appeal rights in public interest cases went further still, that they were restricted in cases where "the Secretary of State certifies that the original decision was made on grounds of national security, in the interests of the relationship between the UK and another country, or is desirable for another reason of a political kind" (House of Commons Research Paper 2002/25 85).

Critics pointed out that these restrictions could be seen as restricting appeals for the very people the Refugee Convention system was set up to protect. For example the European Court "criticised the lack of appeal against the Home Secretary's decision to deport on national security grounds, or to exclude from the United Kingdom on grounds that this was conducive to the public good" (House of Commons Research Paper 02/25 35). In such cases appeals could be made to the Special Immigration Appeal Commission, which had been established in response to criticisms by the European Court of Human Rights concerning that lack of appeals against the Home Secretary's decision to deport.

The 2002 Act also continued the process of extending the grounds on which appeals would be considered non-suspensive. In-country appeal rights were restricted to asylum or human rights claims for those in the UK as well as cases from EEA nationals claiming that removal breached their rights under EC law. However, the force of such rights was constrained by an important caveat, that in asylum or human rights cases the Secretary of State can use certification that the case is 'clearly unfounded', and thus the appellant could be removed prior to an appeal hearing (Stevens 2004 627). This 'non-suspensive' appeal system would make the likelihood of success at appeal from abroad far more problematic for the appellant.

Appeals against the choice of removal destination were to be prevented by the principle that only countries safe for Geneva Convention purposes would receive appellants. New procedures for accepting responsibility were being developed at the EU level and would be justiciable. In such third country cases, appeals would be allowable but they too would be non-suspensive.

What is more all cases emanating from prospective EU member states were to be certified as

clearly unfounded. Essentially the certification process was to operate as a new 'white list' of safe third countries. Shortly after the passing of the Act, the list of prospective EU members was added to with another seven new countries: Albania; Bulgaria; Jamaica; Macedonia; Moldova; Romania; and Serbia-Montenegro. They were later joined by Bangladesh, Bolivia, Brazil, Ecuador, South Africa, Sri Lanka and the Ukraine (Hansard Standing Committee July 7th 2003 Col 006).

As far as removals were concerned the Act sought to accelerate the removal of individuals considered not 'conducive to the public good', including anybody sentenced to two years or more in prison. Attempts to apply such removal only to those convicted of serious crimes, and subject to 10 years incarceration or more, failed (Stevens 2004 623). Thus the genuineness of a claim would not be considered in any case involving an asylum seeker who had received a two year custodial sentence. Such a conviction would also remove protection against non refoulement, that is, the removal of individuals to places where they may be removed to another place that posed a risk to their safety. This meant that individuals subject to removal for reasons of the 'public good' could be removed regardless of whether that could ultimately end with their being placed in a country liable to torture them.

Assisted returns were also evident in the 2002 Act. Essentially the Act empowered the Secretary of State to 'assist' voluntary leavers. Such assistance could be made directly to the leaver or to organisations providing services for them. While the meeting of travel costs was a pre-existing power, the Act also gave the power to provide 'costs associated with their immediate arrival and reception and longer term support to facilitate successful re-integration'.

**The Domestic Delegation of Asylum Controls**

Immigration officers were granted increased powers to enter and search homes and business premises, search individuals, seize material and use 'reasonable force'. Stevens points out that the increased powers regarding Section 8 have not been reflected in their increased use (Stevens 2004 624). Indeed the Government admitted that Section 8 and its accompanying measures had not proved to be an effective deterrent with no successful prosecutions made under Section 8 in 1997, just one in 1998, nine in 1999 and 23 in 2000 (House of Commons Research Paper 02/25 106).

Another aspect of the delegation process concerned the links between migratory movements and labour demand. Following on from Section 8 the Government argued that to address the issue of illegal working required an integrative approach, including action in source countries, action against traffickers and smugglers and more targeting of employers. The proposed solution included the ARC in order that right to work was easier to investigate and establish. In 2000 the Government had also established Project Reflex, a multi-agency task force chaired by the National Crime Squad, who was given a wide remit to co-ordinate operations against traffickers and smuggling. The increasing deployment of airline liaison officers was seen as part of the strategy of preventing arrival in the UK. Such a strategy also included the continuing use of visa regimes and the deployment of immigration staff overseas, not just in places where there were agreements regarding juxtaposed controls, but also other countries producing large numbers of asylum claims or 'illegal' migrants. Thus the borders of UK immigration control were being both fortified and stretched.

Assisting migrants in their unlawful entry to the UK was also further criminalised by the 2002 Act. Section 25(1) contained three offences. It would be an offence to assist illegal entry. It

would be an offence to secure or facilitate the entry of an asylum seeker for profit. And a third offence would committed by helping a person obtain leave to remain in the UK by deception. (House of Commons Research Paper 02/25 2002 98). The Act extended the provisions to cover the assistance of unlawful entry to any country in the EU and also introduced the first trafficking legislation into UK policy. While bona-fide refugee organisations remained exempt, the spectrum of groups being considered bona fide was also subject to a narrowing on the basis that much help being given to asylum seekers was done through unscrupulous advisors.

Carrier liability was also increased by the 2002 Act. Building on the sanctions in the 1999 Act, the 2002 Act introduced the 'authority to carry scheme', which allowed the Secretary of State to issue regulations requiring carriers to check their passengers against a Home Office database to screen out unwanted arrivals. Thus names could be checked against both migration and security concerns. Along with the keeping of biometric data there was some concern that the regulations allowed the use of information for specified purposes which did *not* relate to immigration (House of Commons Research Paper 02/25 2002 94). However, previous powers to detain vehicles were removed and owners and operators of road vehicles would no longer be subject to the £2000 fines imposable on other forms of transport.

The requirement placed upon marriage registrars in the 1999 Act appeared to have had an impact. The White Paper reported that some 700 marriages were reported in the first year of its operation alone (Home Office 2002b 100). However, no details were then provided regarding the outcome of these cases. Nevertheless the 2002 Act had proposals to make it increasingly difficult "for those who seek leave to remain on the basis of a bogus marriage" (Home Office 2002b 100). To this end there were plans to increase the probationary period for leave to remain on the basis of marriage. This period would now last for two years, and thus a marriage was not

considered legitimate for the purposes of settlement for that period of time. In addition there was to be a consideration of changes to the immigration rules to prevent 'switching'. This meant that individuals arriving in the UK on the basis of any other category of entrant, would not be permitted to alter their status in the UK to one of spouse of a citizen. At this point the Government also began to talk of their intention that arranged marriages should involve existing British citizens before any non-citizen be considered.

Part of this was Blunkett's assertion that arranged marriages should be contemplated only by partners who speak the same language. He argued that

> We need to be able to encourage people to respond, particularly to young women who do actually want to be able to marry someone who speaks their language - namely English - who has been educated in the same way as they have, and has similar social attitudes (Independent Feb 7th 2002).

Subject to criticisms that the Government were attempting to interfere with an individual's choice of spouse, Home Office Minister Angela Eagle responded that Blunkett

> did not question the practice of arranged marriages at all, but asked whether, now there are substantial numbers of British-born Asians who embrace the cultural practice of arranged marriage, it might not be more appropriate for more arranged marriages to be conducted within the country rather than for people always to go back to the country of origin (Hansard 24 Apr 2002 Col 378).

**Managed Migration; a New Immigration Paradigm?**

While there was little need for legislation to proceed with the managed migration agenda, it created a new focus on forms of economic migration which gradually started to cover numerous sectors that were considered to have a shortage in the UK economy. The initial plans concerned those with high levels of sought after skills. While the HSMP has been mentioned, it is worth re-emphasising some of the key developments in more detail. The White Paper had spelt out some

of the detail of the plans. It stated that

> The exact role for managed migration depends on the extent and nature of problems, bottlenecks and opportunities in the labour market. In the short run, migration may help to ease recruitment difficulties and skill shortages and also help to deal with illegal working. In the long run, if we are able to harness the vitality, energy and skills of migrants, we can stimulate economic growth and job creation (Home Office 2002b 38).

In this regard the Government pointed out what had already been done, in the shape of the HSMP, as well as altering the immigration rules to allow post-graduate students to switch their immigration status. The Government also announced a review of the working-holiday maker scheme and plans to re-examine the need and supply of short term casual labour.

Essentially the new scheme, which began in January 2002, was a point based system, at least in the upper tier. Highly skilled or wealthy migrants would be given points according to their educational qualifications, work experience and past earnings. The Government announced in December 2002 that there would be no numerical limit in this category of work permits, and that there would be no requirement to have had a job offer prior to the issuance of that permit (Hansard Jan 28th 2002 Col 80W). It was envisaged at this point that the scheme would be joined by a similar one for low skilled migrants within a year.

Such highly skilled migratory movements are nothing new. Those at the higher end of skills and/or economic hierarchies have always had more freedom of movement than the rest. As Sassen points out "There is a set of provisions in the World Trade Organisation regulations concerning the cross-border mobility of professional workers in finance, telecommunications and a broad range of highly specialised services" (Guardian Sept 12th 2000). GATT provisions

also allow for intra-company transfers that involve relatively free movement for certain categories of workers. Nevertheless the HSMP formed an institutionalisation of these processes within the UK.

A review of the SAWS reported late in 2002. Blunkett announced that the interests of those involved in discussion, mainly farmers and growers, or representatives thereof, had concerned the need for excess labour supply on a seasonal basis. The National Farmers Union, for example, had reportedly lobbied hard for more access to agricultural labour. Eagle stated "the Government have listened to these representations and have agreed to increase the number of work cards available for use under this scheme" (Hansard 29th Jan 2002 Col 304W).

Operators who sourced and allocated workers were seen as being integral to the managed migration process, and so a tendering exercise was announced that would operate from 2004. Thereafter labour supply agencies were given a key role in economic migration. In addition the seasonality of the scheme was altered as the previous period of May to November was replaced by a year round scheme. The type of work allowable was also extended providing it remained both seasonal and agricultural and this was to be implemented throughout 2003 (Daily Telegraph May 30th 2002). In addition the quota was raised by over 4000 to 25,000 (Hansard Jun 10th 2003 Col 797W). Thus not only were more seasonal workers going to be available, they would be available for longer and for a wider variety of work.

On October 7th 2002 David Blunkett sought to extend sector specific migration schemes by introducing help for the hotel and leisure and food manufacturing sectors (Hansard Oct 28th 2002 Col 535). This was done on the back of research showing that migrants were contributing £2.5

billion more to the British economy than they consumed (RDS Occasional Paper No 77).

The Government argued that there would be a dual benefit of targeted, sector based migration. These were that required workers would be sourced and that the conflation of asylum with economic migration would be discouraged. Lord Rooker stated that "by opening up routes for people to come and work here legally - in ways that help our economy - we can help to reduce unfounded asylum claims….The expansion of these schemes will help us meet recruitment gaps and demand for seasonal workers" (The Daily Telegraph May 30th 2002). Nevertheless the conflation of different types of migration was something periodically done by the Government themselves. Despite operating a dual immigration system, rhetorically immigration was often taken to mean asylum and illegal immigrants, the 'bad' migrants, while the 'good' were discussed less often. However, managed migration was bringing it to some degree out into the open.

**Nationality and Integration**

One of the spurs to the new focus on integration contained within the nationality procedures of the White Paper were the disturbances in northern English towns in the summer of 2000. The White Paper highlighted that Britain could be broadly characterised as having positive race relations but that "reports into last summer's disturbances in Bradford, Oldham and Burnley painted a vivid picture of fractured and divided communities, lacking a sense of common values or shared civic identity to unite around" (Home Office 2002b 28/9). Thus a sense of common values were emphasised and based around the concept of British citizenship. The White Paper stated that greater emphasis and value needed to be placed upon the significance of that common citizenship. Such commonality "means ensuring that every individual has the wherewithal, such

as the ability to speak our common language, to enable them to engage as active citizens in economic, social and political life. And it means tackling racism, discrimination and prejudice wherever we find it" (Home Office 2002b 28/9). The Bill not only included linguistic requirements of would be citizens but also introduced the concept of prospective citizens requiring knowledge of 'life in the UK' prior to their acceptance as citizens. An updating of the oath of allegiance was also suggested in the Bill.

Such positive notions of citizenship were balanced by new procedures concerning the deprivation of citizenship. The new power allowed the Secretary of State to make a deprivation of citizenship order to anybody that s/he feels has done "anything seriously prejudicial to the vital interests of the United Kingdom or a British overseas territory" (House of Commons Research Paper 2002 34), unless it would make them stateless. Thus for the first time citizens by birth *or* descent could come within the scope of deprivation.

Although a new right of appeal against deprivation was introduced, no such right would be allowed in cases where the decision to deprive was made on the basis of information that the Home Secretary believed should not be made public. In order to make such a decision one of three factors must have been met: that it was done of the grounds of national security; that it was done in the interests of a relationship between the UK and another country; or that it was done for another matter of a political kind.

**The Diffusion of Responsibility -The European Union and Asylum**

Political processes in the EU continued to have an impact on UK policy during this time. The White Paper argued for a more structured relationship within the international asylum system. Blunkett argued for

> something more than the international 'free for all', the so called 'asylum shopping' throughout Europe, and the 'it is not our problem' attitude which is too often displayed. We therefore expect Europe and the developed nations across the world to respond through cooperation and reciprocation in a way that makes it possible for a nation like Britain to accept its responsibilities gladly, and to be able to manage them effectively (Home Office 2002b Foreword).

Thus in a sense only by other nations cooperating would Britain be willing or able to perform its part of the international protection system bargain.

The opt-in continued to provide a means for increased harmonisation in primarily restrictive aspects of immigration policy. As Roche argued, "Common standards across the EU will mean that there is much less incentive for asylum seekers to go asylum shopping for the best deal", and "will encourage claimants to stay in the first member state that they reach" (Hansard Jan 25th 2000 Col 22WH). According to Geddes "action was most evident in the more coercive aspects of migration policy" (Geddes 2005b 797). Roche added that "we have indicated our general intention to participate in all measures which do not adversely affect the United Kingdom's ability to maintain our frontier and immigration controls" (Hansard Oct 30th 2000 Col 319W). This meant that the Government had opted into all 'non borders elements' of regulations. These included

> the Eurodac Regulation, setting up the exchange of fingerprints of asylum seekers and some illegal entrants; the draft temporary protection Directive; the negotiating mandate for an agreement with Norway and Iceland parallel to the Dublin Convention; the Council Decision establishing the European Refugee Fund; and measures aimed at combating illegal immigration and trafficking. The latter measures include: a draft Council Directive defining the facilitation of unauthorised entry, movement and residence; and a draft Council Directive about harmonisation of financial penalties imposed on carriers transporting into the territory of the member states third-country nationals not having the documents necessary for admission (Hansard Oct 30th 2000 Col 319W).

So, by late 2001 the UK had opted into all asylum issues to date, despite having secured the opt

out. However, Eagle stated that the Communication on immigration policy which referred to labour migration would be subject to its Protocols to the Treaties, that is, the opt out (Hansard Oct 22nd 2001 Col 87W). In a sense there was a socialisation of issues pertaining to the opt-out, where great play was made of the fact that the opt-out was available despite its lack of use. However, the opt-in remained publically marginal, that is, not subject to general and public discussion, perhaps for reasons of national sovereignty.

The Amsterdam Treaty had established a time scale of 5 years by which time minimum standards on the procedures for granting and withdrawing refugee status would be agreed. On April 25 2002, EU Interior Ministers expressed agreement on minimum standards for the reception of asylum-seekers (Geddes in The Times Higher Education Supplement May 24th 2002). However, the plan also allowed for the option of keeping asylum applicants at border points, particularly attractive to nations such as the UK with little chance of receiving asylum seekers as the first port of call.

The Tampere scoreboard re-affirmed its importance and allowed the Commission room to manoeuvre to the degree that it presented a proposed directive for common minimum standards on September 28th 2003 (2003/9/EC). These would conform to European norms and go on to provide the "basis for a common European asylum system". Key to this was the reformed Dublin Convention which would now reflect

> the changed ways in which asylum seekers travel within Europe. It is important to uphold the principle of the Dublin Convention to avoid successive transfers of applicants without responsibility being taken to determine the asylum claim. And it is equally important to prevent parallel or successive claims and the related secondary movements known as 'asylum shopping' (Home Office 2002b 49).

Part of the reason for the UK Government supporting increased harmonisation emerged because of a court decisions not to classify France and Germany as safe countries in terms of non-refoulement for removal in the early months of 2001. The decision was based around their policy only to recognise repression from state actors. Jack Straw had argued that

> We cannot have a circumstance where there is effective free movement across every other country in the EU and we have border controls, and where our definitions of whether someone should or should not be given asylum have been judicially interpreted in a way that is significantly at odds with the interpretations of courts in other European countries (Hansard Apr 9th 2001 Col 701).

Local BNP electoral success was also seen as a trigger, although by no means the only one, behind the Prime Minister's enthusiasm, along with Spanish PM Aznar, for a new focus on tough immigration controls. The Seville summit in June 2002 saw "a campaign to harden trade policy and suspend foreign aid to developing countries that refuse to take back refugees whose applications for asylum have been rejected" (Krieger 2004 297). Together Blair and Aznar argued for the withdrawal of EU aid from poor countries which fail to join the crackdown on migrants. Tony Blair argued in the run up to the Seville summit that "if we don't (take action) my fear is that we leave the field open to those who don't want to solve these problems but simply want to exploit them" (Daily Telegraph June 20th 2002).

The Government also had a plan B should such suggestions be rebuffed which included a reassessment of preferential trade deals as well as impacts on diplomatic relations (The Independent June 21st 2002). However, some signals were also being sent that the focus would be more on rewarding cooperative countries than punishing those who do not cooperate (Tony Blair in Guardian June 21st 2002).

Impending European enlargement, an important issue at this time, was seen as having a dual impact on migratory movements. While the option remained open to allow free access to economic migrants from accession countries there was also assumed to be an asylum impact. In early 2001 the Home Secretary argued that "The admission of the new states to the EU will, almost by definition, have the effect of reducing unfounded claims from the applicant countries--for example, Poland, the Czech Republic and Hungary" (Hansard Feb 1st 2001 Col 485).

This was essentially because should the applicant states become full members, they would be deemed to be supportive of human rights and thus any application for asylum would be treated as unfounded. Such a development conflicted with one of the basic tenets of Geneva, that each individual case be treated on its own merits.

**Enlargement and Economic Migration**

At the same time as arguing for common systems, based primarily around the restriction of rights to asylum, there were also some tentative EU proposals for more 'economic balance' to immigration policy, as the aging population and the demand for workers put pressure on economic systems throughout Europe. EU Commissioner Antonio Vitorino, in charge of EU immigration policy sought to establish common rules "for the purposes of paid employment and self-employed economic activity" (COM/2001/0386). These rules, which EU Ministers would have to approve, looked to establish a single EU wide procedure for admission to member states. However, developments regarding harmonisation in economic migration matters did not receive much support, particularly from the UK due to their own development of managed migration routes at this time.

Full rights to work were to be granted to citizens of accession countries on joining the EU from May 1st 2004. Joining Ireland and Sweden in granting such rights Jack Straw, by this time the Foreign Secretary, argued that the Governments approach would "attract workers we need in key sectors" and "ensure they can work without restrictions and not be a burden on the public purse" (Hansard Dec 10th 2002 Col 12WS). The approach was seen very much as being congruent with the managed migration agenda and interestingly Straw also argued that such an approach would leave the immigration authorities free to deal with 'real immigration problems' as opposed to "trying to stop EU citizens enjoying normal EU rights" (Hansard Dec 10th 2002 Col 12WS).

Concerns that EU enlargement would lead to a widespread movement from east to west were downplayed by the Government. The predictions made, that around 20,000 people per year would take advantage of access to the UK labour market were to prove hopelessly wrong (Spencer 2007 352).

**UNHCR Resettlement**

A prime aim of enforcement procedures was the prevention of irregular movement to the UK. While opponents of Government policy argued that such prevention was not only virtually impossible, but simply created different forms of movement, in the shape of trafficking for example, the Government's argument was that at least part of the answer lay in the creation of resettlement programmes under the auspices of UNHCR. They argued that

> The purpose of the resettlement programme is to deal with a problem ….that people cannot enter the country legally in order to claim asylum. …. ..We are planning to develop the resettlement programme in association with the UNHCR. The resettlement programme will allow us to take into this country from abroad people who have already been classified as refugees (Nationality Bill Committee May 14th 2002 Col 228).

This form of pre-arrival status determination was perceived as a way of contributing towards the global asylum system while doing so in a controlled manner. In a sense the dual policy undertaken in Kosovo acted as something of a blueprint, with only those having their status determined abroad being considered genuine. It was further suggested that such a system would also allow a form of quota to be introduced.

Blunkett argued that

> the new gateways for economic migration and the gateway that we are establishing with the United Nations High Commissioner for Refugees will enable those who face persecution to apply for, and to be granted, such status from outside the country. Those gateways will be crucial in ensuring that we avoid scenes—such as those witnessed last summer and since—of clandestine attempts, often at great personal risk, to enter the country through the channel tunnel and via ferries (Hansard Apr 24th 2002 Col 342).

The creation of gateways with UNHCR was beginning to take the form of the legitimate alternative to the illegitimacy of people arriving in the UK prior to being granted any humanitarian status. This 'off-loading' of responsibility was a means by which asylum claims made on UK soil could be contextualised as analytically separate from the much smaller number accredited abroad. In a sense the unwanted migrant side, as all asylum seekers, as opposed to refugees were unwanted, was developing its own good and bad continuum. Blunkett continued that "those who currently enter the country clandestinely, with inappropriate papers, or by applying for refugee status "in country" will be able to enter on a managed basis through the UNHCR without needing to put their lives at risk or to present fraudulent papers" (Hansard Apr 24th 2002 Col 343). In essence then potential refugees would have to have had their position pre-determined and national processes would operate as only a second line decision-making process in such cases.

## Conclusion

Chapter 5 has shown that the trajectory of policy on the unwanted side of the immigration equation showed continuity with what had gone before. The construction of the unwanted and the policies enacted continued to problematise asylum seekers. What is more, this construction was beginning to have an impact on the emerging policy debates regarding nationalty and social exclusion. Nevertheless, labour migration during this period had become a more explicit part of the immigration regime, with managed migration representing something of a turning point, at least with regard to framing and rhetoric. Thus there were both continuities on the restrictive side of immigration and some degree of socialisation of the more open access for labour migration.The chapter has also shown key continuities in both the delegation and diffusion of immigration controls. In addition the chapter has highlighted controls being externalised. There were attempts to increasingly export UK borders to prevent 'unwanted' migrants from arriving in the UK.

The next chapter develops many of these processes. The framing of the unwanted as a threat will be shown to have continued and control measures at both domestic and international levels continued to be pursued. Nevertheless labour migration issues will be shown to take a change in direction with the enlargement of the European Union. The next chapter also shows that a new focus on 'illegal' immigrants was symptomatic of increasing crossover between migrant types.

# Chapter 6 – The 2004 Asylum and Immigration (treatment of claimants etc) Act

## Introduction

While the previous chapter showed a number of key continuities in policy, there remained a feeling within the Government that further legislation was required. The stated reason for the 2003 Bill that was to become the 2004 Act was to address "two remaining problems in the asylum system: applicants who lodge groundless appeals to delay removal and the problem of asylum seekers who deliberately destroy or dispose of their documents to make unfounded claims" (Letter from Home Office Hansard October 27th 2003). Thus the focus remained on the unwanted.

This chapter develops some of the previous chapter's themes and asks the key question, how were migrants being framed in official discourse? What were the ramifications of framing on key Government aims of integration and cohesion? Developments in the 2004 Act will show that there was a continued problematisation of asylum seeking both in relation to policy and in relation to the way in which the Government presented their arguments. The chapter also asks other key question that this thesis seeks to develop; to what extent were labour migrants being constructed differently? This relates not only to those arriving on work permits, but also those included in the developing issue of European enlargement.

Tony Blair highlighted what he saw as policy successes to date such that,

> we are withdrawing support from asylum seekers who do not claim early. We have put juxtaposed controls across all the ports. For the first time, we have British immigration officers on French soil making sure that unlawful asylum seekers cannot use that route. We have withdrawn the exceptional leave to remain on a routine basis. We are also trying to introduce accommodation centres in different parts of the country so that we can make sure that claims

> are processed quickly (Hansard 22 Jan 2003 Col 296).

As the broad results of previous interventions, these were seen as having made an impact. The political climate after the passing of the 2002 Act, despite a recent election where immigration played just a marginal role, was seen by the Government as being of importance with regard to future policy. One senior advisor to the Prime Minister argued that "by the end of 2002 the situation was unsustainable…..we were just getting slaughtered on asylum" (Spencer 2008 345). Consequently this chapter continues to ask the key question; how did immigration come to be seen as in crisis? Whether or not a crisis can be said to have existed is debateable. Nevertheless the Government continued to react to immigration related issues as if a crisis existed and proceeded to introduce a series of rule changes prior to the 2004 Act to increase restriction, 12 between August 2002 and August 2003 alone (Hansard 12 Jun 2003 Col 921). This was increasing both the complexity and opaqueness of the immigration system. With such constant change it is worth highlighting some of the results of previous legislation.

## Impact of Previous Act - Asylum

### Process and Appeals

At the Labour Party Conference in September 2003 Tony Blair declared that

> changing the law on asylum is the only fair way of helping the genuinely persecuted – and it's the best defence against racism gaining ground. We have cut asylum applications by half. But we must go further. We should cut back the ludicrously complicated appeal process, derail the gravy train of legal aid, fast-track those from democratic countries, and remove those who fail in their claims without further judicial interference (Levitas 2004 292).

Judicial decision-making that prevented Government action was being characterised as interference. Targets continued to be a key part of Government thinking, and were seen as one of

the areas that the judiciary could impact upon. In February 2003 Tony Blair had announced on Newsnight that asylum applications would be halved in a year, apparently without the knowledge of the Home Office (Spencer 2008 345). Differences between the Home Office and the Prime Minister emerged as a result of the Newsnight pledge. While Blunkett told colleagues the target was 'undeliverable' (BBC Feb 10th 2003), a spokesperson for the Prime Minister argued that:

> What the Prime Minister was doing was summarising the discussion within government on where we are on asylum. As a result of the various measures, the Prime Minister was indicating our hope that we can reduce these numbers to about half by next September……That's a clear objective (Scotsman Feb 11th 2003).

Having a target for applications was considered by critics as an impossibility if the system was not to penalise legitimate claims. Neil Gerrard for example argued:

> That target is ludicrous. It is something over which we have no control. We should be able to control the rate at which we make decisions. We should be able to control the rate at which we remove those whose applications have been rejected. We should be able to control the rate at which we deal with applications, but controlling the rate at which applications are made is a completely different matter (Hansard Feb 26th 2003 Col 82WH).

However, the prevention of claims being made was seen by the Prime Minister as the key control measure and linked to the prevention of arrivals. Nevertheless targets were also set for other parts of the asylum regime.

In 2004 Tony Blair made what came to be known as 'the tipping point target' which pledged that removals would henceforth outstrip applications for asylum. According to Spencer that target was then used as the rationale for introducing 'tougher' measures on asylum in the 2004 Act (Spencer 2007 359). Blair argued that this target was "to restore faith in a system we know is

being abused" (Somerville 2007 121).

Applications for asylum fell by some 20 per cent in the first three months of 2004. Although the Government sought to take the credit for this, arguing that the fall was a result of the measures they had introduced, the reasons for the drop appear to be more nuanced. For example in comparison to other EU states the figures look less likely to be related simply to UK policy. There was a 20 per cent reduction in asylum applications across the industrialised world in the first half of 2003 (House of Commons Research Paper 03/88 2003 12). However, the UK did experience a larger drop in claims than the EU average while France actually experienced a rise in applications (Home Office 2004). Other EU nations, including France, had also been instituting restrictive measures both individually and collectively, but such processes in all nations met with mixed results. Reasons for movement and policies to prevent it remained more complicated and less linear than these stagiest arguments would allow for.

Nevertheless the fall in UK asylum applications from 49,000 in 2003 to 23,500 by 2006 meant, according to Spencer, that by 2006 the backlog of cases was no longer significant (Spencer 2008 347). This is not to say however, that this drop necessarily signalled a fall in the density of population movements across the globe. It is possible that another displacement effect resulted. Indeed many NGOs and others argued that displacement was the likely outcome of what they saw as the criminalisation of the process of seeking asylum. Sales for example argued that overall EU measures have led to an increase in illegal movement (Sales 2005 453) while Geddes argues that the creation of the category of 'illegal asylum seeker' resulted from many of the restrictions placed on entry (Geddes 2005b 796). One NGO official interviewed for this thesis argued that the Government were aware that restrictions would lead to this displacement but the need to impact on publicised numbers rather than actual people took precedence (Interview

August 17th 2007).

The Refugee Council estimated that in 2001 51 per cent of asylum seekers were successful at appeal. (House of Commons Research Paper 03/88 2003 12). The Daily Mail also inadvertently highlighted the need to maintain the right to a proper appeal process. They reported that in 2002 more people won their asylum case through the appeals process than from the initial decision making process (Daily Mail Dec 16th 2003). Indeed appeals continued to form a significant aspect of overall asylum acceptances (see Appendix 2 for further details).

Nevertheless restrictions on appeals along with the fast-tracking of claims continued to be a key concern of Government. Immigration Minister Beverley Hughes argued that "A new fast track pilot scheme to be introduced in April will radically reduce the time taken to process asylum claims from arrival to removal" (Hansard Mar 18th 2003 Col 43WS). This pilot involved the Harmondsworth Removal Centre which was seen as building on the 2002 Act in general and Oakington in particular. Hughes stated that

> This new pilot will enable us to deal rapidly with straightforward asylum claimants and to remove those with unfounded claims within four weeks of their arrival. …… we will be detaining at Harmondsworth Removal Centre asylum seekers whose claims appear to be straightforward, pending a decision on their claim (Hansard Mar 18th 2003 Col 42WS).

The speed of processing as well as clearing the backlog was linked by the Government to the fall in applications. Blunkett pointed out that "Over 80 per cent of asylum claims are now processed in under eight weeks", and also that "we now have the lowest asylum backlog for a decade—half the level that we inherited in 1997" (Hansard Feb 23rd 2004 Col 24**)**. This 'control' of the asylum

system at all levels was seen as being key to all aspects of the immigration system. The fall in claims and increase in removals also contributed to control measures.

**Support**

On January 8th 2003 Section 55 of the 2002 Act came into force, removing support for 'in-country' asylum applicants. During 2003 up to 9000 asylum seekers were denied support under the provisions of Section 55. Lord Justice Jacob condemned such provisions as 'abhorrent, illogical and very expensive' (Cunningham and Tomlinson 2005 268). A consortium of refugee organisations and lawyers challenged its implementation in the High Court leading Mr Justice Collins to conclude that the Government were wrongly interpreting their responsibilities in denying basic food and shelter. He ended by calling for a radical overhaul of Section 55 (Refugee Council Press release February 19th 2003). The Home Office appealed to the Court of Appeal where Justice Collins' ruling was upheld (BBC March 18th 2003). Thus Section 55 was essentially ruled illegal, although the Government intended to appeal further.

The ruling on Section 55 was welcomed by NGOs and some backbenchers. Previous promises that in-country applications would not be penalised unless applicants had been in the country for a significant time were shown to have been false. Gerrard pointed out "what is actually happening is that people are being refused the day after they arrive in the UK—and, in some cases, on the day on which they arrive in the country—because instead of claiming at the port of entry, they made their way to Croydon to make a claim" (Hansard Feb 26th 2003 Col 81WH).

Some Labour MPs urged re-consideration of Section 55 as a result of Court rulings. Jim Marshall argued that "Instead of appealing against that judgment", the Home Secretary should

"instruct immigration officials to interpret section 55 in terms of a reasonable period after entry into the United Kingdom, rather than on immediate entry?" (Hansard Feb 24th 2003 Col 9). There were also criticisms of the principles underlying Section 55. Karen Buck highlighted Home Office research that showed that asylum seekers had no knowledge of the asylum systems and its accompanying benefits. (Hansard Feb 26th 2003 Col 76WH) and thus benefits did not, contrary to Government arguments, act as a pull factor. David Blunkett's response was that judicial challenge to Government policy was acceptable but that that challenge could not be allowed to override the will of parliament.

> I do not accept that I should withdraw the appeal, but I accept entirely that it is right for judges to be able to use judicial review to facilitate challenges to Government when it is thought that they have acted in an administratively inadequate fashion. I do not accept, however, that judges have the right to override the will of this House, our democracy, or the role of Members of Parliament in deciding the rules (Hansard Feb 24th 2003 Col 9).

Thus the judiciary's competence was only seen in relation to administrative failings rather than legal ones. While Section 3 of the Children's Act had been used as a support for the children of asylum seekers up until this point, with their removal from their parents if they were refused support as the end point, there were signs throughout 2002 that such support would not be indefinite. Cunningham and Tomlinson point out that a Home Office consultation in 2003 made clear that Local Authorities would in the future be prohibited from providing support for children whose parents were deemed to be 'in a position to leave the UK' (Cunningham and Tomlinson 2005 255).

## Controls and Externalisation

Writing in the Guardian, David Blunkett argued that juxtaposed controls were the "most significant development in UK immigration policy", that had "made a real difference in stopping

illegal immigrants before they reach Britain and disrupting criminal gangs" (Guardian July 24th 2003). Although the Government consistently argued that illegal migration by its very nature was not quantifiable, the apparent success of juxtaposed controls in controlling such illegality was held as being numerically significant. On the passing of French legislation allowing for its full implementation, with UK immigration staff now having enforcement rights on French soil, Hughes pointed out that "It will mean that British police officers and immigration officers will in effect move our border to Calais and be able to inspect all passengers before they come on to British soil" (Standing Committee B Jan 8th 2004 Col 25)

Agreements on juxtaposed controls were joined by developing agreements with prospective EU members. In February 2003 the Government signed re-admission agreements with both Romania and Bulgaria. The EU had also agreed re-admission agreements with Morocco, Sri Lanka, Russia, Pakistan, Hong Kong, Macao, Ukraine, Albania, Algeria, China and Turkey (Hansard Jan 5th 2004 Col 8w). This was to make it a simpler process to return individuals to their countries of origin. Taken in conjunction with Dublin Π, removals from the UK were now to be more automatic in many cases.

Liberal Democrat Home Affairs spokesman Simon Hughes raised the issue of the removal of Iraqi asylum seekers, pointing out that they represented the largest national group claiming asylum. One ramification of previous legislation was that parts of countries could be labelled as safe with Beverley Hughes arguing that "most of the people claiming from Iraq are from the autonomous northern zone. There is no reason why those people should not be returned" (Hansard Feb 24th 2003 Col 6).

The repatriation of Afghans also continued despite the ongoing war there. Hughes pointed out that

> the Government's preferred option for repatriating Afghan asylum applicants whose asylum claims have been rejected is assisted voluntary return…. As agreed with the Afghan authorities from spring this year onwards those not choosing voluntary return and found to be without protection or humanitarian needs will be subject to enforcement action (Hansard June 9th 2003 Col 660W).

Zimbabwe was now the only country not subject to forcible removal under any circumstances.

Despite the fact that the Government had started returning people to Iraq, they also argued that non-Iraqis were posing as Iraqis in order to falsely claim asylum. This led to the initiation of language analysis testing in March 2003, with the Government pointing out that "in the UK language analysis has been used already in the case of asylum claims made by nationals claiming to be from Afghanistan, Somalia or Sri Lanka" (Hansard Mar 11th 2003 Col 8WS), that is, many of the major producers of asylum claims to the UK.

The rate of removals showed some increase over this period of time. While voluntary repatriation schemes had been developed and more attention and finances had been directed at removals, the number of principle applicants removed rose from 7,655 in 1999 to 12, 490 by 2003. It was only in 2001 that dependents as well as principle applicants started to be counted, leaving the total figure by 2003, standing at 17, 040 removals (Hansard Feb 27th 2004Col 603W).

The relative success of the certification process in the 2002 Act was commented on by Hughes. She argued that non-suspensive appeals and certification had led to a dramatic fall "by around 85

per cent. Compared with October 2002" (Hansard May 12th 2003 Col 62W) in claims by the original ten certified countries.

Hughes later continued that

> the operation of the non-suspensive appeal mechanism … has been phenomenally successful in reducing unfounded asylum claims from the countries concerned. In respect of the first-wave countries, the accession countries, there was a dramatic reduction in unfounded claims as a result of that measure within the first three months of implementation of the Act (Hansard Standing Committee B January 22nd 2004Col 328).

It is worth pointing out that they would soon have a right to move to the UK in any case.

**Impacts of the 2002 Act - Labour**

Throughout 2003 there were developments with regard to the managed migration agenda. While the Seasonal Agricultural Workers Scheme and the Highly Skilled Migrants Programme were already in place, a new Sector Based Scheme also began in 2003. Sector panels would make recommendations on the needs of specific employment sectors with regard to labour shortages. Such panels were established particularly with shortages in the hospitality and food processing sectors in mind. The sector based schemes were "designed to allow low-skilled workers from outside the European Economic Area (EEA) to enter the United Kingdom to take short-term or casual jobs in the hospitality and food manufacturing industries" (House of Commons Research paper 2003 03/88 10).

A rule change was made in 2003 that allowed 'switching' from the WHS to work permit employment in contrast to the removal of switching for other categories of migrants mentioned above. Immigration Minister Beverley Hughes argued that "permitting switching would benefit UK businesses, as they would be able to recruit skilled Commonwealth nationals quickly"

(Hansard June 20th 2003 Col 22WS). A review of the WHS had seen some demand for the scheme to become a global rather than Commonwealth scheme, rejected on the grounds that a global scheme would necessitate a quota, which the Government were keen to avoid.

This issue of quotas was also one that highlighted a divergence in party politics. David Blunkett's assertion on Newsnight, that he could see no obvious upper limit to labour migration was contrasted with the Conservative's developing proposals on annual total migration quotas. Blunkett argued that "I see no obvious limit. I see a balance in terms of the different forms of entry, migration and residency in this country so that we can get it right" (Newsnight Nov 13th 2003). While sections of the media and the Conservative Party were quick to question Blunkett's assertion, the CBI was hugely supportive, arguing that quotas would harm growth. During the 2005 election campaign CBI Director General Digby Jones, for example, argued "If we have a cap of any sort it will tie businesses' hands from the flexibility which is, after all, the hallmark of the British labour market. So we are not in favour of a cap" (BBC April 22nd 2005).

Hughes developed Blunkett's point arguing that

> In saying that there is no obvious limit, we are not saying that there is no limit but that we will monitor the needs of our economy for migration in line with the numbers that we can accommodate to take account of the impact on public services and the integration that has to take place in our communities (Hansard Jan 19th 2004 Col 1073).

According to Geddes there were some 238,600 labour migrants in the UK in 2003. He points out though, that this was just the latest stage of the more expansive policy developing since the 1980's and was "driven by arguments about the need to close labour market gaps in some sectors of the economy" (Geddes 2005 192). Some of the categories of non EU labour migrants in 2003 and 2004 are shown below.

| **Work Permits Issued** | **2003** | **2004** |
|---|---|---|
| Sector Based Scheme | 7809 | 16,858 |
| Business and Commercial | 153,179 | 160,370 |
| Training and Work Experience | 5980 | 4204 |
| Total | 166,968 | 181,432 |
| SAWS | 22,288 | 25,000 |

(Home Office 2004 and Home Office 2005)

**Impacts of the 2002 Act – Citizenship and Community Cohesion**

With these relatively large labour migration figures as a backdrop, the impact of migration on the indigenous population was a developing issue at this time. While the Government had started to argue that labour migrants had contributed £2.5 billion to the exchequer in 1999-2000, they also argued that there was no negative impact on the employment of non-migrants. Hughes, for example, stated that

> migrants have no significant adverse impact on non-migrants' employment and, if anything, had a positive impact on wages, suggesting they bring complementary skills. The evidence demonstrates that migrants contribute to economic growth, productivity, innovation and public finances. The fiscal study estimated that immigrants made a net £2.5 billion contribution to the economy in 1999–2000. Immigrants also help fill jobs that companies have been unable to fill from the domestic labour force (Hansard Nov 17th 2003 Col 695W).

This argument is also used by Legrain, that migrants have complementary skills that do not lead to a replacement of indigenous workers, but merely supplement them (Legrain 2006). Essentially the argument is contrary to the 'lump of labour' idea of a finite number of jobs in the economy, and that migrants create new jobs.

Nevertheless beyond the economic impact, the issue of community cohesion continued to be one of interest to David Blunkett. In January 2003 he compared the UK to a 'coiled spring' that was

capable of spilling into "the disintegration of community relations and social cohesion" (Daily Telegraph Jan 24th 2003). He also argued that some parts of the UK felt "swamped or overwhelmed" by new migration (Telegraph Nov 14th 2003). There was a huge amount of criticism regarding these remarks from both inside and outside of the Labour Party, many highlighting the similar language used by Margaret Thatcher in the 1970s (World in Action Jan 27th 1978)[12]. However, they should be seen in the context of the increasing importance paid to the concept of Britishness and a move away from an overtly multicultural approach.

Blunkett later argued for more attention to be paid to the indigenous population, stating that "we need to deal with that in terms of reassuring them in relation to the services that are available, to the actions we're taking, to the speed we deal with applications" (Scotsman Nov 13th 2003). However, this was not taken as an argument to limit migration more generally. He continued, "No modern, successful country can afford to adopt an anti-immigration policy**……**It is in all our interests to harness the innovation, skills and productivity that new migrants can bring". In addition such legal migration routes were contrasted with 'clandestine' working (Scotsman Nov 13th 2003). Again the Government's position was clear that either those likely to perform illegal work were the same as those coming through legal channels, or at the very least the work being done is the same.

**Asylum and Immigration (Treatment of Claimants, etc.) Act 2004**

**Table 4 - Asylum and Immigration (Treatment of Claimants) Act 2004**

| | |
|---|---|
| **Travel documents** | It was now to be a criminal offence for an asylum seeker not to possess a valid identity document without a good reason. |
| **Trafficking** | It was now to be a criminal offence to traffick people into the country to |

[12] On World in Action Thatcher stated that immigration "means that people are really rather afraid that this country might be rather swamped by people with a different culture". http://www.margaretthatcher.org/speeches/displaydocument.asp?docid=103485

| | |
|---|---|
| | be exploited for labour or services. Penalties could range up to 14 years in prison. |
| **Applications** | The Act put more emphasis on the behaviour of asylum seekers. This included issues relating to documents but also failure to satisfactorily answer a question and failure to make a claim in a safe third country. |
| **Support** | Extended section 54 of 2002 Act, creating new categories not entitled to support. Support would end 14 days after an applicant had been advised that they must leave the UK. Local Authorities would no longer be allowed to offer support under the National Assistance Act. Support could still be provided for those under 18s but this was seen to involve their removal from the family to avoid others also receiving support.<br>The Secretary of State could designate 'hard-case' support which means that support would be provided to individuals only on the basis of them carrying out work in the community.<br>Repealed section of 1999 Act that allowed income support backdating of the gap (30 per cent) between asylum support and general income support to an individual given refugee status. This would be replaced with an integration loan. |
| **Immigration officer powers of entry** | The Act extended the powers of immigration officers to enter, arrest, search and seize to non immigration offences. |
| **Appeals** | The Act abolishes the two-tier appeal system, to be replaced with the Asylum and Immigration Tribunal. Cases would now mostly be made by one immigration judge. Only in cases where there is an error of law can applicants go to the High Court. |
| **Safe third countries** | Build on 1999 and 2002 Acts that allows for removal of an asylum seeker to a third country that s/he is not a citizen off. Four sets of circumstances would now lead to removal without case consideration. Removal to a EU country or Iceland and Norway, countries the Secretary of State designates as safe for ECHR purposes, also countries deemed safe for Geneva Convention purposes, any country may be deemed safe if there are guarantees of non-refoulement. |
| **Surveillance** | Electronic monitoring would be allowed in cases where bail has been granted and/or a residence restriction imposed. |
| **Deportation** | The decision to deport was now not challengeable in any court. |

### The Framing of Immigration and the 2004 Act

The continuing policy focus on asylum is commented on by Spencer. She argues that

> Positive messages from Home Office ministers on the economic benefits of labour migration were drowned by the negative messages on asylum. Convinced that the public would only be reassured by tough messages and action on asylum, Blair gave it an extraordinary amount of his personal attention (Spencer 2008 359).

Indeed one senior advisor to Tony Blair argued that the only issue that received more attention from the Prime Minister during the period 2001–2004 was Iraq (Spencer 2008 359). A leaked memo during this period re-emphasises the point, indicating that Blair saw it as one of the two top domestic issues during the period under review (Somerville 2007 120).

**Retrenchment and the 2004 Act**

Within months of the passing of the 2002 Act there was considerable censure from elements of the judiciary regarding attempts to restrict the right to apply for asylum (see for example Daily Mail Dec 16th 2003). These primarily revolved around the destruction of documents which the Government sought to make a factor in the determination of the credibility of a claim. In addition there was a desire to further restrict appeal rights. Thus despite drops in claims and continual policy intervention, the Government felt that still more had to be done. As part of an effort to 'clear the decks' prior to the new legislation 15,000 families were given ELR in October 2003 (Guardian October 25th 2003).

By November 2003 Blunkett stated that new legislation would "establish a single tier of appeals against asylum decisions…..reduce the scope for delay caused by groundless appeals" and "put in place a range of other measures to tackle abuse of the system and fraudulent claims" (Stevens 2004 616). The following day saw the publication of that new legislation, entitled the Asylum and Immigration (Treatment of Claimants etc) Bill. It contained within in it measures to allow children of refused asylum seekers to be taken into care, the abolition of the IAT and removal of the right to appeal or apply for judicial review to higher courts (Stevens 2004 616)

The new Bill fell some way short of the Government's Code of Practice regarding consultation procedures. The suggested 12 weeks of consultations were reduced to just three weeks for the new Bill, although the Government argued that it had been consulting informally since May. Despite this claim the Home Affairs Select Committee rebuked the Government for progressing such contentious legislation "with insufficient advance information to enable proper consultation or prior parliamentary scrutiny of the principles involved" (Cunningham and Tomlinson 2005 257). The main provisions in the Act are as follows.

**Controls - Support**

The removal of support for families signified an extension of Section 54 of the 2002 Act. The Home Secretary could thenceforth certify that an individual had failed without 'reasonable excuse' to leave the UK voluntarily. In such cases support would be ended 14 days after the person had received notice of the Home Secretary's decision. It was explicitly stated that support from Local Authorities under the National Assistance Act would be prohibited. Indeed the Government sought to end any possible continuing provision by also ruling out support for the elderly under Section 45 of the Health Services and Public Health Act 1968; support from social services under the Children Act 1989 or Children (Scotland) Act 1995; accommodation under the homeless legislation; and promotion of well being under Section 2 of the Local Government Act 2000 (Spencer 2008 344). Restrictions on the support mechanisms available to asylum seekers were also enhanced when in 2004 the rules were changed to prevent asylum seekers from having access to secondary health care (Spencer 2008 344). In such cases the Home Secretary would have to consider, partly as a response to court decisions regarding Section 55, whether such decisions would lead to human rights' breaches.

This policy was intended to "remove the current incentive for families to delay removal as long as possible and so save money in support and legal costs" (Home Office Press Release Oct 24th 2003). Beverley Hughes added that the policy was seen by Government as being both an incentive and a deterrent. She argued that the policy

> actually says to people, 'Look, there are some alternatives here. We hope that you will take the best alternative for yourself and your children, that is, to go voluntarily, but if you do not, you will be removed forcibly and you will not continue to get support until we have done that' (House of Commons Research Paper 03/88 2003 74).

Thus responsibility for destitution likely to emerge from the removal of support for families was characterised by the Government as a choice made by the families involved. The policy was also offered as a third way between no enforcement and the detention of all applicants and was presented as "the only logical way of dealing with people who have no right to be in the country and therefore no right to public funding or accommodation, but who are simply refusing the organised offer of a paid return home" (Home Office Statement BBC Nov 23rd 2003).

One Labour MP at the Committee stage, David Winnick, commented that the policy seemed to be 'starve them out' (Hansard Home Affairs Select Committee Nov 19th 2003). While Hughes denied this, when pushed on whether the plan was that all support would be removed and children could be taken into care, she responded 'yes, that is what we are proposing' (Home Affairs Select Committee Nov 19th 2003). There was, she insisted, a 'need to eradicate the perverse incentives which lead failed asylum seeking families to refuse opportunities to leave voluntarily' (Supplementary memorandum submitted by the Home Office to HASC Dec 8th 2003). Indeed in a letter to the Guardian Hughes expanded that when faced with their children's removal "I expect them to act as any parent would, to make the best decision for their children and leave the UK" (Cunningham and Tomlinson 2005 260).

As well as termination of support to families, the Act also attached the condition of community activity in order to obtain Section 4 support. Essentially this meant that certain categories of asylum seeker, those who are refused refugee status but who cannot be removed, would now be required to perform community work in order to obtain any support. 'Community activities' were defined as "activities that appear to the Secretary of State to be beneficial to the public or a section of the public" (Hansard July 12th 2004 Col 1188).

The 2004 Act also rescinded Section 123 of the 1999 Act allowing the 30 per cent shortfall in NASS support vis-à-vis income support to be paid in full to newly recognised refugees. In its place was an integration loan meaning that rather than having a small sum with which to begin their new lives, refugees in need of money would be required to go into debt. In addition, from June 2004, the government also removed the right of NASS supported asylum seekers to apply for the Single Additional Payment (SAP) of £50. Such payments were previously available every six months to help meet the cost of replacing clothing, shoes and other worn out items.

**Controls - Detention and Monitoring**

Outwith the consultation procedures the Government decided late on that they would pilot electronic monitoring for those under immigration control. A person subject to electronic monitoring would be required to co-operate with arrangements to detect and record their whereabouts. Up until this point such monitoring had been done only to those convicted of a criminal offence. "It is hence a matter of concern that this approach should be applied for administrative convenience to asylum seekers" (Refugee Council Briefing Sept 2004 13). There were concerns that the stigma already associated with the act of claiming asylum would be exacerbated by this provision. However, electronic tagging was meant solely for those who would otherwise have been detained. Blunkett described it as "an alternative to secure removal centres. If we can track people, both in terms of electronic tagging and in future satellite tracking, we can avoid having to use that" (The Independent Nov 28th 2003).

The continued use of fast tracking relating to the increased detention estate also continued to be evident. On becoming Immigration Minister Des Browne argued that

> the use of detention to fast track suitable claims under these processes is necessary to achieve the objective of delivering decisions quickly. This ensures, among other things, that those whose claims can be quickly decided can be removed as quickly as possible in the event that the claim is unsuccessful (Hansard Sept 16th 2004 Col 158WS).

Immigration control at this point started to be linked to David Blunkett's wider desire for universal ID cards. In January 2003 he argued that "Until we have an entitlement or ID card for all those in our country we will not have a robust way of determining true identity or right to work. I hope that the House and my colleagues will be prepared to debate that in the months ahead" (Hansard Jan 20th 2003 Col 8). Des Browne later argued that the lack of ID cards acted as a pull for illegal migration and that making asylum applicants carry the ARC was part of the solution.

> Those who are in this country legally have to have a biometrically based identity card. We are confident in the knowledge that the absence of such an identity card—which has, of course, been part of the culture of this country—has been a pull factor to illegal immigrants for many years (Hansard Nov 15th 2004 Col 1013).

**Controls - Destruction of Documents**

Section 2 of the 2004 Act was intended to address the problem that the Government perceived in asylum applicants disposing of their travel documents. Immigration officers or police were now able to arrest any individual without a valid travel document and with no good reason for not having one. Reasonable excuses were restricted to whether they or a member of their family was an EEA national, they had a good excuse for not having a valid identity document, they could prove that the false document they had was the one they arrived with or they could prove that they had travelled to the UK without such a document (Home Office 2004b Chapter 19).

David Blunkett explained the move as

> dealing with the problems caused by the majority of asylum seekers who claim not to have travel documents - even those who arrived on planes having needed documents to get on the plane in the first place. The fact is, many destroy them en route because traffickers tell them it's their best chance of staying in UK. (Home Office Press Release 27 October 2003).

The destruction of a document was only taken as a reasonable excuse for not having one if the appellant could provide reason for its destruction, that it was beyond their control. If the immigration officer did not believe the appellant they could be arrested without the need for a warrant. Destroying documents at the behest of those helping you into the country was specifically excluded from reasonable excuses, as was destruction as a delaying tactic or as a means of increasing the possibility of a successful claim, a clearly subjective matter. Who would decide this motivation and what it would be based on was unspecified. The Refugee Council argued that the effect would be to punish refugees for behaving like refugees, while UNHCR pointed out that "in most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently without personal documents" (Refugee Council Briefing 2004 3).

While legislation already existed allowing the prosecution of people using false documents under the Forgery and Counterfeiting Act 1981and the Immigration Act 1971, the Adimi case in 1999 had held that prosecutions could be contrary to Article 31 of the Geneva Convention which says

> The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence (House of Commons Research Paper 03/88 2003 25).

The Court in the Adimi case had essentially argued that visa regimes and carrier sanctions made arrival without false documents all but impossible. Despite this, the new proposals focussed on the credibility of claims from individuals using false documents. The consultation paper stated the need to "ensure that those asylum seekers who fail to provide documents without a good explanation and/or have travelled through a safe third country and/or who claim late, would have this taken into account when considering the credibility of their claim" (House of Commons Research Paper 03/88 2003 27).

The power to arrest an individual deemed not to be co-operating with re-documentation for removal was also included in the 2004 Act. During its passing there were calls for both the failure to comply to be defined and for the requirement to be limited to over 18 year olds, both of which were rejected by the Government (Hansard Standing Committee B Jan 27th 2004 Col 413). The Government essentially argued that the aim of this policy was to change behaviour as an end in itself, but also as a means of impacting on people trafficking. Hughes argued that "We have to try to change the behaviour of people who destroy their documents. In so doing, I hope that we can begin to break the power of the facilitators who control so much of this traffic" (Hansard Standing Committee B Jan 8th 2004 Col 76).

Certain behaviours were thus established that individuals would be required to comply with, behaviours aimed at facilitating their removal from the UK. These included the answering of questions, signing of documents and attendance at meetings. Failure to comply would carry a maximum two-year sentence. UNHCR pointed out during the consultation that the return of people with a criminal record as a result of failure to comply could make their eventual removal even more difficult, as other states would be less likely to accept them (House of Commons

Research Paper 03/88 2003 33).

Hughes, however, argued that the intention was

> "to encourage people not only to return but to help us to redocument them when they are in that position…., if the Secretary of State certified that such people have failed without reasonable excuse to take steps to leave the United Kingdom voluntarily or to place themselves in a position in which they can do so—for example, by helping us to obtain a travel document on their behalf—asylum support for the family would cease. (Hansard Standing Committee B Jan 15th 2004 Col 198).

**Controls - Credibility**

The new legislation placed power pertaining to decisions on the credibility of asylum claims in the hands of an Immigration service caseworker. Caseworkers were to provide the opportunity for asylum applicants to explain reasons behind apparent problems in credibility, although issues of credibility were not supposed to be taken as a blanket negation of the original claim. Nevertheless it was clear that such issues would have a serious impact on the credibility of a claim. Factors seen as damaging an asylum seekers claim included that the applicants did not make a claim at the earliest opportunity, despite the apparent illegality of Section 55, or that the application was made after refusal of leave to enter or after deportation proceedings had begun.

In addition, credibility would be affected if the applicant had provided 'manifestly' false information either orally or in writing, that the applicant had no reasonable excuse for not providing travel documentation, or that the applicant had done things inconsistent with their stated beliefs. The Act also required that failure to answer a question be taken into account in the case. Finally credibility would be questioned if the applicant had 'engineered' a case by, for example, taking part in high profile activities against his/her Government while in the UK, or had made claims in more than one country. The Act also allowed the Home Secretary to take

into account ‘any other factors’ pertaining to issues of credibility and allowed the behaviours of anyone acting on behalf of the applicant to also be taken into account. Late in the proceedings Clause 6 created a new provision that questioned the credibility of an application from an individual who had travelled through a safe third country to get to the UK. This was an extension of existing third country rules and was aimed at facilitating the quick removal of certain categories of asylum seekers.

UNHCR were highly critical of this move and argued that a claim should not be refused on the grounds that it could have been made elsewhere. They further pointed out that there was nothing in international humanitarian law that required an individual to make their claim for protection in the first safe country they reached (House of Commons Research paper 88/03 2003 45). The Refugee Council added that “this measure marks a worrying trend within the UK’s asylum procedures of judging an asylum application by looking at how an individual came to claim asylum rather than why they had to flee” (Refugee Council Briefing 2004 5). Indeed UK courts had routinely interpreted the Geneva Convention as allowing for some choice in where claims were to be lodged. However, Dublin Π was to facilitate this transference of claimants, more on which below.

The burden of proof regarding reasonableness and credibility was placed squarely on the shoulders of the appellant. A House of Commons Research paper points out that this was “contrary to the general rule in criminal cases that the prosecution bears the entire burden of proof – the ‘one golden thread’ in the web of English criminal law” (House of Commons Research paper 88/03 2003 28). The original wording of this clause suggested the prevailing burden of proof but this was reversed under pressure from the Home Office.

**Controls - Process and Appeals**

The 2004 Act sought to replace the still existing two-tier appeals process with the newly established Asylum and Immigration Tribunal (AIT). In most cases it was envisaged that a single judge would hear a case and that restrictions would be placed on the ability to move to a higher court by making the Tribunal a Court of Superior Record, the so called 'ouster clauses'. Essentially the right to go to the Court of Appeal and/or the House of Lords was to be removed and there was to be no right to challenge deportation proceedings. David Lammy, Minister in the Department of Constitutional Affairs, argued that "most hearings will be heard by single immigration judges, but more complex cases will be heard by panels. Its flexibility will ensure that each case receives the most appropriate level of judicial consideration" (Standing Committee B Jan 20th 2004 Col 227).

The Tribunal itself was to be the only body that could review decisions made by the Tribunal. According to Stevens "the consequence of such a groundbreaking clause would be to make the Tribunal a judge in its own cause" (Stevens 2004 631). While the pre 2004 Act process allowed permission to be granted by the IAT to appeal a decision made by the IAT, the new Act sought to prevent challenge to Tribunal and Home Secretary decisions making. The Refugee Council pointed out that at the time of the Bill going through Parliament about 20 per cent of appeals to the special adjudicator and 21 per cent to the Tribunal were successful (Refugee Council Briefing January 2004 5).

This 'ousting' of access to higher courts was criticised by leading immigration barrister Frances Webber, "In no other field apart from immigration is recourse to the higher courts prevented, in apparent breach of article 13 of the European Convention on Human Rights, which enjoins

Member States to provide effective remedies against potential breaches of Convention right" (House of Commons Research Paper 03/88 2003 60). Stevens also questioned the introduction of such restricted access to appeals prior to the impacts of the previous restrictions in the 2002 Act being established. However, these ouster clauses were later watered down due to opposition to the complete removal of judicial review, most notably from the Lord Chief Justice (Refugee Council Briefing Sept 2004 9). The Government eventually opened up the possibility of allowing oversight by the administrative court, retaining some element of judicial scrutiny.

The fact that Judicial Review was specifically ruled out as recourse to decisions made by the new tribunal, was perhaps recognition that previous restrictions had increased the displacement effect of judicial review due to restrictions on appeals in other areas. The only cases where Asylum and Immigration Tribunal decisions could now be referred to the High Court concerned 'errors of law', although no oral hearing was allowed for. In such cases the High Court would have the power to order the AIT to reconsider their decision. Where a decision was reconsidered and still refused, there would be a right of appeal, on a point of law only, to the Court of Appeal.

Any cases being permitted to go to the High Court would have to do so within five days. Concerns pertaining to natural justice were highlighted by the Joint Committee on Human Rights who argued that

> We consider the five day limit to be far too short for the right of access to the High Court and beyond to be practically effective. The number of tasks to be performed between receipt of decision and lodging an application for review makes it simply impracticable to require applications to be lodged within five days (Refugee Council Briefing Sept 2004 10).

**Controls - Enforcement**

Prior to the 2004 Act provisions for removal to a safe third country could be challenged on

ECHR grounds. However, the new provisions also designated certain countries as safe under the European Convention and others under the Geneva Convention. Appeals would not be allowable under either of these provisions if the case was also certified as clearly unfounded. Thus the only appeal against removal in such cases would now be on the grounds that it would interfere with a family life already established in the UK, in line with Article 8 of the European Convention.

Clause Π extended the white list provisions in the 2002 Act. Hughes pointed out that "It provides for a relatively modest extension of the powers in Section 94 of the Nationality, Immigration and Asylum Act 2002, under which a state or part of a state can be designated as safe if certain conditions are met" (Standing Committee B Jan 22nd 2004 Col: 326). White list countries would also now allow for parts of countries to be considered safe for certain 'descriptions of person' for the purposes of return, and any appeals against removal would be non-suspensive. Descriptions of persons were defined to include gender, language, race, religion, nationality, membership of a social or other group, political opinion or other attribute or circumstance (House of Commons Research Paper 03/88 2003 37). Therefore countries or parts of countries as well as types of persons combined to reduce the protections against removal.

The extensions of removals to safe third countries were now essentially encompassed by four sets of criteria. First, the proposed removal was to an EU country, or to Norway or Iceland, although other countries outside the EU could be added. In such cases the applicant would have no argument that those countries breach their human rights since they are all signatories to the ECHR and the Geneva Convention. It was therefore assumed that such countries would not then remove the appellant to countries where they risk persecution, although no such guarantee was provided. Secondly, an unspecified list of countries would be considered safe for Geneva and

ECHR grounds, meaning an applicant could not claim that such countries did not interpret either Convention appropriately. Third, the Home Secretary could certify a country as safe for Geneva purposes. And finally any country can be considered safe for a specific individual, with the assumption of non refoulement again applying. Concerns included the risk that the certification of a country as safe would be involved in the horse trading that goes along with political and trade negotiations (House of Commons Research Paper 03/88 2003 43).

Opposition to the designation of countries as safe focussed on both the principle and the individual countries involved. For example, Heath pointed out at Committee that

> the list of countries to which the Foreign Office advises against all travel includes Albania and Sri Lanka, while Moldova and Serbia and Montenegro are on the list of countries to which it advises against travel unless on essential business. The Home Office is saying that those places are safe while the Foreign Office is saying that the places are so dangerous that people should not even visit them (Hansard Standing Committee B Jan 22nd 2004 Col 334).

The Government's response was that advice on the safety of returns to certain countries was "different from the advice that we would give to UK residents about whether they are safe in travelling to a certain country, precisely because they are UK residents" (Hansard Standing Committee B Jan 22nd 2004 Col 334).

Hughes also argued that all cases were still decided according to their individual merits. "Designating a country does not mean that a person's asylum or human rights claim will not be considered on its merits. Every claim is given an individual assessment, taking account of all the facts" (Hansard Standing Committee B Jan 22nd 2004 Col 327). As evidence she highlighted the fact that "in 2003, there were 1,260 decisions, most of which were refused and certified, but 69 were refused and not certified. (Hansard Standing Committee B Jan 22nd 2004 Col 335). This

small success rate was used as the example to argue that national designation did not pre-determine cases.

**The Diffusion of Responsibility**

The diffusion of both powers and responsibilities also continued during this period. The powers of immigration officers were enhanced by a strengthening of Clause 8 which extended the powers of arrest, entry, search and seizure for immigration related offences, to include a series of criminal offences for the first time.

The Act also sought to further regulate the range of immigration advice available. The powers of the Office of the Immigration Services Commissioner would be strengthened in this regard. While the OISC had been given regulatory power over immigration advisors in the 1999 Act, the 2004 Act significantly increased its powers. The Commission could now enter domestic or business premises on a warrant if they believed immigration advice was being illegally provided. The Act also allowed them to seize anything they wished, even items protected by legal privilege (Standing Committee B Jan 27th 2004 Col 390).

A tightening of rules pertaining to marriage occurred on April 1st 2003. Tony Blair characterised the move as being "aimed at tackling the growing menace of fraudulent marriages". A number of means by which this could be done were included in this rule change. These included

> increasing the probationary period from one to two years, introducing a no-switching policy into marriage provision for those coming to the UK for a period of six months or less, removing the "legally unable to marry requirement" preventing a fiancé under 16 from applying for leave to enter and preventing persons under 18 from acting as the sponsor in a marriage application (Hansard Sept 17th 2003 Col 270WH).

The extension of visa regimes as a means of preventing arrival in the UK also continued. In January 2003 all Jamaican nationals wishing to visit the UK would require pre-embarkation approval. Transit visas also started to be used more widely. This meant that individuals from certain countries touching down in the UK on route elsewhere would require pre-approval. By 2004 nationals of 23 countries required such visas. This was also part of the target of reducing the number of asylum claims. Des Browne argued that "For the three months following the introduction on 16 October of DATV regimes for Angola, Bangladesh, Cameroon, India, Lebanon and Pakistan, the number of asylum applications made at ports by those nationalities fell by 58 per cent" (Hansard May12th 2004 Col 13WS).

The 2004 Act also extended the offence of aiding the entry of asylum seekers or illegal immigrants from being solely focussed on entry to the UK to covering the whole of the EU. Although the Government argued that such a move was necessary due to requirements of EU Directives, they themselves had been among the prime advocates of this move at the European level.

**Nationality and Community Cohesion**

David Blunkett had started to look at issues of integration through citizenship ceremonies and tests. In the summer of 2004 this led to the beginning of a consultation process for a new refugee integration strategy. "The purpose of the strategy, which applies to England and will replace that set out in 2000 in "Full and Equal Citizens", is to help refugees build new lives in the United Kingdom and integrate to the full" (Hansard Jul 20th 2004 Col 20WS). This process also reflected attention to the integration of refugees expanding to focus on migration more widely.

Blunkett later linked such a process to what he saw as his 'progressive form of British Nationalism' (Channel 5 May 1st 2007), as will be seen further in Chapter 8.

**Labour Migration**

There was little in the 2004 Act that related directly to labour migration. The main changes during this period were that work permit application fees were introduced in early 2004 at a cost of between £95 and £125, in addition to the £95 fee for the permit itself. The 2004 Act allowed the fees to exceed the administrative cost for the first time, to reflect the benefit likely to accrue to the applicant. Other than that changes that were occurring during this period involved rule changes as well as projections concerning labour migration resulting from enlargement.

In the early months of 2004, with enlargement pending, increasing attention was being paid to issues of labour migration. Blair made a claim at his weekly press conference in April 2004 that the reason for such attention on the issue was essentially because the asylum system had been 'sorted' (Times April 5th 2004). However, a poll in April 2004 showed falling voter confidence in the Government's ability to manage the asylum system, with three quarters saying they wanted new restrictions (The Herald April 7th 2004). Such arguments served to reinforce the view that the public do not distinguish well between various types of migrants. Indeed the 'crisis' in the immigration system had been re-sparked by Hughes resignation over a non-asylum issue, furthering the widespread feeling that the system was out of control.

Blunkett responded to this resignation by arguing again that the country needed the managed migration system and that to do otherwise "will create difficulty within our own communities, we will create problems for our economy, and we will continue to snipe at the edges of what is a robust, sensible, and managed policy" (Downing Street Press Conference Tuesday 6 April

2004). Furthering Blair's view that asylum issues were essentially 'sorted' Blunkett added that "As I have done on asylum, I will ensure we get a grip of these problems, so that we restore confidence and trust" (The Herald April 7th 2004).

Perhaps as a result of the increased attention directed at economic migration as well as impending European enlargement, Tony Blair in April 2004 announced a cut in the number of work permits to be issued. While Blunkett had argued against such a reduction he accepted a link between accession and cuts in other migration schemes.

> The temporary quota-based schemes for the hospitality and food processing industries are due to be reviewed at the end of May in the light of EU enlargement. I have also ordered a review of the quota-based scheme for agricultural workers, for the same reason - around a third of these places were filled last year by nationals of the new EU accession states (Hansard Apr 22nd 2004 Col 25WS).

While the Association of Labour Providers opposed both the new restrictions and the Worker Registration Scheme, (Letter from ALP to author) the CBI were generally in favour as long as they would, in certain circumstances, be able to recruit outside of the European Union, as well as continuing intra-company transfers (CBI Press Release October 2005). Des Browne later announced reductions of 35 per cent in the SAWS for 2005 and 25 per cent for the SBS (Hansard May 19th 2004 Col 51WS). Thus enlargement and existing labour migration schemes were in some senses seen as having a symbiotic relationship.

**European Enlargement**

The initial lack of debate regarding the enlargement of the European Union is commented on by Spencer. With the projections of around 20,000 East European migrants each year moving to the UK there was little debate and even less concern. Spencer does point out, however, that in the weeks leading up to the May 1st enlargement, media focus on the arrival of Roma communities

appears to have pushed Blair to focus more on the issue, and put him at odds with his Home Secretary. The Workers Registration Scheme that was to emerge as the compromise between Blunkett's support for open labour markets and Blair's support of some degree of restriction (Spencer 2008 352). The issue was succinctly put by Tony Blair and signifies a possible contradiction in European accession agreements. He argued rightly that with regard to initial enlargement nationals "The free movement of people is guaranteed throughout the European Union after accession….the free movement of workers, however, is not" (Hansard Feb 11th 2004 Col 1407). Spencer points out that the WRS had the inbuilt problem of only counting those arriving and not those leaving, and so the figures were likely to be inflated (Spencer 2008 352). However, the overall argument for openness was an economic one. As Flynn argued "The objective was always to meet the needs of the economy……..It did not take into account the needs of the migrants themselves" (Flynn 2003 353).

While the Government proposed the registration scheme the Conservative opposition proposed a work permit system, allowing access but on a much more controlled basis. Hughes responded that "we want a "light touch" approach to this. We do not want to have anything which puts a particular burden on employers" and argued that their position was also supported by employers organisations (HASC March 9th 2004). David Blunkett continued that "there seems to be one difference between us: whether there should be a pre-entry system of work permits, or a post-entry registration scheme. The CBI, the TUC and the British Chambers of Commerce favour the post-entry registration scheme that we propose (Hansard Feb 23rd 2004 Col 28).

In a last minute insertion the Government decided on April 30th, the day before enlargement, that it would impose benefit restrictions on not just the A8 but also on existing citizens of EU

member states. Benefits would be denied unless individuals had a job and, for A8 nationals, had registered to work. In addition, the Government also tightened rules on access to council housing. Essentially those who were economically inactive, not self-sufficient or deemed to be placing an unreasonable social burden on the state would be denied housing benefits (Guardian May 1st 2004).

In a move similar to previous appearances on Czech and Slovak Television, the Government sought to deliver information in the Czech Republic, Poland, Hungary and Slovakia. Essentially the Television appearances highlighted that work was available in the UK but that benefits would not be unless an individual had worked continuously for 12 months. In evidence to the Select Committee Stephen Hewitt from JobCentre Plus argued that "What we are saying is that you have to have a right of access to the labour market in this country under the terms of the Treaty and after one year you enjoy the same rights as other nationals from other European nations" (HASC March 9th 2004).

Enlargement was therefore seen by the Home Office as being primarily an economic issue which had links to the managed migration schemes already in existence. Hughes for example argued that

> I think potentially we will benefit in quite a wide range of sectors in the labour market. There is a great deal of scope for people to take vacancies in the lower skilled end of the market, in the sector based schemes that we have already had running, but in addition I think we are aware that there is the potential especially for professionally qualified people or craft based people—builders, plasterers, dentists and nurses—as well as people who work in the hospitality sectors, construction and so on. I think there is the potential for a wide range of sectors to benefit (HASC March 9th 2004).

Between May 2004 and May 2005 176,000 A8 nationals registered as having found work. 27 per

cent were to be found in administration, business and management, 13 per cent in agriculture, 5 per cent in food processing, 25 per cent hotel and catering and 8 per cent manufacturing. However, on top of these numbers were the self employed who were not required to register.

The furore over the false projections of movement to the UK largely overshadowed the fact that a large proportion of those A8 nationals counted were in the UK prior to enlargement. Between September and November 2003 an estimated 113,000 A8 nationals were resident in the UK, 51,000 of who were in work (Hansard Jun 8th 2004 Col 319W). Des Browne highlighted as much in a written answer in July 2004. Of 24,000 applications to work in May and June of 2004, some 14,000 were already in the UK. His answer also revealed that 83 per cent were between the ages of 18 and 34 and 94 per cent had no dependents (Hansard Jul 7th 2004 Col 37WS).

Hughes combined the issue of numbers with both illegality and economic need. She argued that

> 60 per cent at the moment of the A8 nationals who are in the European Union are in Germany, only 5 per cent are in the United Kingdom, and that is to do with reasons to do with language and geographical proximity and history……. We have taken the view…that if people want to come here, and they can come freely anyway, if they want to work we want them to work legally. We know we have got half a million vacancies in the economy at the moment across a wide range of sectors so there is considerable opportunity for people to come and take some of those vacancies and help our industries and businesses (Hansard HASC March 9th 2004).

EU enlargement was at this point presented as a means of addressing illegal working. When Hughes announced measures to strengthen Section 8 she made the link with enlargement explicit. She argued that

> The reform of section 8 will bring added clarity and security to the document checks employers must carry out on prospective employees to prevent the use of illegal labour, and the Immigration Service will continue to increase intelligence-

> led enforcement activity against illegal working. The workers registration scheme will allow these nationals access to our labour market in a monitored way, and will encourage those working here illegally to formalise their status and contribute to the formal economy. Employers will be required to check that a person has registered within 30 days of starting their employment (Hansard Mar 18th 2004 Col 494W).

Employment related issues were not the only issue of importance that related migration to enlargement however. The Acquis Communitaire had placed primary responsibility on new member states to control migration from the east into the newly enlarged EU. On enlargement almost two thirds of the land borders of the EU would be the responsibility of new member states (Times December 2nd 2003). Hughes made this point explicitly, that stronger external borders would lead to less irregular arrival in the UK (Government response to Lords European Committee 10th report 2004).

**Externalisation - Safe Third Countries and 'Zones of Protection'**

In the spring of 2003 the Government furthered plans to keep asylum seekers from reaching the EU. It presented its 'New Vision' initiative which encompassed arguments for the establishment of Transit Processing Centres (TPC's) and Regional Protection Areas (RPA's) as a means of keeping the 'problem' away from the borders of the EU (Flynn 2005 479). RPA's were envisaged as camps in Turkey, Iran, Iraqi Kurdistan, Somalia and Morocco and were presented to the Thessalonica Council in June 2003. While TPC's were dropped from discussions due to widespread opposition the RPA's were simply downgraded to a 'work in progress' (Flynn 2005 480). The idea had developed into one whereby non EU countries would be offered support to take asylum seekers prior to their arrival within the EU. Such camps outside EU territory would see the IOM and UNHCR determine the status of applicants and those successful would then be dispersed on a burden sharing basis. Such burden sharing was seen as particularly helpful to the

UK Government as its courts had tended to be more generous in its interpretation of the Geneva Convention (Sunday Times Mar 30th 2003).

Despite the rejection of TPCs the more general move towards pre-arrival asylum certification meant variations of such processing centres being utilised, although not in the style the Government initially envisaged. David Blunkett furthered plans that from spring 2003 would involve an external screening exercise.

> We will begin a new programme, organised with the United Nations High Commissioner for Refugees, which will screen applicants for asylum in regions of the world where people are experiencing the threat of death or torture. We will initially take 500 refugees, rising to a larger number as we develop the programme—thereby preventing people having to present through the use of smugglers, traffickers and organised criminals (Hansard Jan 20th 2003 Col 5).

Bilateral moves in the same trajectory were also being progressed. Early in 2004 Tony Blair admitted that the Government were in negotiations with Tanzania to create a system whereby asylum claims could be made "nearer to the country of origin" (Hansard Feb 25th 2004 Col 278).

Overt questioning of the Geneva Convention also progressed. Blunkett presented his ideas regarding the reform of the Geneva Convention to other EU leaders in March 2003. This helped to push UNHCR towards a re-evaluation of the Convention. As Des Browne would later argue "The United Nations High Commissioner for Refugees has a process known as Convention-Plus[13], which we support, for the modernisation of the convention to enable it better to meet the circumstances of the 21st century" (Hansard Nov 15th 2004 Col 1016). Indeed Beverley Hughes was eager to point to the welcoming way UK proposals had been accepted, highlighting the fact

[13] Convention Plus was a coordinated effort to 'resolve' the problem of refugees through 'multi-lateral special agreements'. It included development assistance, resettlement programmes and agreements re secondary movement

that the Commission had published a positive communication concerning UK proposals for 'Zones of Protection' (Hansard June 16th 2003 Col 13).

The 2004 Bill referred to the replacement of the 1992 Dublin Convention by the 2003 Dublin II Regulation, much of which in due course would also be superseded by the Council Directive on minimum standards for granting refugee status. In it 'safe third country' provisions placed demands upon the place an asylum seeker could make their claim for asylum. Symes and Jorro argued that this went against the international principle and practice that applications should be considered wherever they are made unless there are strong connections with the third country (cited in House of Commons Research Paper 03/88 2003 36).

The importance of the Eurodac system to Dublin II should not be overlooked. Hughes argued that

> The Dublin II Regulation will enter into force in September this year. The Eurodac fingerprint database is now operational, and will provide much better evidence to support the determination of responsibility. Together, the Dublin II regulation and the Eurodac system will enable the UK to effect the return of a greater number of asylum seekers to the Member State most responsible for their presence on EU territory (Hansard May 12th 2003 Col 72W).

The UK Government were involved in negotiations over the Qualification Directive as well as Dublin II. Hughes pointed out that consistency across the EU would "discourage those in genuine need of international protection from "asylum shopping"", which would "deter secondary movements of asylum applicants within the EU" (Hansard May 12th 2003 Col 72W). Such a process would clearly be to the benefit of a nation such as the UK with no borders with

non-EU states. Indeed the ability to keep asylum seekers away from UK territory was seen as vital.

The Luxemburg summit in October 2004 saw a re-affirmation of the Government's position with regard to the veto. While the Commission pushed for a common asylum and immigration policy**,** a common asylum procedure and a European centre for the joint processing of asylum claims, Tony Blair stated that

> There is no question of Britain giving up our veto on our border controls. With the Treaty of Amsterdam seven years ago, we secured the absolute right to opt in to any of the asylum and immigration provisions we wanted to in Europe. Unless we opt in, we are not affected by it. And what this actually gives us is the best of both worlds (Independent Oct 26th 2004).

**Pre-cursor to 5 year plan**

While many in the Labour Government had sought to dismiss criticisms of the immigration system as racist, Tony Blair started to argue that such issues were politically legitimate. He stated that "they are real concerns. They are not figments of racist imagination and they have to be tackled precisely in order to sustain a balanced and sensible argument about migration" (Express April 28th 2004).

This led to Blair arguing that Britain had reached its 'crunch point' and that a top to bottom review of the system of access to the UK was required (Independent April 28th 2004). With the 2004 Act representing the third major piece of immigration legislation undertaken by the Government since 1997, along with numerous rule changes, the legislative activism was described in one legal textbook thus

> The speed of procedural change exhibited by these developments is one of the most significant features of this area of law. Few legal arenas can be more exposed to the pressures brought about by the media and public opinion than this (House of Commons Research Paper 88/03 2003 19).

Nevertheless within a very short period of time the Government were again signalling the need for a new immigration focus in the shape of the Five-Year plan and the 2005 Bill.

## Conclusion

This chapter has presented the contents of the 2004 Act and placed it withing the empirical and theoretical context of the thesis. In particular the impacts of previous legislation were highlighted and led into discussion on the framing of migrants according to migrant type. The chapter also developed the issue of Government attempts to externalise the control measures aimed at unwanted migrants.

Further, framing was shown to have been underscored by a perspective that viewed migration as a problem to be dealt with, which contributed to the perception of immigration being in crisis. That is, the 'problem' was defined according to control measures, whereas the search for control was shown to be unsuccessful if defined according to numbers. Thus a crisis perspective had emerged. The next chapter develops this point and places it within the context of the Five-Year plan. However, what is also shown in Chapter 7 is the extension of the problematised population, with a developing negative focus on 'illegal' migration rather than just asylum seeking.

# Chapter 7 - The Five-Year Strategy for Immigration and Asylum and the 2006 Immigration, Asylum and Nationality Act

## Introduction

This Chapter highlights both the Five Year Strategy for Immigration and Asylum and the 2006 Immigration, Asylum and Nationality Act. As with all previous empirical chapters it begins by highlighting some of the context, with particular attention being paid to the 2005 General Election as well as the effects of the previous piece(s) of legislation. In addition, this chapter develops two of the key themes of the previous two chapters, that of the problematising of asylum accompanied by new means of encouraging labour migration, or at least some forms of labour migration. Thus one of the key questions answered in this chapter is; did the five-year strategy, with its plans for points based labour migration, represent a full codification of a dual immigration process? However, the chapter also highlights one of the key consequences of the previous framing of migration, that of an immigration crisis that jumps targets. Consequently a key question for the chapter is; was non-asylum migration problematised? Further, the impact of enlargement and the imminent future enlargement had and would potentially create further forms of labour migration. Therefore another question that the chapter seeks to address is; what was the relationship between enlargement and migration?

The chapter moves from looking at the impacts of previous legislation to highlighting key continuities in policy, particularly with regard to the ubiquitious control measures contained in the Five-Year plan and the 2006 Act. This includes new forms of diffusion as part of the overall control system. The chapter then goes on to develop the processes at work in the labour migration regime. In particular the chapter highlights the points based migration system being developed. The emerging impetus on nationality, settlement and cohesion is then examined

before the post 2006 Act developments are discussed and explained. This includes developments at the European level, including future enlargement, the effects of some of the processes in the 2006 Act and sojme brief discussion of the 2007 Borders Bill.

**The Five-Year Strategy and the 2005 General Election**

With another General Election imminent, in early 2005 the Government began to signal their belief in the need for further reform of the immigration system, partly prompted by Conservative plans for a total annual migration quota. The election campaign itself saw the immigration debate conducted in a fevered atmosphere of anti-immigration hostility. "Debates about immigration during the 2005 general election tended to centre on the negative connotations of migration" (Geddes 2005 195).

In terms of electoral strategy there may have been some sense to the Conservatives focus on immigration. In April 2005 asylum and immigration was the only high-ranking political issue in which the Conservatives enjoyed a lead over Labour (Guardian April 12th 2005). However, while asylum had being subject to intense political debate, it had yet to make any substantive impact in national elections. The BNP had made some local gains but had yet to have a national breakthrough. In addition a tracking Mori poll suggested that concern with immigration may have peaked in the spring of 2004, when 35 per cent named it as their number one political concern, falling to 25 per cent by early 2005 (Guardian Jan 25th 2005). Regardless the campaigns of the two main parties remained focused on immigration, and characterised it as being in crisis. The Labour manifesto at the 2005 election highlighted the changes to come in the Five-Year plan but also suggested plans for biometric passports and ID cards for anybody staying in the country for over three months with the long term plan being that everybody would carry one (Labour Party Election Manifesto 2005).

Tony Blair presented asylum as a major issue of concern, having previously characterised it as having been 'sorted'. Blair argued that "The problem with asylum…. is not the number of genuine refugees; it is people coming into this country claiming to be genuine refugees who are in fact economic migrants" (Hansard Jan 26th 2005 Col 297). However, while political and public opposition had tended to be focused primarily on asylum seekers, as asylum numbers significantly dropped the opposition gravitated to other immigration targets, as will be shown below.

## The Impact of Previous Developments

### Asylum and Immigration Controls

Despite the short time-lapse from the 2004 Act, some ramifications of previous legislation were evident. By late 2005, under Section 9 provisions of the 2004 Act, 27 families had had all financial support withdrawn, including 54 children (Kelly and Meldgaard 2005 3). A joint report by the Refugee Council and Refugee Action showed that the removal of support had led to just one family choosing to leave the UK, and thus the incentive to return assumed by the Government had failed to bear fruit (Refugee Council/Refugee Action 2006 2). Despite the lack of substantive impact regarding these provisions, it would later be extended allowing case managers, as part of the New Asylum Model (NAM), to opt to withdraw support from families (Hansard 25 Jun 2007 Col 10WS). While Section 9 had produced few results for the Government, voluntary return schemes meant that by the end of 2005 over 8000 refused asylum seekers had 'voluntarily' returned home (Hansard Jan 9th 2006 Col 354W).

The effect of criminalising the destruction of documents was hailed as a success by the

Government. Immigration Minister Des Browne argued that "The number of those who have been arriving at ports inadequately documented, since the introduction of the 2004 legislation in October, has been reduced by 50 per cent" (Hansard Mar 7th 2005 Col 1275). Essentially the Government argued that the act of making lack of documentation a criminal offence had directly led to this decrease in inadequately documented persons. New Immigration Minister Tony McNulty would later highlight that 33,000 inadequately documented passengers had been prevented from boarding carriers by Airline Liaison Officer's in 2003 (Hansard Jul 5th 2005 Col 265), prior to the 2004 Act, and thus the success of the provisions pertaining to documents may have been over-stated. Nevertheless such pre-arrival control was becoming increasingly important to overall Government control measures.

**Labour Migration**

Work permits continued to be issued in ever growing numbers over this period, reaching over 180,000 in 2004 (Hansard 15 Mar 2005 Col 210W). The concentration of such permits within certain sections of the workforce was evident. Between January 2004 and August 2005 some 45 per cent of permits issued were to health care workers, with another 30 per cent in business, education and IT (Financial Times Feb 23rd 2006). At this point there was growing concern regarding the political ramifications of such developments, particularly with the migration of Accession 8 nationals having hugely exceeded expectations. Home Office estimates had been that a total of between 5000 and 13,000 such nationals would migrate to the UK (Hansard 5 Jul 2005 Col 203). Between May 1st 2004 and March 31st 2005 some 176,000 A8 nationals applied to work under the Work Registration Scheme (Hansard 26 May 2005 Col 29WS), rising to 345,000 between May 2004 and Dec 2005 (Home Office 2006). Self employed enlargement nationals not required to register would add significantly to that figure. Although migration as a

result of enlargement is legally different to work permit migration, the two were increasingly conflated in debate. Concerns pertaining to the impact on social services and the indigenous population more generally also started to be voiced.

The lack of embarkation controls also meant that there was no clear record of numbers leaving and so it was felt that overall numbers were inflated due to many A8 jobs being short term and/or seasonal. It is widely accepted that around 500,000 A8 nationals came to work in Britain between May 2004 and the end of 2006 (see for example the Bank of England discussion paper 17). One IPPR paper reported that actual migration had exceeded that predicted by a factor of 20. ONS data, however, shows the cyclical nature of much of this movement that contributes to double counting, with 89 per cent of A8 visits being planned for a duration of less than three months. (IPPR 2006 10).

A study by the DWP in early 2006 showed no direct causal links between migration from the A8 and unemployment in the host population. The report found that "Overall, the economic impact of migration from the new EU member states has been modest, but broadly positive" (DWP 2006). McNulty was more effusive in analysis of the impact of A8 migration, arguing that workers from the newly enlarged Europe were "filling important vacancies, supporting the provision of public services in communities across the UK and making a welcome contribution to our economy and society" (Home Office Press Release Feb 28th 2006). He would later argue that new EU citizens contributed £500m to UK GDP between May 2004 and March 2005 (Hansard May 26th 2005 Col 29WS). The positive impact was further highlighted when in December 2006 the Chancellors pre-budget report was adjusted to predict growth of 2.75 per cent, from an initial 2.5 per cent, which the Government put down to higher than expected

migration (Financial Times Feb 19th 2007). Meanwhile Treasury figures obtained through freedom of information also showed that migration had contributed some 15-20 per cent of the UK's growth between 2001 and 2005, and that despite making up just 8 per cent of the population the contribution of migrants stood at around 10 per cent of UK GDP (Birmingham Post April 19th 2007).

The link between enlargement and other forms of economic migration was made explicit. As a result of A8 migration the Government decided to end the sector based scheme for hospitality workers. Some 42, 070 A8 nationals had undertaken work in that sector. In contrast, however, it was felt that the food-processing scheme was still required (Hansard 23 Jun 2005 Col 48WS), due to continuing labour shortages.

In early 2006 a similar process also appeared to begin with regard to the Seasonal Agricultural Workers Scheme. Home Office Minister Andy Burnham, argued

> SAWS has been successful. What we question is whether it is still required, given that the expansion of the European Union has given growers access to a larger pool of workers who are free and, on the evidence, willing to meet seasonal labour needs in the agricultural sector. …. …….Research commissioned by the Department of Environment, Food and Rural Affairs and the Home Office suggests that demand for temporary workers, the majority of whom are engaged in packing and grading, peaks in the winter rather than in the picking season. If agriculture increasingly needs a year-round work force, it follows that that need is best met by relying on those with the freedom to enter the labour market rather than relying on seasonal immigration schemes (Hansard 10 Jan 2006 Col 57WH).

Continuing demand was also reflected in the rise in migrants in the UK through the HSMP. Whereas 2003 saw just 3695 migrants accessing this route, this had risen to some 17,642 by 2005 (Hansard Jan 23 2006 Col 1780W). The relatively uncontroversial student contribution to

migratory movements was also highlighted. Of all visas granted in 2005 some 53 per cent were to students, in comparison with the increasingly controversial 19 per cent to work permit holders (Daily Mail March 29th 2006). It was later estimated that in 2006 foreign born students brought some £5 billion into the UK's education system (Hansard 30 Apr 2007 Col 1228).

**Nationality**

Increasing numbers of migrants at this point were being accepted for settlement which is perhaps one of the reasons behind the tests and temporary refugee status envisaged in the upcoming White Paper. In the year ending 2004 there was a 2 per cent increase in the number of people being allowed to settle, up to 144, 550 (Home Office 2005b). Within these figures, however, there was a 43 per cent increase in employment related settlement grants. ONS data showed that in 2005 565,000 foreign nationals arrived to live in the UK while 380,000 British citizens left to live abroad (Politics.co.uk Nov 2nd 2006). While some elements of the press reacted to the statistics by highlighting that this meant 500 people arriving each day, John Reid later argued that such figures were 'sustainable' (BBC Nov 5th 2006).

The Government reacted to public concerns and political controversy over these population movements by seeking to re-structure the labour side of the immigration nexus while maintaining and increasing the levels of control on the asylum, and now also the broader irregular side. The Government's Community Cohesion panel argued that "the pace of change is simply too great at present" (Daily Telegraph Jan 27th 2005). Blair's response was that "the public are worried about this; they are worried rightly because there are abuses of the immigration and asylum system" (BBC February 6th 2005). In response to criticisms from Labour backbenchers such as Jeremy Corbyn that constant talk of abuse was driving the issue into the lowest common denominator (Hansard 7 Feb 2005 Col 1194), which was adding to a

sense of 'othering' of migrants, Home Secretary Charles Clarke argued that "the issue of who does come to this country, and whether they are entitled to be here, who does settle here, how we have border controls, is a perfectly legitimate aspect of public debate. And I think it is right that we should debate it and consider it" (Hansard 7 Feb 2005 Col 1194).

## The 5 Year Strategy for immigration and asylum and the 2006 Act

**Table 5 - Five-Year Strategy and the Immigration, Asylum and Nationality Act 2006**

| | |
|---|---|
| **Appeals** | Removed the right to appeal against refusal of entry clearance in all cases involving a visitor or dependent.<br>Revised section of 2002 Act to give a separate right of appeal at each stage of citizenship removal; at revocation stage and the decision to remove stage. |
| **Refugee status** | Refugees would be given Temporary Leave to Remain rather than permanent status, initially for a period of 5 years although it could be revoked at any time. Country information would be used to determine who should have their status revoked. Appeals were allowed for revocation of refugee status but not humanitarian protection or discretionary leave to remain. |
| **Employer sanctions** | Increased onus on employers to ensure they were not illegally employing anyone, now subject to a civil penalty of £2000 for each employee found working illegally |
| **Border controls** | Under the E-Borders programme the Home Office would now be able to get lists of passengers on board ships and planes on route to the UK.<br>Individuals would have less time in which to provide fingerprints, 3 days for asylum seekers.<br>All visa applicants would be fingerprinted and electronic checks made on those entering and leaving the UK.<br>Plans to enhance data sharing between the immigration services, the police and customs and excise. |
| **Accommodation** | Local Authorities would now be able to provide accommodation for 'hard case' applicants who had their claims rejected but who could not be returned to their country of origin for reasons of health or due to there being no safe route. The Secretary of State could also provide essential items such as nappies and razors but they would be provided in the shape of vouchers rather than cash. |
| **Integration loans** | Integration loans would replace the previous system of backdating of the shortfall of income support paid to asylum seekers on receiving refugee status or temporary leave to remain. |
| **Support** | While previous legislation terminated support to rejected asylum seekers at the point at which they have been notified of the decision to remove them, they would now not be eligible for support from the point at which removals directions were issued. |
| **Determination of status** | Integrated into immigration law the broad definition of terrorism used in the 2000 Terrorism Act. |
| **Removals target** | Tipping point target became permanent. This was to be done by detaining more refused asylum seekers; introducing fast track processing of all 'unfounded' asylum seekers; greater control over applicants throughout the process including through more detention and the use of electronic tagging. |

| | |
|---|---|
| **Nationality** | Those wishing to apply for nationality would be required to show knowledge of English as well as passing a 'good character' test.<br>The Act gave the Secretary of State the right to deprive an individual of their citizenship or right to abode on the grounds of national interest. |

## Introduction to the Five-Year Plan

Charles Clarke argued that despite falling asylum numbers and the illegality in the long term of preventing EU nationals from moving to the UK, his top priority on becoming Home Secretary had been to restore public confidence in the immigration system (Home Office Feb 2005 Foreword). Plans to streamline the migration system were hinted at in an interview given by the Home Secretary in early 2005. While arguing that migration was of benefit to the UK he also suggested the points based system to come. "What is wrong is when that system is not properly policed and people are coming here who are a burden on the society. It is that we intend to drive out". He continued, "we will establish a system ... which looks at the skills, talents and abilities of people seeking to come and work and ensures that when they come here they have a job and can contribute to the economy" (BBC February 6th 2005). Clearly aimed at economic migration this was the next stage of the managed migration agenda.

The Five-Year Strategy was launched three months before the 2005 General Election. The aim, according to Spencer, was to bring "inherently unpredictable migration flows under control" (Spencer 2008 353). This would be done by having a joint focus on strengthening borders and creating a point based system to integrate over 80 existing employment entry channels.

Clarke described the issue thus

> The Government's approach to this important subject begins with the recognition that migration is vital for our economy and society. ….Migrant workers, skilled and unskilled, do key jobs that cannot be filled from our domestic labour force. Overseas students make a major contribution, economic and intellectual, to our education institutions, and many as a result develop lifelong ties with this country. …Moreover this country has always been among those first in the world

> to recognise our moral and legal duty to offer protection to those genuinely fleeing death or persecution at home (Hansard 7th Feb 2005 Col 1182).

While highlighting the welcoming and tolerant nature of the British population, and its importance for race relations which he defined as being a 'quiet success story', Tony Blair was clear that "this traditional tolerance is under threat" (Home Office 2005 foreword). The threat was not seen in terms of the recently linked immigration and terrorism, but was seen as emanating from 'abuse' of the system from people "who come and live here illegally by breaking our rules and abusing our hospitality" (Home Office 2005b Foreword).

Blair was clear that the asylum system had been 'sorted out' with removals having doubled, applications falling and backlogs down. This was contrasted with the increased labour migration "to fill the vacancies our growing economy has created" (Home Office 2005b Foreword). The Five-Year plan was thus focused on rooting out remaining 'abuses' while creating new avenues for sought migrants. On the 'illegal' side, now broader than asylum seekers alone, came control measures, on the spot fines for employers illegally employing workers, the fingerprinting of visa applicants and financial bonds. On the labour side a point based system was envisaged. The 'bad' migrants were no longer seen only in terms of asylum seeking. Instead a new focus on 'illegals' was being adopted, more of which will be seen below. Clarke added that "We will bring all our current work schemes and students into a simple points based system designed to ensure that we are only taking migrants for jobs that cannot be filled from our own workforce and focusing on the skilled workers we need most like doctors, engineers, finance experts, nurses and teachers" (Home Office 2005b Foreword).

The 2006 Act was presented to Parliament on 22nd June 2005. Coming so close to the launching of the Five-Year Strategy it was largely built around the elements of that strategy that required

primary legislation. While the move to a point based system for labour migration required just secondary legislation and the New Asylum Model concerning administrative reform, the Bill itself focused on other aspects of immigration control and enforcement.

The Act itself did not overhaul existing law but merely added to it, a situation familiar to observers of immigration policy where law had largely been added to the seminal 1971 Act. The Bill's scope was, however, narrow when compared to its predecessors. Indeed in Standing Committee McNulty directed attention to the narrow focus, arguing that

> this Bill is not presented as the all-singing, all-dancing answer, solution and comprehensive retort to whatever is going on in the asylum and immigration world, as some of the others have been. ……. all this needs to be seen in the context of the Government's Five-Year plan for asylum and immigration and, crucially, the current consultation paper on a managed migration points system (Hansard Standing Committee E Oct 18th 2005 Col 25).

The Act was presented as a means of 'tightening' the immigration and asylum system. In the Queen's speech it was described as doing so "in a way that is fair, flexible, and in the economic interests of the country" (Queens Speech May 17th 2005). Contemporaneously the Home Office strategic plan for 2004-2008, *Confident Communities in a Secure Britain,* highlighted other changes that the Government sought to institute including the targeting of intelligence and the implementation of more thorough electronic tracking systems and detection technologies. This plan also envisaged increased detention and removal. Once more primary legislation was not required in order to institute these changes.

## The Five-Year Strategy and the 2006 Act - Asylum

### Appeals

As far as appeals were concerned it was still felt that there were too many avenues by which

removals could be delayed. A House of Commons research paper highlights the displacement effect created by limitations in appeal rights in relation to the concomitant increase in cases heard by adjudicators. While 56, 718 appeals were heard by adjudicators in 2001 (77 per cent of which were asylum cases), by 2004 this had risen to 109,220, although the proportion of asylum cases had dropped to 51 per cent. This still reflected an increase in asylum cases going before adjudicators from 43, 702 to 55,702, despite a large drop in asylum applications (House of Commons Research Paper 05/52 12).

For the first time restrictions in appeals were focused on non asylum as well as asylum aspects of immigration. The increase in non asylum issues mainly concerned appeals against refusals of entry to work, visit or study. A rule change in 2000 had re-instated the right to appeal against refusal of entry for family visits. This had enabled 11,000 refused entrants to win their appeals against that refusal by 2001, 53 per cent of total refusals (House of Commons Research Paper 05/52 18). This led to the removal of appeal rights in the 2006 Act for family, work and study in all but two circumstances, where they were coming to the UK as a dependent in a number of prescribed circumstances, or that they were appealing on race relations or human rights grounds. The restrictions on appeal rights were explained and justified on the basis that more legal channels of migration were being created and that controls were being diffused. McNulty argued that

> the removal of appeal should be considered in the context of the Five-Year plan and the strategy and all that that entails in terms of shifting burdens to sponsors far more readily, streamlining the decision-making process, putting in all those resources and fusing both work permit applications and visa applications (Hansard Standing Committee October 18th 2005 Col 30).

Problems at the decision making end of the asylum seeking process were also highlighted by the increased number of refused asylum seekers given leave to appeal in the first place, up by 20 per

cent in 2005/06 compared to figures from 2004/2005 (Daily Express May 24th 2006). Although the Government were keen to argue that this should not be seen as symptomatic of wrong decision making in the initial process it is difficult to reach a different conclusion. While restrictions to the right to appeal were being constantly sought, cases given leave to appeal increasingly had to be of a substantive nature, and thus such cases can only really be seen as involving poor initial decision making.

At least part of the controversy in relation to the removal of appeal rights relate to judicial interpretations of appeals as being a fundamental right. Article 6 of the ECHR concerns the right to a fair trial, stating that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law" (House of Commons Research Paper 05/52 22). Despite occasional protestations that the Convention was too constraining, the Government more commonly held that Article 6 was not contravened due to the fact that appeal rights on Human Rights grounds were preserved. Nevertheless the 2006 Act sought to broaden the categories of people who were not entitled to an appeal, to include everybody who arrived in the UK without entry clearance, that is, anybody who needed a visa and did not have one. In addition some *with* entry clearance but who were deemed to be arriving for a purpose other than that stated on that clearance would also lack any right of appeal.

**Administrative Reform and the New Asylum Model**

The New Asylum Model (NAM) was to become a key part of the asylum side of the Governments immigration plans. Essentially the Five-Year plan argued that the reduction in the backlog and number of new applications meant that there was an opportunity to change the way

claims were handled. The aim was to tighten the management of the asylum seeking process through the introduction of different streams so for example, certain cases would be fast-tracked. NAM also demanded that individual case managers were to be responsible for all aspects of an individual case, signifying more diffusion as well as placing further powers with 'street-level bureaucrats' (Lipsky 1983).

Harmonsworth detention centre was another key part of the tightened regime. The strategy predicted that by the end of 2005, 30 per cent of cases would be fast-tracked there (House of Commons Research Paper 05/52 36). Thus initial screening and streaming was to become the key part of the process, as cases that were fast-tracked would be less likely to succeed. Indeed Neil Gerrard, the only MP to sit at committee examining all immigration acts since 1993 made that very point, arguing that

> Deciding which stream is appropriate for people applying for asylum will almost certainly prejudge the final decision about their applications. If a person is put in the "late and opportunistic, low barriers to removal" queue, it is difficult to see how he or she can have much chance of proving an asylum claim (Hansard Jul 5th 2005 Col 238).

**Support**

The 2006 Act allowed the Home Office to provide Section 4 'hard case' support under contract to Local Authorities. This involved support for people whose claims had been rejected but who could not be returned to their country of origin for one of numerous reasons, that country's unwillingness to accept them, the conditions in the country of origin, that there was no safe route of return or that the individual involved was too sick to be returned. Such cases had increased by more than three times by the first quarter of 2005 compared with the previous quarter, 85 per cent of who were Iraqis (House of Commons Research Paper 05/52 60). By early 2006 asylum

seekers qualifying for Section 4 support amounted to some 5000 cases. Housing provision for Section 4 support would conform to existing arrangements for asylum support, they could be evicted without a court order and would not be given secure tenancies and support was offered on a no choice basis. In addition monies were paid via vouchers and were well below income support levels.

Despite the fact that vouchers had been abolished for all asylum seekers in 2002, and that the Home Office accepted that removal for hard case recipients was not possible, the Government remained convinced, or at least argued, that to allow cash benefits would incentivise delay. Tony McNulty argued that benefits "should not act as an incentive to remain in the UK once they have exhausted their appeal rights" (Hansard Mar 29th 2006 Col 930). Thus, although appeals were completed and removal not possible, the Government contextualised such asylum seekers as seeking to delay a removal that they themselves were not pursuing.

**Removals and Deportation**

The second part of the 5-Year Strategy related to asylum was to maintain the 'tipping point' target, that removals should exceed applications on a permanent basis. In terms of removal this was to be done by a combination of measures including more detention and fast-tracking along with increased use of electronic tagging. Combined with the prevention of arrival in the UK it was felt that the target could become a permanent feature of the system. In later evidence at committee Home Secretary John Reid would highlight the fact that the tipping point target had been met in the first three quarters of 2006, and indeed had been exceeded by around 700 over that period (HASC 12th Dec 2006).

Returning people to 'safe' countries was another key aspect of the plan. Indeed the strategy itself also talked of the need to find ways of returning unaccompanied asylum seeking children. The first half of 2006 witnessed a new push to incentivise voluntary returns. Between January and June 2006 the Government operated through the International Organisation for Migration, to provide up to £3000 of financial help to people agreeing to voluntarily leave the UK (Hansard Jan 12th 2006 Col 14WS). The incentive offered for voluntary return appeared to have some impact with the number returning increasing by some 132 per cent between January to June 2005 and January to June 2006 (IOM 2006).

Nevertheless while voluntary removal was seen as being more humane, as well as considerably cheaper than forced removal, Immigration Minister Tony McNulty argued for a need to have harsher measures where that had failed.

> enforced returns are in part because there is resistance to going back voluntarily….. you must have a robust asylum system and that includes fully looking after refugees, integrating them when they are successful in the system. But it does mean removals on the other side and we are working very closely to see what can be done in the most appropriate and efficient way possible, taking into account the children issues and a whole range of other issues (BBC Nov 25th 2005).

Although there were fewer attacks on the Geneva Convention, there were more subtle means by which the Convention could be undermined or diluted. Clause 52 of the 2005 Bill extended the grounds on which the Government could exclude people from the Convention's protections. While the Convention allows the refusal of protection for those engaged in terrorism, the 2005 Bill sought to define terrorism in the wide sense recently used in the Terrorism Act. The definition used included where "the use or threat is designed to influence the government or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious or ideological cause" (Home Office Press Release February

2005). On the passing of the 2005 Terrorism Act the definition of terrorism would be extended still further to include the new concept of 'encouragement of terrorism'. Essentially the act of engaging in or even voicing political opposition to an existing regime could be potentially seen as an act of terrorism and thus could lead to the denial of protection in the UK under the auspices of the Geneva Convention. UNHCR were highly critical of the move arguing that it "is a piecemeal attempt to interpret one subsection of a provision which should be read as a whole and in context. UNHCR is concerned that the adoption of Clause 51 [now clause 52] will result in a skewed and imbalanced application of the exclusion clauses in the UK" (Refugee Council Joint Parliamentary Briefing Jan 2006). McNulty inadvertently highlighted the point. He argued that "It is, in part, pettyfogging to talk about national liberation movements in 2005" (Hansard Oct 27th 2005 Col 296).

Criticism of the definitional congruence prompted McNulty to argue further that

> it is right and proper to align definitions and criteria in the Terrorism Bill with this Bill … … In the narrow focus on the definition of refugee and terrorist under the convention it is our right at least to start from the premise that these are people we would like to exclude (Hansard Oct 27th 2005 Col 295).

As far as deportation appeals were concerned the 2006 Act provides the ability to appeal in-country but only in cases where human rights aspects are raised in national security cases. Essentially those subject to removal action would have a separate right of appeal at both decision stages of that removal process, the revocation stage and the stage at which the decision to remove is taken.

Previous legislation only allowed for appeals to the Asylum and Immigration Tribunal or the

Special Immigration Appeals Commission on the basis of a point of law rather than the substance of the claim itself. The implication of Clause 52 was that any appeal could only be made on the basis that the exclusion on terrorism grounds was wrong, something that appeal bodies did not have the expertise nor power to do.

Linked to this were the continuing ramifications of the Chahal case which re-emerged in 2006 [14]. Perhaps as a result of the July 7th bombings, and putting aside for a moment that those bombing were carried out by British citizens, John Reid sought to avoid constraints on the Government's ability to deport. He argued that "We will make it easier to deport people under UK law, within the terms of the judgment, limiting as far as possible the ability to stop the deportation of those the government considers necessary to deport or remove for reasons of national security" (Hansard July 25th 2006 Col 742). Such a process was also seen as going against the principle of non-refoulment, but Reid argued that the safety of the general population should outweigh this international obligation (see Chapter 8). The Government sought the ability to balance the rights of individuals not to be removed in cases liable to lead to their torture, with the safety of the British population. Thus invoking national security would be seen to over-ride any international protection measures.

**Geneva and Temporary Leave To Remain**

The Government removed permanent refugee status and replaced it with a temporary period in which conditions in the applicant's country of origin would be kept under review. If conditions were seen to have improved within five years of the granting of temporary status, the applicant would be expected to return. McNulty highlighted the compatibility of this move with Geneva

[14] The Chahal judgement essentially rules that the Government's detention of foreign nationals without trial was illegal. This

requirements, which states that protection can cease when "circumstances in connection with which he has been recognised as a refugee have ceased to exist" (Hansard Jul 5th 2005 Col 271). Home Office Minister Andy Burnham added that "It also aligns us with several other countries such as France, Germany, Denmark, Norway and the Netherlands—to name but a few—which also grant temporary leave before offering permanent settlement"(Hansard Oct 19th 2005 Col 68). This move, according to a House of Commons Research paper would "change the way refugee status is recognised in the UK", and was thus a major departure (House of Commons Research Paper 05/52 63).

Taken beside the Government's focus on integration and community cohesion there were concerns that a state of limbo would prevent proper integration, with, for example, employers unwilling to provide training to individuals who may be removed at any time. The Refugee Council also expressed concern that the criteria for deciding on the safety of the country of origin remained unspecified. Although appeals were available to those who had their refugee status removed, no such rights were included for status removal among those with discretionary leave or humanitarian protection (Refugee Council Press Release June 30th 2005).

This 'cessation clause' was criticised for ensuring that recognised refugees "live through five years of uncertainty until the UK Government confirms they can remain here permanently" (Maeve Shirlock in The Independent Feb 8th 2005). Gerrard added that this was a reversal of the Government's position in 1998. He stated that

> The arguments that we made in 1998 for indefinite leave were not about numbers or time scales for decision making. They were about principles—what was the best way to help people whom we recognised as refugees to integrate into society, and how could we best to operate our commitments under the 1951 convention? (Hansard Oct 10th 2005 Col 127).

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judgement led to the implementation of control orders.

A minor change as far as finances were concerned but a major symbolic one occurred in early 2007 when English language lessons for asylum seekers were abolished. At a time when integration had become a key issue it may seem slightly contradictory that such a move should be undertaken. However, it should also be seen within the context of the move to temporary refugee status. Essentially the 2005 Bill sought to cancel a persons leave to remain, and thus access to benefits, at the point at which an individual was informed of the decision to remove them. This earlier removal of benefits was an incremental extension of existing policy trajectory. In addition, the removal of permanent refugee status and the lack of English teaching provision re-enforced the view of asylum seekers in the UK as transient.

Geneva was now being used as a liberal human rights issue to be contrasted with the position of the Conservative opposition. Attacking the Conservatives plans to pull out of the Geneva Convention, Charles Clarke argued that such a move would be "unworkable, unjust, counterproductive and immoral" (Hansard Feb 7th 2005 Col 1183). He added that plans for a quota would "cause considerable hardship and is not acceptable" (The Independent Feb 8th 2005)

**Diffusion and Control**

Exporting borders had long been an aim of the Government. The Five-Year strategy extended this aim and envisaged the implementation of fully integrated controls prior to arrival in the UK. It argued that "it is better to control entry before arrival, as far as possible, given the extra difficulties removal from UK territory can present" (Home Office 2005b 25). As rights only accrue on arrival to the UK, keeping individuals away from the geographic territory is a right limiting measure. By 2008 it was planned that all visa applicants would be fingerprinted, in line with an EU wide agreement. The Strategy points out that such fingerprinting was already in

operation in relation to Sri Lanka and a number of east African nations, with the aim being to make this worldwide and capable of crosschecking through an EU wide 'Visa Information Database' (VIS), more on which below.

On the day that the Five-Year plan was revealed the working holidaymaker scheme was reformed in a way that had links to the externalisation process. Browne argued that

> In future it will operate on the basis of country-by-country bilateral arrangements. This means that we will be able to vary the arrangements with individual countries in the light of such things as degree of co-operation with our own immigration control and the capacity of our posts overseas to handle large numbers of applications (Hansard February 7th 2005 Col 71WS).

Thus immigration was beginning to be used more openly as part of the Government's overall relationships with other nation states which was placing increased requirements on those nation states to perform aspects of immigration control for the Government. Charles Clarke argued strongly for a 'global approach to migration' (Somerville 2007 103). During its presidency of the EU in the second half of 2005, the UK Government placed this near the top of its agenda. The plan was essentially for development aid, readmission agreements, border management and security to be linked to a loosening of visa regimes and limited labour market access (Somerville 2007 103). Clarke argued that

> It will be most important to secure more effective returns arrangements with the countries from which most of our failed asylum seekers come. We will place migration at the centre of our relationship with those countries. We will give support to help with the reintegration of failed asylum seekers, if they need it, but we will also make it clear to the relevant countries that failure to agree such a joint approach will have implications for our wider relationship, including access to some migration schemes (Hansard Feb 7th 2005 Col 1185).

Such plans were then 'uploaded' to the EU and taken to meetings at Rabat and Tripoli. Thus the EU was used as the means by which domestic wants could be met.

Airline 'authority to carry' (ATC) schemes were also enhanced. All foreign nationals would be required to be checked against a database containing details of those the Government saw as a security threat. The use of airline liaison officers on 'high risk' routes was seen as not only having fostered a cooperative relationship between Government bodies and airlines, but was also seen as successful in terms of prevention of arrival in the UK. There were plans to roll out further the requirement that travel documents be copied by airlines. In conjunction with such universal checks would be health screening for those from parts of the world still subject to high levels of Tuberculosis. In addition, anyone planning to stay in the UK for more than three months would require residence permits in the form of ID cards. Clarke argued in the Five-Year plan that "ID cards will provide a simple and secure way of verifying identity, helping us to tackle illegal working, organised crime, terrorist activity, identity theft, and fraudulent access to public services" (Hansard February 7th 2005 Col 1183).

In the future the e-borders programme would aid these external control measures. This would allow fingerprints to be checked against a UK database and only on a clean bill of health would airlines be given authority to carry. A precursor to the e-borders programme was Project Semaphore which began in December 2004. While Semaphore sought to control movement by requiring passenger information to be checked against names held by the United Kingdom Immigration Service, Police and Customs and Excise on just ten selected routes, the e-borders scheme would eventually lead to a more general requirement. Joining Semaphore was Project Iris which, from 2005 onwards, introduced a pilot iris recognition system, with gates opening

automatically for those who have had their iris pattern enrolled in the programme (House of Commons Research Paper 05/52 34/35).

Removals through externalised controls were key to the overall credibility of the control policy. The Five-Year Strategy highlights the removal of 18,000 refused asylum seekers in 2003, along with 46,000 others either caught illegally working or removed upon arrival at port (Home Office 2005b 29). The success of the Dublin Regulation is seen as relevant to the overall control measures adopted. The designation of third countries as safe along with Dublin and its component Eurodac was hailed as enabling the return of 200 asylum seekers per month "without considering their claims ourselves" (House of Commons Research Paper 05/52 19).

In March 2007, new Immigration Minister Liam Byrne highlighted the fact that the UK had Memoranda of Understanding, including re-admission agreements, with Afghanistan, Azerbaijan, China, India, Iran, Iraq, Nigeria, Pakistan, Somaliland, United Arab Emirates (Dubai) and Vietnam, as well as Albania, Bulgaria, Romania and Switzerland. This was in addition to EU negotiated agreements (Hansard Mar 7th 2007 Col 133WS). Arrangements had also been negotiated with Sri Lanka, Turkey, Vietnam and the Somaliland to supplement other longer-standing readmission arrangements.

In the last weeks of Blair's premiership the exporting of borders re-emerged as part of the Border and Immigration Agencies 'Managing Global Migration' strategy (Hansard Jun 18th 2007 Col 78WS). New 'offshore border' and re-admission deals would form a key part of Britain's future foreign policy. John Reid argued that "Through exporting our borders, by the end of next year the people of more than 100 countries will require visas to come here; and

through the introduction of biometrics, fingerprint and identity management will enable us to track people in and out of the country (Hansard Mar 29th 2007 Col 1651). The presidency of the G8 had given the UK the opportunity to promote such a vision, prompting UNHCR and others to begin to look into the idea.

## The Points Based System and Labour Migration

The continuing importance of employers was key to the concerns of the Five-Year plan. While Clarke argued for an independent body to advise on labour market needs this would be "flexible and employer-led" (Hansard Feb 7th 2005 Col 1183). The envisaged points based system created an initial four tiers for economic migration. Points would be allocated according to "qualifications, work experience, income, and other relevant factors" (Home Office 2005b 16). One of the rationales was to produce a more transparent system in which the public, the individuals involved and employers would be able to see what was required in order to gain access. The tiers were as follows:

**Tier 1 (Highly Skilled) –** Only workers in this tier would be able to come to the UK without a job offer. Entrance would be based on qualifications from graduate level upward, work experience and current salary, with additional points for those with the most needed skills.

**Tier 2 (Skilled) –** People with skills at NVQ level 3 (A level equivalent) and above would be able to come if they have a job offer in a shortage area, and where an employer could not find the skills they require within the UK or EU.

**Tier 3 (Low Skilled) –** As a result of the additional labour now available from the new EU countries, existing quota based schemes in the agricultural, food processing and hospitality sectors would be phased out, although future needs would be kept under review with provisional plans for short term small scale quotas considered

**Tier 4 (Students) –** This tier was to bring together students and others where there was no issue of competition with their domestic equivalents (Home Office 2005 16/17).

These programmes would later be joined by **Tier 5** that encompassed temporary workers and youth mobility agreements with other nations.

While the details of the obligations of sponsors were yet to be finalised it was clear that the aim was to have employers and other sponsors act as immigration enforcers, ensuring that individuals leave at the end of their permit. Sponsors would "share responsibility with us to ensure they leave at the end of their time in the UK" (Home Office 2005b Foreword). With similarities to the diffusion mentioned in the previous chapter there was a spreading and stretching of responsibilities for migration control. The points based system would also reward employers who fulfilled what the Government saw as their obligations, giving them preference in applying for future permits.

Sponsors of individuals from countries labelled 'high risk' in terms of returns would be required to deposit a financial bond. Clearly such processes would make it more difficult for individuals from certain parts of the world to come and work in the UK which, although far from new, re-emphasised concerns regarding the bias of the entry system. Countries such as Australia and New Zealand were not considered high risk despite the numbers of nationals from those states who over-stayed their visas (Jennings 2005) Among Tier 3 and some of Tier 4, individuals would only be accepted from countries that had a 'satisfactory' returns policy, fulfilling previous points about returns becoming central to general international relationships.

Immigration Minister Liam Byrne later argued that such sponsorship was inextricably linked to deportation issues. He argued that

> the number of deportations has hit an all-time high—we now deport somebody, on average, every eight minutes. However, the points system will make it even easier to remove those who have no legal right to be here. Everybody who comes here under the points system to study or work in skilled jobs will need a sponsor. ….However, the commitment is backed by two important changes. First, there is £100 million extra for immigration policing…Secondly, there are the compulsory ID cards for foreign nationals. (Hansard April 30 2007 Col 1221).

The Migration Advisory Committee (MAC), primarily made up of employers so with an interest in excess supply, would advise on economic need and the Migration Impact Forum (MIF) would advise on the social impacts of migratory movements. The recommendations of neither were binding. According to Somerville though, "Labour will not be constrained by the MAC, but it will be able to use it as a mechanism to justify particular decisions" (Somerville 2007 35). Using expert advice in this manner is not unusual but an interesting development nevertheless. Expert advice can be relied upon as an ideational foundation when Government wishes policy to reflect that advice, but can be downplayed and ignored when it does not.

Except with regard to EU migration or in shortage occupation lists, employers would still be required to apply the 'resident labour market test', to show they could not recruit from inside the UK. As far as the impact of EU expansion is concerned the strategy pointed out that until the residence test was passed individuals would only be entitled to in-work benefits and that just one per cent of those registered to work had applied for such benefits (Home Office 2005b 13). The link in the strategy to increased European labour supply and restrictions elsewhere is explicit. "Labour from the new member states will over time enable us to phase out our current low skill migration schemes for people from other parts of the world"(Home Office 2005b 13).

The increased use of migrant workers was presented as a fundamental success story of the British economy. With 600,000 vacancies and the largest proportion of people ever in work, it was celebrated that in 2003, outwith EU migrations, over 180,000 people came to the UK to work (Home Office 2005b 13). Access would continue to be employer led and 'responsive to market needs'. The Government argued that for certain skill categories, and in jobs that could not be sourced nationally, they would continue to recruit in consultation with employers 'and other stakeholders'. Later in the paper the Skills for Business Network, a peak organisation of the 25 Sector Skills Councils was given an advisory role in terms of labour market needs and skills shortages (Home Office 2005b 16). This celebration of wanted migration is important but also shows the changing contours of who is wanted and thus who are the 'good' and 'bad' migrants from a policy perspective.

**Nationality and Settlement**

Some similarities with a form of guest work can be seen in the Government's overall migration plans. The 5-year Strategy argued that permanent settlement created different issues to that of a temporary nature. Although permanence was seen as contributing more economically, "they also start to have families and to make greater use of public services" and thus "long term settlement must be carefully controlled and provide long term economic benefit" (Home Office 2005b 21). The strategy envisaged the movement of workers although not, out-with Tier 1, the movement of potential citizens or residents. That is, all workers outside Tier 1 would have limited rights and would not be considered for anything other than temporary stay, unless of course their skills became needed or sought after, in which case they could conceivably switch to Tier 1.

A number of bureaucratic obstacles were put in the way of those seeking to become British

citizens. The strategy points out that "they must pass a residence test; be intending to make the UK their home; be of good character; and pass an English language requirement and (from later this year) a test of knowledge of life in the UK" (Home Office 2005b 22). Among non EU citizens, professionals and entrepreneurs would see their qualifying period for permanent residence reduced from four to two years while the applicability moved in the other direction for less-skilled migrant workers, from four to five years.

Chain migration, whereby primary migrants are entitled to bring their families to live with them, was to be ended. In future it was envisaged that only citizens or those who are at the point of eligibility for settlement would be entitled to bring family members with them.

**Illegal Migration and Employer Sanctions**

During the 2005 election campaign Tony Blair stated 18 times in an interview on Newsnight, that knowledge of the number of illegal migrants in the UK was impossible (BBC April 27th 2005). A Home Office official later told the Home Affairs Select Committee that he did not have 'the faintest idea' how many illegal migrants were in the UK (HASC Hansard Nov 2nd 2006 Col 50WH).

However, later Government research produced a figure of over 500,000. Immigration Minister Tony McNulty was keen to point out that "This is only an estimate and should not be seen as a definite figure…...By its very nature, it is impossible to quantify accurately" (Hansard Jul 18th 2005 Col 1475W). Whether this led to or was led by a developing focus on illegal immigration rather than asylum is an interesting point. As mentioned previously the Government now felt that asylum, at least in terms of applications and the backlog was 'sorted', which may be part of

the explanation for this new focus. For the first time the Government directed its attention with regard to issues of 'abuse' at non-asylum migration. McNulty argued for example that

> it is not asylum seekers or others who make up the largest group of those who are here in an illegal capacity, but those who, for whatever reason, overstay. If we are to have a cogent, transparent and, I would say, progressive immigration policy based on what we are doing with managed migration, we must be able to take action against those who overstay and work illegally (Hansard Oct 20th 2005 Col 153).

Byrne was clear that there had been a change in focus as far as issues of immigration were concerned. He argued that

> we have quite dramatically repositioned our policy in the last year. We have made it very clear that we want to see a much sharper attack on illegal immigration**,** they are the ones undercutting wages. It means stopping illegal journeys by creating an offshore border control. It means shutting down illegal jobs and it means the introduction of ID cards (Daily Telegraph 21st April 2007).

In tandem with these developments were plans to further restrict the access of unwanted migrants to social services. John Reid announced that despite four major pieces of legislation and constant rule changes that restricted access to such services, the Government felt there was "an underlying reality that we have not been tough enough in policing access to such services as council housing, legal aid or NHS care" (Guardian February 24th 2007). The solution was "a package of measures that will shut down access to benefits and services for those that should not be here. Living here illegally should become ever more uncomfortable and ever more constrained" (Guardian February 24th 2007). Although certain legal economic migrants were entitled to benefits and services on the same basis as UK nationals, others would have temporary periods without such entitlement and still others would be entitled to nothing. This system of stratified rights questions any notion of 'post-national' rights. Once more talking tough on the 'bad' migrants was the fall back position, but the 'bad' was expanding.

**Illegal Working**

Illegal working was thus becoming more of a political issue. The Government operated on the assumption that the majority of 500,000 illegal stayers in the UK were working. Existing powers under Section 8 had seldom been used. In 1998 just one case had been pursued and found guilty. These figures went to four pursued with one found guilty in 1999, ten pursued with four found guilty in 2000, dropping to just two pursued with one found guilty in 2003 (Hansard Jan 6th 2004 Col 322W). So despite the widespread feeling that more illegal working was taking place, prosecutions were rare and becoming rarer. Even in cases that were prosecuted and found guilty, fines fell well below those allowable by law, with the highest to date being £2050 of an allowable £5000 (Hansard Jan 6th 2004 Col 322W).

Rather than simply enforcing existing law more rigorously the Government decided that on the spot civil penalty fines would be more effective. The aim was to catch those who were deliberate rather than negligent. In the new offence of 'knowingly employing an illegal worker' the employer would have to know that the worker had no legal right to work. The maximum penalty for this offence would be two years in prison and/or a £5000 fine. According to Spencer enforcement units made a series of periodic and well publicised raids to back up its introduction (Spencer 2007 355). The CBI however, argued that the introduction of civil penalties was 'a distraction' (CBI response July 5th 2005) while the JCWI voiced concern that employers were becoming ''enforcers' of 'immigration control' (Hansard Nov 16th 2005 Col 1032)

A defence against the civil penalty, although not the criminal one, was that the employer had checked and copied documents. Interestingly the burden of proof would be on the employer, to show that s/he had performed the required checks. The new offence was likely to have a

maximum fine of £2000, less than the existing £5000 but more than the average levied up until this point. The £2000 would also be in line with existing fines for the transport of people without a right to be in the country (House of Commons Research Paper 05/52 32).

**Information Sharing**

As far as the collection and sharing of information is concerned the Bill sought to allow border agencies, defined as immigration, police and revenue and customs, to collect and store fingerprint and biometric data used in passports and visas. Individuals were now to be legally required to provide their fingerprints within tight time scales, a maximum of three days for asylum seekers. What is more agencies would be compelled to share such information with one another and with domestic and foreign law enforcement agencies. This closer cooperation was previously envisaged in the White Paper *One Step Ahead - A 21st Century Strategy to Defeat Organized Crime* and ran in parallel with the rolling out of measures in the e-borders programme. The IND could now require carriers to obtain information about passengers and pass them to the UK authorities.

A new Authority to Carry scheme would require airlines to check their lists against government databases, allowing the Immigration service time to prevent some passengers from boarding. Linked to these developments the UK opted into the EU Directive *on the obligation of carriers to communicate passenger data (*2004/82/EC). What all of this meant was that there were a number of databases with overlapping remits and responsibilities. Some concerns regarding the purpose and security of such databases were voiced. The Home Affairs Committee voiced concern at the "proliferation of large-scale databases and card systems, since we have seen little to suggest that they are being approached in a co-ordinated way" (HASC Fourth Report July 2004).

Nevertheless, extensive powers to check the identity of individuals using biometrics were included and increasingly linked to the ongoing desire to introduce more general ID cards. Tony Blair would later argue that

> there are two things that we need to do. First, we need to introduce electronic borders, which we have introduced for some 26 routes and which we need to roll out across the entire country. Secondly, we need identity cards both for foreign nationals and for British nationals (Hansard May 17th 2006 Col 992).

An EU wide control system operated through the reporting device of the Schengen Information System' (SIS). SIS was soon to be replaced, with the UK participating, by SIS II and a new Visa Information System (VIS). Despite the UK choosing to be involved it would not be entitled to access to immigration data within the VIS due to its non participation in the Schengen agreement. However, in combination with their own databases, a huge amount of data would be stored and checked on migrants and potential migrants.

Following on from a series of successful trials, by 2008 the Government planned to fingerprint all visa applicants, whether successful or not. In addition the UK was bound by EU regulations that established a common format for visas, a format that includes a photograph. Another EU development that the UK sought to be involved with was the standardisation of passports, such that by 2008 all new passports would contain not only a digitalised facial image but also fingerprints. Although such a measure would eventually apply to citizens as well as immigrants, like ID cards the issuing of such biometric forms of ID were to be required by immigrants first, along with those working in 'sensitive' areas such as airports. In a sense they would be normalised prior to being required by all UK citizens (Guardian July 26th 2006).

Thus the Bill looked forward to the time when the technology in the e-borders system would be

available to allow facial, iris and fingerprints to be scanned and compared to travel documents. The Bill gave officers the powers to examine passengers on arrival and departure, although it was not made clear whether or not such powers would also be applicable to EEA nationals, or even to British citizens. However, there was also a clause that made asylum seekers and their dependents subject to much tighter compliance deadlines, such as attendance at a particular time and day, while others could attend at a point of their own choosing.

Many of these measures were designed to help the Government fulfil its wish to export UK borders. While ALO's and juxtaposed controls had already sought to prevent poorly documented people from setting foot on UK soil, the increased use of pre-entry controls and intelligence marked a ramping up of the move. The prevention of arrival on UK soil continued to be the main priority for the Government. Reid argued that "Our first objective is to strengthen our borders, use tougher checks abroad so only those with permission can travel to the UK and ensure we know who leaves" (Hansard July 25th 2006 Col 736).

On becoming Immigration Minister one of Liam Byrne's first acts was to announce the re-introduction of embarkation controls, finally abolished in 1998. He announced that "we need to toughen our borders, and counting people in and counting people out is a basic discipline that we need to reintroduce" (Daily Telegraph 21st July 2006). More than simply an arithmetic process this re-introduction was seen as a means of having, or at least giving the impression of having, authoritative control of Britain's borders.

**Conclusion to 2006 Act**

The need to appeal to two different sections of the population simultaneously is evident in much of Labour's rhetoric and can be seen in Clarke's responses to questions from Labour Party

members about the 5-year-strategy. In a question and answer session he argued for more people coming to the UK for work and study but also that "We want more people coming to look for refuge". He argued that such a move was legal and moral but also "something which is part of the essence of this country" (Daily Mail Feb 15th 2005). However, the increase in numbers looking for refuge was only considered a goal in the pre-accredited side, that is, those given refugee status by UNHCR while still in their region of origin. Nevertheless, the Government's constant harsh rhetoric in the media and in Parliament can be contrasted with this softer approach to this more liberal audience.

The Labour Chair of the Home Affairs Select Committee also acknowledged the different audiences that policy had to assuage. John Denham, a former and future Minister, stated that "Labour home secretaries know that tough action works well with some supporters but appalls others" while also pointing out that illegal migrants seen in the abstract attract opprobrium among the public while individual families to be removed will attract sympathy and support. His solution focussed almost entirely on the pull factor of illegal work, not the benefits that the Government argued in the case of asylum seekers (Guardian July 26th 2006). This signified not only dual audiences but also a move in the assumed pull factors according to the changed composition of the migrants of concern.

**The European Union**

Following on the heels of Dublin Π a number of other EU agreements signalled the developing EU wide asylum system. The receptions directive (2003/9/EC) was created in 2003 and laid out a series of minimum standards, with Ministers agreeing on a narrow definition of support requirements necessary under the Geneva Convention. While technically binding it did not come into full force until February 2005. The qualifications directive **(**2004/83/EC) established an EU

wide definition of refugee. Agreed in March 2004 it was to come into full force in October 2006, although the definition used Geneva as its starting point and thus its focus remained narrow. The procedures directive **(**2005/85/EC) set out common ways in which applications should be processed. The UK Government had fought a rearguard action on the matter of appeals. Essentially the directive required a proper appeal system and while the UK Government argued that the system of judicial review complied with the requirement, many of its European partners were initially unsure that there was sufficient form of redress in such a process, although they were eventually 'convinced' by the UK government (Daily Telegraph Jan 25th 2005).

In a written answer Des Browne had highlighted the degree to which the UK was engaging with EU immigration measures. He pointed out that to date the UK had opted into

> Eight measures related to Dublin and Eurodac arrangements which enable us to return asylum seekers to the European Union member state responsible for determining their claim; 11 negotiating mandates for European Community readmission agreements with third countries and four resulting readmission agreements that have been finalised to date. The aim of these agreements is to facilitate the return of third country nationals who do not or no longer have a basis to remain in the territory of member states; Four minimum standards measures in the field of asylum, which the UK already adheres to; 11 measures on illegal immigration contributing to increased security of the European Union's borders; Two measures relating to the format of visas (Hansard March 7th 2005 Col 1591W).

Thus by early 2007 the Government confirmed that the UK had opted in to every asylum directive to date and were abiding by plans to create a common asylum system by 2010 (Hansard July 15th 2007 Col 778W).

Agreements pertaining to increased control and restriction were also evident at the Brussels Council meeting in June 2006. Blair argued that agreement had been made on

> a number of specific measures and initiatives to combat illegal immigration, designed to strengthen borders while improving co-operation with some of the main source countries of migrants and refugees. In particular, the Council agreed to implement regional protection pilot projects to protect refugees in their region of origin and, therefore, avoid the need for mass migration. We also agreed to intensify work on readmission agreements, so that across Europe failed asylum seekers can be more easily returned (Hansard 19 Jun 2006 Col 1069).

Thus prevention of arrival and easier removal were key to EU agreements. While visa regimes were being devised at the European level, the UK also had their own longer list of nations whose citizens would require a visa to visit the UK, and increasingly also to stop on route elsewhere in the form of transit visas. However, although concerns about immigration vary across nations and time, the desire to maintain some national control is more constant. As Becerro points out "member states are interested in preserving full control over the admission to their territory of people from third countries, and not least because of obvious political and public policy ramifications"(Becerro 2005 12). Indeed the Government justified their failure to ratify the UN Convention on Migrant Workers on the basis of national peculiarities. Des Browne had argued that

> The UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families is not compatible with the Government's immigration policies…… We consider that unemployed migrants being able to remain in the UK and claim benefits in these circumstances would act as an unnecessary "pull factor" and undermine current immigration controls (Hansard Jan 24th 2005 Col 134W).

This strategic or instrumental form of externalisation showed again the system of stratified rights created by the Government. The Convention would have placed restrictions on what the Government could do with regard to immigrants and so could not be considered.

**The Further Enlargement of the Union**

In April 2006 it was announced that Bulgaria and Romania would become EU members on January 1st 2007. With this further EU enlargement imminent the Home Office predicted that between 60,000 and 140,000 Bulgarians and Romanians would come to the UK should no restrictions be enacted. Reid gave a strong hint, however, that restrictions would be used as a means of assuaging public concern. He argued that while he did not accept that there was an 'unmanaged tide' of immigration, "I do accept that people want reassurance that when we are allowing people to come to this country they contribute something towards it" (BBC Aug 6th 2006).

While employers had generally welcomed the dual impacts of increased migration, filling difficult to fill vacancies and keeping wage inflation down at a time of high employment, there were some signs that a change of focus was being considered. Richard Lambert, the Director-General of the CBI, later voiced concern that mass migration had become a 'social issue' that had "potential implications for the social fabric, on housing and the way we live" and that thus "we are suggesting a pause" (The Daily Telegraph Sept 6th 2006.) However, others such as the National Farmers Union and the Fresh Produce Consortium, the peak organisation for packers, processors and wholesalers, argued strongly to maintain more open access (Financial Times Aug 23rd 2006).

Reactions to the enlargement of the A8 combined with the underestimates concerning the numbers of migrants that would come to Britain as a result prompted restriction to be placed on the rights of Bulgarians and Romanians to access the UK labour market. According to Spencer in this case "the economics said yes, but the politics no."(Spencer 2008 353). Indeed one unnamed British cabinet Minister argued just this point, that "sometimes politics has to override

the economics, and that is what is going to happen in this case" (Daily Mail Sept 4th 2006). Thus issues of political legitimacy were enough to assuage many of those most supportive of a free labour market. While employers were generally in favour of open access they continued to source large excess labour supplies from the A8, and thus were prepared to go against what may have been in their objective interest in the short term in order to allow overall opposition to be assuaged.

In contrast to the involvement of Blair in decision making in previous years, Spencer argues that Blair played little part in John Reid's decision to impose restrictions (Spencer 2007 353). Despite the fact that the Foreign Office remained supportive of open access, Reid's arguments for restriction would eventually prevail. One source close to the Foreign Secretary complained of John Reid "bulldozing through" his plans (The Evening Standard Oct 25th 2006).

The only unskilled work A2 nationals could apply for was in food processing and agriculture, while high skilled workers would have to apply according to Tiers 1 and 2 of the points based system to come. In late 2006, a £280,000 advertising campaign was launched to discourage Romanians and Bulgarians from attempting to migrate to the UK (Independent Jan 2nd 2007). John Reid also linked enlargement with other low skilled migration. Employers would now be expected to look exclusively towards EU members for low skilled workers and places on low skilled schemes would now be restricted to Bulgarians and Romanians (Hansard Oct 24th 2006 Col 84WS).

When Bulgaria and Romania joined the EU in January 2007 the Government opted to allow an initial 20,000 agricultural workers access to the UK labour market. In the first three months of 2007 8000 Romanian and Bulgarian migrants came to work in Britain (Home Office 2008). This

came at a time where evidence was appearing to show that migration from the A8 had peaked, with stories of agricultural employers in particular having difficulty in attracting staff becoming a regular feature of the news. (See for example the Times report on availability of strawberry and raspberry pickers on May 28th 2007). While embarkation controls were absent, however, much of the evidence for A8 nationals returning home was anecdotal.

**The Aftermath of the 2006 Legislation - Labour Migration**

The points based labour migration system was officially announced in April 2007 and predicted to come fully into force in early 2008. Liam Byrne announced the timetable the day after the release of a Policy Network pamphlet in which he had accepted that the level of migration in recent years had 'deeply unsettled the country' (Byrne in Policy Network 2008). The points based system was, he said, intended to ensure that migration acted in support of British interests and would do so by being "simpler, clearer and easier to enforce" (Buonfino 2004 48).

John Reid then sought to remove raw numbers from the to and fro of the immigration debate by arguing for an 'optimum level of immigration' (Guardian Aug 7th 2006). This level would be set by an advisory committee of, 'informed and non-partisan' people who would set limits based on what was "beneficial in terms of enhancing the economy of this country commensurate with our social stability" (Guardian Aug 7th 2006). The arms length nature of the MAC was designed to "take it away from being a party political football and indicate we are listening very carefully to people's concerns about immigration" (Guardian Aug 7th 2006), although it should be re-emphasised that its recommendations would not be binding. Reid argued that a number of factors would affect the level at which immigration was set,

> not least the birth rate, the death rate, the emigration level from this country, which is now not people leaving because they are in impoverished circumstances

> seeking a better life, as was the case some time ago, but people who are reasonably affluent and want to spend their last years of retirement abroad. It will depend on the growth of the economy, the specialism and skills, and so on. There is a huge number of factors (HASC Dec 12th 2006 Question 68).

Liam Byrne, in a speech to the CBI, argued that there were other 'interests' that also had to be taken on board when making these decisions about migration (Financial Times June 5th 2007). The MIF would complement the MAC by adding a non-economic analysis that would feed into Government policy. Although business would be represented, so too would other groups such as housing, local government, the police, the National Health Service and the Trade Unions. Byrne argued that demands for labour would not outweigh other social issues (Byrne 2008). Such an argument was relatively uncontroversial. For example John Cridland, the CBI deputy director-general, argued it was "absolutely right that issues of public infrastructure and social cohesion are taken into account alongside economic needs when decisions are made on migration" (Financial Times June 5th 2007). Nevertheless, employers had been seen as the only legitimate interest on the labour migration side until this point, and so the change is significant.

In February 2007 a credit system was also being developed for firms that apply to employ foreign workers. Those that had a good record of not employing illegal migrants would be rated as reliable and thus would be given more scope to employ such workers in the future (Guardian Feb 24th 2007). As part of this process there would be a one-stop shop where the status of individual migrants could be checked by both public and private bodies. The Government saw the introduction of ID cards for foreigners as vital to the effectiveness of this one stop shop.

**The 2007 Borders Bill**

Although out-with the scope of this thesis in early 2007 yet another Bill related to issues of

immigration began in the form of the Borders Bill to be followed by a Simplification Bill in 2009, although this has been drastically paired back. Liam Byrne introduced the scope of the Bill in Parliament thus,

> Last summer, my right hon. Friend the Home Secretary launched the most radical shake-up ever of our immigration system. ….. over the next few months, we will introduce five important ….First, we will introduce a new strategy to bring together government to tackle illegal immigration in the round, ….. Secondly, we will provide new resources to help double the budget for enforcement ….Thirdly, we will introduce new technology to count everybody in and out of Britain. Fourthly, we will establish stronger international partnerships ….. Fifthly, the Bill will provide new powers for the borders and immigration agency, which will go live in shadow form on 1 April this year. The Bill should not be dismissed as another immigration Bill. It is much more ambitious than that. It is part of an ambitious plan of reform that has been co-authored by many immigration and nationality directorate front-line staff. (Hansard Feb 5th 2007 Col 590).

The 2007 and 2009 Acts were presented as the 4th and 5th time for radical reform of the system. Increasing the powers of Immigration Officers was one of the key and most controversial aspects of the 2007 Bill. While being given 'quasi-police powers' (Hansard 5 Feb 2007 Col 594), there were no similar requirements either regarding conforming to race relations legislation or complaints procedures. One of the issues of concern was the power given to detain, explained by Byrne as recognising "that the role of the immigration officer is changing and is increasingly important in the wider battle for security" (Hansard 5 Feb 2007 Col 593).

The compulsory carrying of identity cards by foreign nationals is also explicit in the Bill. Described by Byrne as a way of 'phasing out 20th century forms of identification' (Hansard 5 Feb 2007 Col 596), the incremental extension of the scope of ID cards is evident. Byrne saw this as the first stage in the general use of ID cards, arguing that "we will introduce biometric immigration documents and ID cards for foreign nationals in 2008. We will then introduce

voluntary ID cards for British citizens in 2009" (Hansard 5 Feb 2007 Col 596). Part of the rationale for this was related to the denial of social services to those with no legal right to be in the country. Thus responsibility for identity checks on foreign nationals would be placed not only on employers but also public services.

The whole Bill was predicated on the need to narrow the doors of entry to the UK from the developing world. Byrne was explicit in concluding that

> Over the next 14 years, the labour market in the developing world will increase by 1 billion people. We know from the International Labour Organisation that somebody in a low-income country can increase their income fivefold by moving to a high-income country. Unless we take action today, the pressure on our borders will grow. The changes that we propose are vital to render our immigration system fit for the future (Hansard 5 Feb 2007 Col 602).

In the last months of Blair's premiership the conflation of different types of migration was condemned by Liam Byrne. He felt that there were dangers in that it "has the potential to jeopardise this country's proud tradition of offering humanitarian protection, refugee status and asylum to those fleeing persecution, torture or worse in different parts of the world".(Hansard Mar 28th 2007 Col 482WH). In addition this conflation had earlier been used by Tony McNulty as an argument against a regularisation of illegal stay. He argued that "I do not accept the premise that, in Government at least, there has been a blurring at the edges of those categories.….so I do not recognise the concept of amnesty" (Hansard Standing Committee E Oct 20th 2005 Col 163). However, increased attention to illegal migration along with the restrictions placed on the A2 nations were indicative of the political shift towards the highlighting of employment issues over asylum ones. It should be added though, that the source of pressure had altered. Asylum numbers had dropped while A8 migration rose considerably. This inevitably brought attention to those A8 nationals and the impact that they were having both economically and socially.

## Conclusion

While Labour's 1997 manifesto had contained just 135 words on immigration at a time when a small number of the population saw it as a major issue, by the time Tony Blair stood down as Prime Minister, migration had become the first or second most important issue for a large section of the public, with 40 per cent putting it as their top concern (Birmingham Post April 19th 2007). Thus this chapter and the previous three have indicated a problematisation of immigration which was having an impact on the views of the audience, contributing to the perception of immigration in crisis. However, the focus of concern had shifted, reflected in much of the 2006 Act with its increased focus on 'illegal' migration rather than asylum seeking. Nevertheless, the chapter has shown that a dual immigration process, with migrants defined according to their 'goodness' or 'badness' was increasingly evident.

This chapter has also, however, shown an expansion of the migrant types seen as a problem to be dealt with. This did not mean that asylum seeking was no longer prioritised. As has been shown, control measures with regard to asylum seekers continued. It was simply that they had been joined by control measures for other migrants too. The relationship between this increased attention to non-asylum migration was occurring at a time of European enlargement and so migrant workers could be sourced from within the European Union, meaning that the Government felt more 'free' to frame other types of migration negatively. Some of the consequences of this framing started to be developed at the end of this chapter. However, Chapter 9 will develop this theme more fully. The next chapter integrates many of the develoments of the previous four chapters and links them more concretely to the core research questions and the public policy approach highlighted in Chapter 2.

# Chapter 8 - The Political Dynamics of New Labour Immigration Policy: An Analytical Overview

## Introduction

As a chapter that aims to sychronise many of the developments of the previous four chapters, there are a number of key questions that this chapter seeks to address. These include; did a dual immigration process maintain throughout Labour's period in office? Was an immigration crisis created by the framing of the subject and the Government's policy involvement? What has been the impact of framing and legislative activism on public perceptions of the 'crisis'?

In addition to these questions, there are a number of others that relate to the consistent themes in immigration policy under New Labour. The combination of control and externalisation lead to two further questions addressed in this chapter. These are; what did the framing of asylum issues mean for the Government's perspective on international obligations within the asylum system? And related to this; what does the diffusion and externalisation highlighted in the previous four chapters tell us about the actors involved in immigration control?

This chapter proceeds as follows. Firstly the chapter argues that policy, and the migrants it is aimed at, has been characterised along a continuum of wanted-ness that has historical continuities. This duality of policy has had significant impacts on the direction of the debate. At the domestic level the amount of immigration law being passed as well as the New Labour propensity to set targets in all aspects of policy-making have created the sense of immigration in crisis, one that is heightened by each passing Act and missed target. In addition some of the key continuities in Labour's policy approach have been the externalisation and diffusion of immigration controls, and linked to this the consistent questioning of key international protection

regimes. These institutions are shown to rest on less than solid foundations as the Geneva Convention was consistently called into question and circumvented. This chapter contextualises all of these issues, while also providing signposts regarding some of the theoretical contributions which are developed in Chapter 9.

## New Labour's Dual Immigration Policy

The dual nature of the immigration system was spelt out in David Blunkett's plans for the 2002 Act that brought labour migration more into the open. He argued that Britain would continue to welcome wanted labour migrants while being "'as tough as old boots' on those who abused the system" (Guardian Oct 25th 2003), at that time just asylum seekers. The Government sought to portray their position as a non-contentious and rational problem solving one, indicative of viewing policy-making as mechanistic rather than overtly political, an attempt to highlight pragmatism rather than ideology or principle.

Policy was control on one side to allow continuity on the other. Tony Blair announced "we will neither be Fortress Britain, nor will we be an open house. Where necessary, we will tighten the immigration system. Where there are abuses we will deal with them, so that public support for the controlled migration that benefits Britain is maintained" (Speech to CBI April 27th 2004). In a sense only through being tough on unwanted migrants could acquiescence be maintained for those who were wanted, particularly by employers. Keith Best, former Conservative MP and head of the Immigration Advisory Service (IAS) argues that policy

> was a kind of head of Janus in so far as one mouth was saying we welcome economic migration and we need these people in the vibrant economy … but then the other side of the mouth is saying completely the opposite and the actions are even more contradictory in terms of everything that's coming out in enforcement, how we're going to crack down on the illegals and everything like this (Interview June 14th 2007).

Best argued that enlargement was inextricably linked to this dual process. This allowed labour gaps to be plugged and provided the freedom to 'crack down' further on the unwanted without creating labour shortages, thus keeping employers politically supportive (Interview June 14th 2007).

In a sense the dual institutions of an open labour market for economic migrants and a policy of restriction for asylum seekers to some degree follows a pattern of behaviour from the past, a degree of institutional path dependence (see Hall 2002 and Reich 2000 in Chapter 2 for discussion of path dependence). In addition to such continuity in administrative decision making, and ignoring for a moment the huge increase in both primary and secondary legislation under Labour, the principles underlying restriction also show continuity with the past. Blair, for example, as Shadow Home Secretary in 1992 argued against restrictions in appeal rights in the 1993 Act thus,

> It is a novel, bizarre and misguided principle of the legal system that if the exercise of legal rights is causing administrative inconvenience, the solution is to remove the right….when a right of appeal is removed, what is removed is a valuable and necessary constraint on those who exercise original jurisdiction. That is true not merely of immigration officers but of anybody (Hansard Jan 11th 1992 Col 641).

It was just the administrative inconvenience of the liberal right to claim asylum and an accompanying appeal system should that claim be refused that Labour in Government challenged. Best argues that this inevitably led to judicial challenge.

> I think that the absence of an independent check on any decision maker, particularly in the public field is a highly deleterious thing and will lead to poor decision making and I fear for the government will lead to more challenges by way of judicial review which is a very expensive way of doing it (Interview June 14th 2007).

Again tough action in one area creates displacement as issues move to another.

Consequently the removal of some forms of appeal has an impact on other parts of the system. Appeals are displaced elsewhere, such as towards judicial review, and migratory movements move from asylum towards irregular movement, more of which below.

The judiciary was subject to Governmental pressure. Blunkett criticised 'airy fairy civil liberties" and the people who defend them (Guardian Nov 15th 2001) as well as counter-posing the liberal arguments of the judiciary with the democratic will of Government (Hansard Feb 24th 2003 Col 9). While attempting to remove the right of refused asylum seekers to take their case to judicial review Blunkett argued that "Judges now routinely use judicial review to rewrite the effects of a law that Parliament has passed….. we need a long hard look at the constitutional relationship between Parliament and the judges and be clear how it has changed" (Evening Standard May 12th 2003). Although not feeling that there was a direct and controlling form of interference by the Government one immigration judge stated that "there certainly is from the top some kind of influence, pressure, to get the numbers down" (Interview Aug 17th 2007).

The removal of appeal rights was one of the main sources of contention between some elements of the judiciary and the Government. While the courts on occasion had interpreted appeal rights as being fundamental rights and so protected under the European Convention on Human Rights, the Government, contrary to their position in opposition, saw them as more of an administrative matter. While opposition MPs argued that this was a problem of Labour's creation that withdrawal from the Convention would fix (see Ian Duncan Smith Hansard Jan 29th 2003 Col 876), the Government instead found other administrative methods such as third country provisions as a means of avoiding appeal rights, or at least making them non-suspensive and thus difficult to action. Thus even the supposedly stringent institution of the ECHR could be

circumvented. In addition there were derogations from the Convention on clauses such as those relating to detention (Hansard Jan 15th 2003 Col 675).

On the 'wanted' side there seemed little dissention as far as the managed migration thesis was concerned. While the Trade Union movement welcomed it from a liberal perspective, and the Conservatives saw it as logical, employers, undoubtedly the biggest winners from such a system, argued that "using controlled migration to help reduce skill gaps and stimulate economic growth in geographical areas that might otherwise have problems is nothing more than common sense" (CBI Director General Digby Jones quoted by Blair in Speech to CBI April 27th 2004). The developing consensus on migration as an economic necessity is commented on by Gerrard.

> I remember going to a meeting here 4 or 5 years ago that I was asked to chair where we had speakers from the CBI, the TUC and someone from a research organisation talking about managed migration and there was virtually no disagreement….they were saying almost identical things about economic needs, about skills shortages, very very similar arguments (Interview May 10th 2007).

Furthermore Gerrard argues that what opposition to the asylum side of immigration policy that did exist, in parliamentary terms, showed a congruity between the Government and Opposition.

> The last 2 or 3 Immigration Acts, where there has been opposition its come from Labour back benchers and to some degree the Liberals…. when you look at the Tory front bench their line, they'll have a go you know, the Home Office is out of control, you don't know how many illegal immigrants there are, that's the public pitch if you like but actually when its come to the legislation they haven't really led much of a big campaign about the legislation (Interview May 10th 2007).

Nevertheless as far as the wanted were concerned the CBI argued that "we want to promote a flexible and mobile workforce, we want employers within the UK to have the right and the ability to within reason employ the best people from wherever in the world" (Duvell and Jordan

2003 321/322). This desire chimed very closely with the fundamental beliefs of the Labour Government, that of a free market in labour migration, at least at the higher end, and a continuous but pluggable supply of workers to do jobs that UK workers either would not or could not do. It is also linked to Labour's activation policies, that people are defined as more or less productive units of labour (see for example Scott 2005).

For many a turning point with regard to labour migration had occurred in 2000 when the existing economic migration schemes came more into the open for the first time, with the Government seeking to increase them in the year ahead. The White Paper leading to the 2002 Act specifically located the direction of policy as being determined by employers and the labour market. It stated that

> The exact role for managed migration depends on the extent and nature of problems, bottlenecks and opportunities in the labour market. In the short run, migration may help to ease recruitment difficulties and skill shortages and also help to deal with illegal working. In the long run, if we are able to harness the vitality, energy and skills of migrants, we can stimulate economic growth and job creation (Home Office 2002b 38).

Barbara Roche as Immigration Minister was widely seen as an advocate of an employer responsive labour recruitment initiative. In a speech to the IPPR, Roche argued that "We are in competition for the brightest and best talents. The market for skilled labour is a global market and not necessarily a buyers' market" (Roche Speech to IPPR Sept 11th 2000). Thus UK labour migration had to allow employers to access high end labour migrants through easier work permit systems and low end through various other employment schemes, joined later by enlargement.

In a later interview Roche points out that the response to a speech calling for more immigration was low key. "Most of the comments were actually pretty favourable…..People on the right

didn't throw up their hands in horror. People said, at least let's debate it in a grown-up way" (New Statesman Interview Jan 27th 2003). The fact that such responses can be elicited by a focus on the positives could have been used as a means of lessening hostility to other migrant groups. Nevertheless the speech was also made at a time of rising asylum numbers, when most attention was focused in that direction, leaving the suggestions of increased migration on the other side relatively underdeveloped and unexplored in public discourse.

Not only were employers accessing wider labour supplies there were also suspicions that this was operating against wage inflation. Shadow Home Secretary David Davis highlighted a paper from the CBI which he described thus, "the CBI rather gloatingly referred to the fact that the large number of immigrants has pushed down wages for lower skilled workers. The CBI is absolutely delighted about that, of course." (Hansard Feb 5th 2007 Col 629). Excess labour supply has long been a means by which wage inflation could be kept down, and employers had a clear interest in maintaining access to relatively cheap and plentiful labour.

One Institute of Directors study also found that a lack of skills base within the indigenous population was the main reason for the high employment of migrant workers. While 61 per cent of employers highlighted this as the main factor, 16 per cent admitted that labour costs were the primary factor (Institute of Directors 2007).

As well as obtaining access to labour the CBI also appeared to have a large influence over issues of workers' rights. For example they initially successfully lobbied against the directive on temporary agency work arguing that "the directive would undermine labour market flexibility and make the UK a less attractive place to do business" (CBI Europe Brief Nov 2003). They also opposed the civil penalty for employers illegally employing workers, arguing successfully in the

end that a yellow card first offence system should be utilised. Thus within the labour side of immigration, employers were a powerful and influential interest, capable of gaining their wanted end points, sometimes without having to espouse their position, while being subject to only the most perfunctory quid pro quo. Sullivan states that

> when we're talking about who has influence on policy, business has a lot of influence on government thinking……clearly one of the things that was happening is that business was saying 'we need external supplies of labour because of our skills shortages', it was always presented as skills shortages rather than in things like agriculture it was numbers shortages. So the government changed its tune in a way because they were risking a revolt from business (Interview Aug 1st 2007).

Indeed the Government had been consistently clear that they sought to avoid any 'burdens on business'. Home Office Minister Beverley Hughes for example had argued that "we want a "light touch" approach to this. We do not want to have anything which puts a particular burden on employers" (HASC March 9th 2004).

During the 2005 election the issue of upper limits regarding total migration numbers emerged. In a Newsnight interview Tony Blair argued against an 'arbitrary quota' for total migration. "The point is to make sure that you have strict controls that mean the only people your economy needs to come into this country come into this country…..But the reason I couldn't put a figure on it, is that I don't run every business in the country" (BBC April 29th 2005). This was again evidence of the Government's business-centric approach. Blair highlighted the influence of employers on policy-making in implying that only business was aware of their needs and that policy was solely responsive to *those* needs. Much has been written about the reification of the private sector under New Labour (see Hall 2005 for Education, Gaffney et al 1999 on PFIs and McLaughlin et al 2001 on criminal justice). In a sense the maxim of 'the market knows best' dominated and 'light touch' regulation became the watchword. Employers were therefore given

a defining role in the control of who was to be allowed to make Britain their home, at least in the short term.

**Symbols and Crisis - Legislative Activism and Targets**

One issue that was continually raised in interviews conducted for this research was the sheer amount of immigration legislation being passed under New Labour. Not only were there five substantive Acts of Parliament, with numerous other pieces of legislation also having an immigration dimension (see Appendix 3), but secondary legislation along with reform of the institutions responsible for implementation have been constant. Three times during the period under review the Government announced the most fundamental change to immigration for a generation, each time seen as the final time until such time as the next was required. Roche for example argued that "The Immigration and Asylum Act 1999 represents the most comprehensive overhaul of immigration legislation for three decades, and it is essential to deliver our fairer, faster and firmer system" (Hansard Feb 2nd 2000 Col 1099). Charles Clarke in 2003 announced that the Asylum and Immigration Bill would be the 'final phase' of reform (Home Office Press Release 326/2003). John Reid would then argue that events had highlighted that the Immigration and Nationality Directorate was 'not fit for purpose' and in need of fundamental reform (Hansard July 25th 2006 Col 736) while Phil Woolas, as new Immigration Minister in 2008 argued that the summer of 2008 represented "the biggest shake up of the Immigration system for a generation" (Hansard Nov 4th 2008 Col 19WS).

As Best argued

> I think if you keep on legislating on a particular issue you increase its prominence, it's inevitable. And the more you increase its prominence, the more people talk about it, the more comments are made in the media, the more politicians talk about it and the more the general public talk about it. And there has been this rather indecent and unfortunate move into making migration a

> particular crisis because people think it's a crisis, its not evidence based (Interview June 14th 2007).

In 2000 Straw stated that "twice in the space of three years the Conservative Government tried to reform the asylum system. If their first Act--the Asylum and Immigration Appeals Act 1993--had worked, the second would not have been necessary" (Hansard Feb 2nd 2002 Col 1064). Five acts in ten years created its own sense of failure and inability to control movements.

Best concludes that

> if you include the present legislation we've seen three major acts of parliament subsequently which is in effect saying we didn't get it right and we have another one coming next year that is even more tantamount to saying we didn't get it right and I think that's really sad, it's a shame that politicians haven't learnt to live with the legislation (Interview June 14th 2007).

Those charged with the operation and implementation of the immigration policy field were subject to constant reforms and target driven initiatives that prevented consistent focus on some issues while reifying others. This can be contrasted with the comparatively stable period between the passing of the 1971 Act and the late 1990's, with a comparative lack of primary legislation and limited rule changes, which according to Flynn amounted to no more than two or three rule changes each year (Interview June 13th 2007). What is more the lack of awareness of changes was considerable. This was raised in a parliamentary question by Sion Simon. He pointed out that in the 12 month period between August 2002 and August 2003 there were 12 rules changes with just four even being accompanied by a press release (Hansard Jun 12th 2003 Col 921). Thus the complexity of the law was exacerbated by the opaqueness of the immigration rules.

The issue of targets and numbers more generally dominated much Government thinking on asylum from the outset. Different messages were evident but control of asylum numbers as a means of legitimising the system came to overcome all other considerations, while numbers on

the labour side were treated in a far more relaxed fashion. Neil Gerrard commented that "I think very early on we got into that numbers game on asylum, not so much on immigration but on asylum, it was very much numbers driven" (Interview May 10th 2007).

Targets set for the time taken to take cases to their end point and for removals focused increased attention on asylum application issues but also provided a simple means for opponents of the Government to attack them, that of missed targets. While nobody had called for targets to be set in the first place, once they started to be used they provided a simple and straightforward means by which the administration of the system could be questioned, heightening the sense of a system in crisis.

Flynn adds with regard to the numerical targets set by the Government that

> all they did at that point was they set up targets for organisations like Migration Watch, the Daily Mail and Daily Express to come along and at that point they'd previously announced that 80,000 asylum seekers were getting into the country and there were about 70,000 in about 1997 and nobody blinked, newspapers were saying there is a civil war going on and it is in Europe and there seemed not too big a surprise there but then suddenly saying 'we will drive down asylum figures by such and such, we will bring the system back under control' and then statistics came back showing that that they certainly weren't in total control, they suddenly gave traction to all of the dissenters and the critics and the anti immigrants elements (Interview June 13th 2007).

Gerrard also argues that the problems of targets were accompanied by a linguistic conflation of all aspects of the immigration system which contributed to the way in which it was seen, and thus to the process of 'othering'.

> the fact that there was all this talk about numbers, the way that asylum and immigration got completely mixed up together and distorted in a very uncomfortable way, I think that contributed to the feeling. And all these myths that people started to believe about asylum seekers and illegal immigrants and the two became almost the same thing in the public mind, asylum seeker meant an illegal immigrant, a completely distorted view of the system (Interview May 10th 2007).

Events, whether external or internal, are often assumed to impact on policy. However, events in and of themselves seldom alone warrant being seen as critical to policy change. One former Labour Immigration Minister argued that "there are events when, I'm not just thinking here about migration and asylum, there are events that are so major that the government takes action, Dunblane perhaps with gun control", but more commonly policy development was more incremental. The former Minister went on that "policy doesn't come out of one particular incident, I think it tends to evolve" (Interview Aug 31st 2007). Despite a crisis atmosphere policy tended to be more incremental. Nevertheless the Government's management of events often contributed to the feeling of a system in chaos.

The ten years of Blair's premiership witnessed a series of events that were either objectively linked, or deliberately tied to immigration matters. The Sangatte refugee centre in Calais, the disturbances in northern English towns, the Dover lorry found with 58 dead migrants in it, the Morecambe Bay tragedy where 18 Chinese cockle pickers were killed in rising tides, 9/11 and 7/7, along with the fast tracking scandal that led to Hughes resignation and the release of foreign prisoners that witnessed the end of Charles Clarke's front bench career. These all impacted on the perceptions of the immigration system, most increasing Government hostility and twice leading Blair to bypass his Home Secretary and take full control of the system himself (Spencer 2007). These events also contributed to the almost constant reform of the Home Office.

David Blunkett was clear that the impacts of events could only be mediated by a series of beliefs that anchor developments. In one article, he argued,

> Home Secretaries are notoriously vulnerable to "events", and I am no exception. That's one reason why it is important to have a set of guiding values which underpin a framework of policy. Without this foundation, the events that emerge

> from nowhere can blow you off course and obscure the work you are already doing (Observer Sept 15th 2002).

Events in a real sense do not seem to have changed policy to any great degree, except when used in a post hoc way. In other cases events furthered the existing trajectory of policy, implying perhaps that if a 'foundation' did exist, it was a dual system of harsh controls and more open labour access.

September 11th and July 7th operated to re-enforce existing arguments about integration, now more directly aimed at the Muslim community, while the disturbances in Burnley, Oldham and Bradford had a similar impact and prompted a new search for what it means to be British. Hampshire and Saggar point to the post hoc rationalisation of policy in stating that "the securitization of UK migration policy was already well under way before the bombers struck in London", but that "there is little doubt the bombings gave an extra impetus to the securitization of migration policy discourse" (Hampshire and Saggar 2006). There was a conflation of arguments used in response to these events though. Blunkett argued that events showed the UK as capable of disintegration, arguing that new labour migration was leading to some communities feeling 'swamped or overwhelmed' (New Statesman Jan 27th 2003), echoing claims made by Margaret Thatcher in 1978 (World in Action Jan 27th 1978). Simultaneously the Government argued that migrants had no discernable negative impact on the indigenous population, and indeed that they were helping to fund the services that that population relied upon while also arguing that stresses and strains in the system had potentially dangerous ramifications.

The reactive nature of policy highlights the lack of ideological foundation. Events and numbers,

along with media attention, were capable of impacting on Government policy in quite substantive ways. Boleat highlights this link it arguing that "in a way government policy on asylum is quite successful because it hasn't been in the news for the past year and that's the criteria" (Interview June 19th 2007).

**Reactive Policy-Making –and the impact on the 'Audience'**

Rationalist approaches to the study of public policy emphasise Government's sole or at least prime interest, as being re-election (see Hall 1997 for a description and critique). The Labour Government has perhaps been more aware of public perceptions than any other Government in British history. As far as immigration was concerned, this tended to lead them to focus their attention on the proportion of the population uneasy with immigration, rather than those who were more relaxed, who were also more likely to vote Labour in any case.

Policy focussed primarily on asylum, and on the restrictions the Government felt were needed on the 'right' to claim asylum as well as the benefits accruing on that claim. Along with the consistent use of terms such as 'abuse' and 'bogus' the overall importance of immigration as an election issue increased substantially during Labour's period in office. While the numbers applying for asylum had risen significantly, and thus could be seen to explain some of this rise in issue salience, there seems little doubt that the atmosphere of perpetual crisis contributed to public perceptions and often hostility. In Geddes and Tonge's series of election studies, they point out that by the time of the 2005 election, salience was at a level not seen for 25 years. While in 1997 immigration was not seen as a top ten issue in any major polls (Saggar in Geddes and Tonge 1997 156), by the time of the 2001 election 14 per cent felt that immigration and race relations were one of the most important issues. This then rose to some 34 per cent by March

2005 (Geddes and Tonge 2005 283). Geddes and Tonge further point out that there was circularity in this 'ratcheting effect'. Thus, increased salience led to increased attention which increases the numbers of Government statements emphasising the negativity of such migratory movement, and thus further increased salience.

Don Flynn argued that playing to the hostile gallery simply increases the size of that gallery, while a truly progressive position would have focussed more on the element of the population who were either not hostile, or undecided on the issue.

> There was sufficient purchase I'm convinced in the public imagination to show leadership on those issues. Instead of looking at the 20-30 per cent of the population that seemed to be implacably hostile to immigration, concentrated on the 15-20 per cent who were at ease with immigration and was wondering why the government were making such a mess of it (Interview June 13th 2007).

What appears clear regarding the relationship between policy making and the public is that there is some degree of policy making for public consumption rather than for results, which has had its own consequences. Keith Best for example argued that "most of the legislation that has been brought forward has not been evidence based, it has not been as a result of careful analysis, it has been knee jerk reactive to either media or supposedly the public have by way of concern" (Interview June 14th 2007). Such reactive policy making on the asylum side has been centred around the notion of pull factors that have little evidential weight (see for example Robinson and Segrott 2002), meaning that

> the legislation is badly drafted, it has unwelcome very often unpredicted results. … the whole policy of deterrents which has been the main driver in asylum policy, to deter people coming to the UK, has been based upon an understanding that those who might be deterred clearly will know and understand what it is that might deter them (Interview June 14th 2007).

One NGO official implies rationality to Government action, as a response to both media hostility and those voters who appeared hostile to migration

> the rationale for more restrictive measures, I think again its politics…..Labour governments or left of centre governments were falling or failing to be re-elected on the immigration ticket. …. I think there was a fear right across Europe of the way that immigration can be used in politics but also I think in 2001, 9/11, there was certain concern about terrorism and that was mixing into these fears of uncontrolled immigration. …. It's a very difficult political thing to do in the current climate, particularly post 9/11, for governments to say they're going to be more liberal on immigration (Interview Aug 24th 2007).

As far as electoral issues were concerned it was the notion of being liberal, or to use the more common terminology of parliamentary debates, being a 'soft touch' with regard to asylum seekers that was seen as the fault line. In late 2002 a joint Oxfam/Refugee Council study found that Britain, far from being the 'soft touch' decried by many politicians and sections of the media, was institutionalising poverty among asylum seekers (Yorkshire Post January 20th 2007). Former leader of the Transport and General Workers Union, Bill Morris, responded by arguing that a 'bidding war' was being conducted between the Government and the Conservative opposition regarding who could "be the nastiest to asylum-seekers" (Yorkshire Post January 20th 2007).

While other EU states had faced similar migratory movements, many had responded through regularisation programmes, in essence an amnesty for irregular migrants (see Katrougalos 1995 for earlier discussion of regularisation). Immigration Minister Liam Byrne argued that regularisation "would severely damage our country. At the moment local authorities are still coping with the pressure on schools and services but if we had the green light for unprecedented immigration they wouldn't be able to handle it" (Policy Network 2007). It is unclear why an amnesty for those already here represented unprecedented immigration and 'no obvious upper limit' to labour migration did not, other than the fact that there was a link between what is considered unlimited and the issue of wantedness. Thus while Byrne sought to highlight the £125 billion of value to the UK economy as a result of unprecedented labour migration an

amnesty was seen as 'dangerous'. Byrne characterised the argument thus, "We could simply give up trying to control immigration and say it's all too difficult, which is what an amnesty might mean" (Speech by Liam Byrne to KPMG June 4th 2007).

The opening up of low skilled migration routes, according to Spencer, was supported by employers, as would be expected, but interestingly she also argues that employers had exerted little pressure in that direction, "suggesting that they were experiencing little difficulty finding irregular migrants" (Spencer 2007 351). This is a fairly widely held perception. Jon Cruddas, later to run for the deputy leadership of the Labour Party also argued in 2007 that "I posit that there might also be something to the idea that in the past a blind eye was turned to tacit illegal employment" (Hansard Feb 5th 2007 Col 632).

Irregularity therefore cross-cut migrant 'type' and therefore the links between different types of migration question the ability to separate them in policy-making. Where restrictions are imposed in one area there is often a displacement effect. For example externalising asylum controls could be seen to have increased those choosing to enter and stay illegally rather than apply for asylum. Liberty argued that UK government policy encourages "people to enter the country without formally claiming asylum on the basis that, if they go through the proper channels, they will be treated as criminals" (House of Commons Research Paper 03/88 2003 28). One NGO official told a story of such acceptability, concerning the New Vision plans.

> I know for a fact that someone very close to Blair rang up someone very high up at the UN, UNHCR and said 'what do you reckon to these proposals?' and of course UNHCR was shocked and said it might succeed in driving asylum numbers down but the likelihood is that it'll just push people under ground, they won't stop coming but they won't apply for asylum. And the response was 'well I think we can live with that'….The number of people arriving illegally didn't mean as much, although it did later become a political problem as well but at the time the focus was very much on asylum (Interview Aug 24th 2007).

Thus displacement was seen as a politically acceptable outcome of the further crackdown on asylum.

There is considerable dubiety regarding the direction of causality as well as its very linear nature between media attention and Government action (see Flynn 2003 and Moraes 2003). However, there certainly seem to be some occasions where the Government responded to media outcry. Spencer, for example, highlights the fact that a media focus on east European Roma in the weeks before the 2004 enlargement of the EU pushed Blair to focus more on the issue, with the Workers Registration scheme seen as the compromise between the Prime Minister and Home Secretary (Spencer 2007 352). This type of reactive policymaking may have short term benefits in relation to how the Government are perceived by some elements of the population, but it also acted to maintain the problematisation of migration. Boleat argues that negativity with regard to immigration is related to media management. "Like a lot of policies it's driven by short term issues. A lot of it is 'keep it out the media', I mean dailtymailitis, 'immigration is bad news no matter what we do' so give the impression we're controlling it absolutely" (Interview June 19th 2007). With regard to the Workers Registration Scheme he argues that

> It doesn't stop anybody coming in, it doesn't count accurately, and it doesn't do anything. The officials at the Home Office agree…. Its partly fear of the media, it's partly …. If I'm a Minister, what is in it for me to announce the withdrawal of a measure that seeks to at least count immigrants, what brownie points do I get, none. Am I going to get savaged by the media, probably, so they're cowards…… Conflict avoidance, I think that sums it up quite nicely (Interview June 19th 2007).

However, while conflict avoidance may be a short term outcome, the consequences of these actions would have longer term implications. This will be discussed in Chapter 9.

**Interaction with International regimes**

The notion of UK policy and policy-making being constrained by a series of international

obligations was alluded to in Chapter 2. At its most optimistic end is Soysal's notion of post-national citizenship where certain rights are universally enjoyed regardless of nationality (Joppke 1999 3). However, with regard to refugees the international tool of the Geneva Convention contains minimal requirements on nation states, who are entitled to implement according to their own national law and circumstances. An obvious example is the UK Government's use of the 'White List' of safe third countries which confronts the fact that Geneva requires each case to be decided on its own merits. As mentioned in chapter 3, this list applies in cases where there is no serious risk of persecution, meaning that both a degree of risk is permissible and that the individual nature of the case is not examined, or at least not neutrally, as is required by the Geneva Convention. That is, a 'culture of suspicion' is seen to pervade Home Office decision making (Interviews with Flynn June 13th 2007 and Gerrard may 10th 2007). As mentioned in Chapter 5, the 2004 Act extended white list provisions to include both parts of states being designated as safe as well as certain 'descriptions of person' being eligible for the purposes of return, accompanied by non-suspensive appeals (House of Commons Research Paper 03/88 2003 37).

Phil Douglas, a Home Office civil servant seconded to the Foreign Office and involved in Treaty negotiations, adds that

> the problem isn't the Geneva Convention, the Geneva Convention is actually quite strict about who is a refugee and who isn't a refugee…. stricter than domestic law regarding who should be excluded from refugee status and doesn't even have any evidential requirements for their exclusion. ….. what I think is a problem is balancing national security interests and immigration control with individual human rights under the auspices of …. the European Convention on Human Rights and the domestic Human Rights Act. That's where there's a difficulty (Interview June 27th 2007).

Despite its strictness, as has been previously shown, at periods of increased asylum seeking to

the UK, the Government actively sought to undermine the Convention by arguing that it was out of date and had not been designed for a time when mass migratory movements were possible. Jack Straw as the first Home Secretary under Labour in 1997 set this questioning of the Convention in motion arguing that "the Convention is no longer working as its framers intended…..The environment in which it is applied today is one that has changed almost out of all recognition from that which obtained in 1951. The numbers of asylum seekers have vastly increased" (Jack Straw Speech to IPPR, Feb 6th 2001). Thus in a sense there was a continuity with the principles of Commonwealth citizenship until the passing of the 1961 Commonwealth Immigration Act, when individuals from the Commonwealth had a legal right to live in any other part of the Commonwealth, as long as only a small number attempted to implement this right. Once movements began in relatively large numbers the 'right' was diluted or removed.

Straw argued that the prime reason for the failure of Government policy, which was seen solely in terms of raw numbers, was due at least in part to the Geneva definition of a refugee, that it was too wide (Jack Straw Speech to IPPR Feb 6th 2001). His opposition was particularly acute concerning Article 31 which states that asylum-seekers should not be penalised for illegally entering a country in search of protection, despite the fact that Government policy regarding documents as part of the externalisation process made legal arrival increasingly difficult. Not only were the mechanics of the Convention being questioned and undermined, the principle was also under pressure. The Government's developing perspective was that the genuineness of a claim was not the sole rationale for preventative controls, that even genuine asylum seeker numbers had to be limited (Jack Straw Speech to IPPR Feb 6th 2001).

Tony Blair agreed that in effect the Convention had legitimacy and applicability only if accessed

by small numbers, and further essentially argued that it had only worked in a world where people were forcibly prevented from leaving their homelands. He stated in a speech in 2004 that "The UN Convention on Refugees, first introduced in 1951, at a time when the *cold war* and lack of cheap air travel made long-range migration far more difficult than it has become today, has started to show its age" (Speech to CBI April 27th 2004 – my emphasis).

Indeed, one former Immigration Minister argued that precisely, "I guess the difficulties are that Geneva was written at a time before mass travel, mass communication, the ease of movement" (Interview Aug 31st 2007). The blurred boundaries between economic and political movement also related to such questioning of Geneva. One Home Office official argued that Geneva remained the fundamental bedrock of the asylum system, which had been facilitated by the UK opting into the Qualification Directive. However,

> There's also recognition that the reality of mass movements, of mass migration, be that individuals, be that smuggling or be that even more ghastly trafficking, is there, and I think there is a recognition that while the principles of the Geneva Convention are there…that they have to be managed in the way that there is a recognition of the complexities of the reasons why migrants move, and that its not simply through persecution, there may be persecution and then there are economic reasons as well (Interview 14th June 2007).

Liz Colett from the European Policy Centre adds that problems of the Convention were in a sense utilised by EU member states. "What's interesting is that member states use that as an excuse for not complying with it. It may be inadequate for migrants but it should be enough to give proper direction to members' states" (Interview 26th June 2007). The dilution of the international protection regime along with at least an attempt at building higher walls and smaller doors of access to the EU and UK, although only for certain types of migrant, confronts the notion of liberal norms acting as a constraint. The limited requirements Geneva placed on

signatories were designed to be universal. The fact that wealthy developed nations such as Britain were questioning it shows the relatively weak foundations on which it rested.

Indeed UNHCR acknowledge that the requirements of Geneva are not onerous. One senior official pointed out that "we have global norms. They are fairly low, and are reflected in the international covenants….When it comes to core rights and entitlements, we think of basic services: housing, food, health and education. That will mean something different in Mali or Niger from what it means in Britain" (Special Standing Committee 16th March 1999). Indeed international law was seen as being more pliant than the notion of post-national rights would suggest. An NGO official stated that "I remember talking to senior civil servants, and I think this was under Blunkett and they were saying 'you can't do that Minister because of international human rights law' and it was 'we'll change it then, we'll change international human rights law'" (Interview Aug 24th 2007).

In the latter years of the Blair Government attacks on the Geneva Convention lessened, perhaps in part due to falling asylum numbers as well as the fact that the UN had launched their Convention Plus consultation which sought to examine many of the issues previously raised by the Government. A lack of explicit condemnation of Geneva, however, did not mean that there was a new appreciation of its necessity beyond the rhetorical. As mentioned above, a number of measures had been enacted to exclude certain 'types' of individuals from Convention protection. This was joined by the definition of people engaged in, encouraging or glorifying 'terrorism', which was a means by which the Government sought to exclude individuals engaged in political opposition to existing regimes from protection. Indeed the Government implicitly, and at times explicitly, argued that there was essentially no justifiable reason for individuals to be engaged in

attempting to overthrow a Government (see Tony McNulty in Chapter 8), despite Blair's assertion of the utility of a 'liberal interventionism'.

Perhaps as a result of the July 7th bombings the Government's position on refoulement, one of the key protections of the Geneva Convention, changed. David Blunkett had argued against abrogation from Article 3 of the ECHR allowing those suspected of terrorist activity to be deported to countries where they could face death or torture. Blunkett sought to imprison such individuals as well as to deprive them of citizenship. Although there was a right of appeal against deprivation it would not be allowed in cases where the decision to deprive was made on the basis of information that the Home Secretary believed should not be made public. In order to make such a decision one of three factors must have been met, that it was done on the grounds of national security, that it was done in the interests of a relationship between the UK and another country, or that it was done for another matter of a political kind, an extraordinarily wide remit.

John Reid later argued that the rights of individuals not to be subject to torture had to be weighed against the 'public interest' (Hansard May 24th 2006 Col 1434). The Government's proposals extended to the removal of individuals, regardless of what may happen to them on return to their country of origin (see for example the Government's response regarding the Ramzy case in Redress 2007). It is important, however, that this is not seen as simply a John Reid initiative. When Charles Clarke was the Home Secretary he had argued in a speech to the European Parliament that "in developing these human rights it really is necessary to balance very important rights for individuals against the collective right for security against those who attack us through terrorist violence" (Clarke Speech to European Parliament Sept 7th 2005). The Government's developing perspective was that removal was the primary issue, while what happened to individuals once they had been removed was of less importance.

The durability of Geneva against all of the attacks it faced could be partly understood according to the concept of institutional conversion or layering (Weir 2006 5). In a sense the Government, aided by a critical mass of others, were able to work around any liberal constraint. In essence the liberal constraint was removed without the removal of the institution itself but through its circumvention, its conversion to new ends and other forums performing the task of removing responsibilities from the Government through diffusion. This meant that the path dependent 'way of doing things' was altered without the need to eschew the institution outright. It is also worth adding that this circumvention did not prevent the arrival of refugees. Thus the lack of controllability of asylum flows is evident.

There is comparatively less to say regarding international institutions in terms of labour migration. What can be said is that the highly skilled and wealthy have always found it easier to migrate, particularly if they are from certain developed nation states. This is underpinned by some institutional factors in the form of the WTO. Sassen highlights the privatised nature of these factors. Essentially professionals in finance, telecommunications and other 'specialised services' were given international mobility without any public debate and certainly without any outcry (Guardian Sept 12th 2000). Domestic workers have also been more able to migrate with their employers but not in the form of 'free labour' as their visas are tied to those employers. Multi-national corporations also have the ability to transfer their staff by issuing their own visas and bilateral deals exist to allow the UK to source health workers globally. Essentially global capitalism in the form of big business and state structures were given some flexibility in recruitment not available elsewhere beyond the regionalisation project of the EU, discussed further below.

**Diffusion and Externalisation of controls**

Integral to the issue of protection measures within the Geneva Convention were attempts to externalise control measures. The Lisbon initiative was launched by Jack Straw in 2000 and set in process plans to prevent the arrival of unwanted migrants through this externalisation. In essence the plan was to end the right to make an asylum claim outside of immediate zones of conflict in return for increased financial support to the nations involved. Suggestions for pre-arrival certification as well as zones in the parts of the world producing large numbers of displaced people were designed as the means to prevent the Government, and the EU more generally, from having any legal responsibility to hear cases.

While there were few supportive voices initially, it set in motion a process that would allow similar ideas to re-emerge at a later stage. The Seville summit in June 2002 to some degree marked the nadir of plans to externalise preventative and control measures. Tony Blair and Jose Marie Aznar suggested the linking of aid and trade with countries willingness and ability to control migratory movements (Krieger 2004 297). Thus, development aid as well as limited access to labour markets would also be subject to migrant producing nations controlling external movement better (Lavanex 2002 703).

Aznar and Blair advocated "a campaign to harden trade policy and suspend foreign aid to developing countries that refuse to take back refugees whose applications for asylum have been rejected"(Krieger 2004 297). Blair argued that

> it is not a question of going out specifically to penalise countries, but it is a question of us saying, look we should use the whole of our relationship with those countries, as the European Union, to make sure that we get the maximum cooperation to deal with the problems of illegal immigration and the problems arising from large numbers of asylum seekers who are in fact migrants seeking work (No 10 Website 19 June 2002).

The UK Government argued that "development offers useful analysis of the root causes of migratory flows and highlights potential synergies between migration and development policy" (Government Response to House of Lord European Select Committee 2003).Thus not only were plans to prevent asylum seekers and other forms of unwanted movement from arriving in the EU being made, there were also EU wide suggestions of forced re-acceptance of refused asylum seekers by regimes in the developing world. At the European level the notion of 'concentric circles' of restrictive access was envisaged. Demands would be imposed on non-EU countries, first through the acquis, then the 'circle of friends' and finally through the Transit Processing Centres and Refugee Protection Area's, while EU members would also continue to impose their own internal and external forms of restriction.

Although there was a lukewarm response to many of these proposals, termed the 'New Vision' initiative, the Government sought to further them at the Saloniki Council (Flynn 2004 479). Tony Blair wrote to the Greek Prime Minister arguing that the international asylum system was failing for a number of connected reasons, that support was badly distributed, meaning those in the west receive much more than the majority in their region of origin; that the system was constructed in a way that required illegal entry to the West; that the majority of claimants do not meet the required criteria; that intakes fluctuate; and that all of this had led to public support for such measures declining (see Blair's letter to Costas Simitis March 10th Statewatch 2003). The solution was said to be the development of legal pre-entry asylum certification along with processing centres on transit routes to the UK. The long term aim, however, was to 'deal with' irregular migrants, now contextually separated from the more specific asylum seekers, in their region of origin. This management of migratory movements would be done by preventing

conditions that force movement, improving protection in source regions, and developing resettlement routes on a quota basis (Letter to Costas Simitis March 10th Statewatch 2003). Interestingly the bounded nature of Government responsibilities, linked to burden sharing, is implicit in the notion of fluctuating intakes. As asylum movements at the very least involve *some* degree of episodic push factors, fluctuation should be envisaged as an inherent part of that system.

Douglas implies an initial gestation period for these plans. While Blair's externalisation plans in 2002/2003 were initially rejected,

> the solutions that were put forward in the Blair proposals, to have transit camps and regional protection zones, were not accepted by the Thessalonica Council who then asked the Commission to come forward with a Communication and the Commission did come forward with a communication called durable solutions which came out in 2004 and put forward the idea of regional protection programmes. The Commission came forward with another communication in 2005 on regional protection programmes which set out more clearly the kind of activities that could take place, so I think it was the Blair influence (Interview 27th June 2007).

The problem was seen as the Convention placing obligations on states to consider an application made on their territory, Dublin provisions permitting. The solution?

> we must help the countries concerned to make conditions in the regions of origin better; Second, we must make it easier for genuine refugees to access the protection regimes of Europe and other Western States, for example by making their journeys less hazardous; Third, we must ensure that those who are not refugees are actively dissuaded from seeking to benefit unjustly from the terms of the 1951 Convention…..Most refugees want nothing more than to return safely to their own country. They have the best chance of doing that if they are able to stay in safety and dignity in a place as close as possible to home (Straw Speech to IPPR, Feb 6th 2001).

Thus the long term want of the government as far as asylum seeking is concerned was to process claims as much as possible in their own regions of the world, provide aid to improve conditions

and for reasons of international burden sharing, to take a small and controllable number of pre-accredited refugees. This would allow the Government to claim to be fulfilling its humanitarian obligations while doing so in only the most cursory way.

In addition to prevention of arrival and enforced removals, controls were sought through the revocation of permanent refugee status and its replacement with Temporary Leave to Remain, a period in which conditions in the country of origin would be monitored. Ignoring for a moment the effects on integration, the criteria for deciding on the improvement in a country of origin remained under-specified. The Refugee Council and UNHCR both voiced concerns over yet another right limiting measure. The Refugee Council argued that "the Government has provided no information about the criteria that will be used to decide whether a country is safe enough for a refugee's status to be revoked"; while in the same press release UNHCR expressed concern that temporary improvements would be taken as fundamental turning points in the life of volatile nations. "The change which has taken place in the country must be fundamental - not a mere transitory change in the facts surrounding the individual refugee's fear" (Refugee Council Press Release June 30th 2005).

Interestingly the Government were well aware of the difficulties faced by people attempting to arrive and seek protection in the UK, difficulties exacerbated by measures undertaken by them.

> It is often very difficult for those who do have a well-founded fear of persecution to arrive in the UK legally to seek our help. The absence of such provision provides succour to the traffickers and exposes the most vulnerable people to unacceptable risks. We propose to develop ways in which refugees, whose lives cannot be protected in their region of origin, can have their claim considered before they reach the UK and are able to travel here in safety and receive protection. A UK resettlement programme would sit at the heart of these gateways (Home Office 2002b 52).

Policy and practice seeking to make movement to the UK more difficult while simultaneously highlighting the fact that most refugees are unable to flee to the EU shows some awareness as well as contradiction within Government policy.

Nevertheless the Five-Year strategy furthered the Government's argument in stating that

> We will put immigration at the centre of our relationship with all major countries from which failed asylum seekers and illegal migrants come. But we will leave our partners in no doubt that accepting return of their nationals is a duty and failure to do so will have implications for our wider relationship (Home Office 2005b 30).

In a press release Charles Clarke underlined the importance of returns to this overall managerial policy. In it he stated that "swift removal is central to the credibility of our system. We will have a new drive to secure more effective returns arrangements with the countries from which most of our failed asylum seekers have come. We will achieve all this through effective international cooperation, not through isolation" (Home Office Press Release Feb 7th 2005).

As rights only accrued on arrival to the UK or EU, prevention of arrival through externalised controls is a right limiting measure. Blunkett argued

> it was not until people reached our soil that our border controls came into effect so, by the time that they did so, they were entitled to claim asylum. By moving our border controls to France, operating pre-embarkation controls, photographing documentation and having liaison officers at airports across the world, we are beginning to be able to screen people before they reach British soil (Hansard Oct 26th 2004 Col 1304).

Such an argument is replicated at the EU level. One senior civil servant in the European Commission argued,

> each state in the world and the EU has a legitimate interest in protecting its borders. For potential asylum seekers of course the main hurdle is to cross the border because only once you have crossed the border you have a right to asylum. Before, as long as you are in a third country, you don't have a right in the EU to seek asylum as they have not entered EU territory yet (Interview 28th June 2007).

Legally, this is largely true, potential asylum seekers have few rights beyond broader appeals to human rights until the point at which they make a claim for asylum. However, normative considerations as well as the utility of the Convention are also of consideration. As the Refugee Council point out "UNHCR has in the past warned that the protection which is owed to refugees under the 1951 Convention may be 'rendered meaningless' if refugees are unable to reach, and then claim asylum in, states party to the Convention" (Refugee Council Press Release June 30th 2005). However, the prevention of arrival was also partly predicated on the difficulty of removal. The Five-Year strategy highlighted as much, stating that "It is better to control entry before arrival, as far as possible, given the extra difficulties removal from UK territory can present" (Home Office 2005b 25).

Following the incorporation of the Human Rights Act into UK law in 1998 British Courts interpreted responsibilities more widely than the Government would have liked. Thus by creating a critical mass of nations undermining the principles of the Convention by arguing for its reform through the creation of TPCs and RPAs, domestic constraints on Government could be loosened. One senior NGO official at the European level was clear that other nations were in agreement but that the UK "was certainly the loudest in saying that the 51 Convention had to be re-considered", and that Lisbon "was one of the triggers for UNHCR to say 'ok, lets have a major rethink' and they launched a huge what they called global consultation, on the Convention leading up to the 50th anniversary in 2001" (Interview Aug 24th 2007).

It is worth adding that many measures that appear to be European in origin, actually had UK roots. Collett asks

> how much has actually been proposed by the UK, how much of the restrictive measures have been not just opted into by the UK but proposed by them…I think there has been a certain amount of, when New Labour wants something done and recognises that the EU is a mechanism to get it done, so they sell it at EU level and then come back to the national level and say 'don't blame me' (Interview June 26th 2007).

Such an argument is supported by a European NGO official who argues that on UK courts ruling Section 55 illegal, the provision was 'cut and pasted' into European law to create the same effect through different means (Interview Aug 24th 2007). While this would not have been possible without a critical mass of EU members agreeing, European developments showed some signs of isomorphism as far as control measures were concerned (see Gorges 2001 for discussion on European isomorphism).

In a sense this was an 'escape to Europe' whereby the EU was used as a means of avoiding domestic constraints in migration control practices. Douglas adds that

> some countries have become more restrictive, some countries have introduced what academics and NGOs have criticised as punitive measures against asylum seekers, but I don't think they've done that for the reason that they could, that EC law would let them, I think they've done that because of more pressing domestic concerns, ….they have their own domestic constituencies, their own civil society and their own parliaments to answer to (Interview June 27th 2007).

A Home Office official stated that "our line has always been that we will opt in to measures that are consistent with our right to maintain our own frontier control" (Interview June 14th 2007). Geddes concurs that the direction of agreements "was most evident in the more coercive aspects of migration policy" (Geddes 2005b 797). Gerrard adds that

> what I think has tended to happen is that, where something has come from the

> EU that's been fairly tough, we've been much more likely to go for that than something that wasn't….. there've been 1 or 2 incidences like that of fairly progressive things coming from the EU that the Home Office has not wanted to touch whereas tougher stuff they're far more likely to grab hold of" (Interview June 10th 2007).

In early 2007 the Government confirmed that the UK had opted in to every asylum directive to date and were abiding by plans to create a common asylum system by 2010 (Hansard July 15th 2007 Col 778W). The Government themselves argued that

> our policy is clear. The UK opts in to Title IV measures where we can, provided they are in the national interest and consistent with our policy of retaining frontier controls. In practice, this means we have tended to opt in to measures on asylum and illegal migration, but do not tend to participate in legal migration measures (House of Lords European Union Committee 2005 41).

In a sense the opt out was under-used, certainly with regard to asylum issues, but its existence was consistently heralded, the issue was socialised. The opt in was far more evident in policy terms, with all asylum procedures being accepted by the Government, but it received comparatively little attention.

However, national policies continued to place limits on what EU institutions could do. Phil Douglas, involved in Treaty negotiations while seconded to the EU, argued that the reason for continuing divergences in national policies, despite the move towards some degree of commonality, concerned assumed pull factors. He stated that

> member states still viewed asylum policy as something of a competitive sport, they recognised that it was about application numbers, it was about getting those application numbers down and they would do so at the expense of their neighbours, so the idea of European solidarity in those days of negotiation… was not particularly well formed (Interview June 27th 2007).

Enlargement also had a role in this process. The acquis placed prime responsibility for the security of the EU at its external borders, now predominantly new member states. Indeed one of the main requirements for prospective members involved a hardening of their eastern frontiers.

Tony Blair linked support for the changing borders of enlargement to increased immigration control in arguing that "As the borders of the European Union are pushed further eastward, it will be very important to have proper controls in place" (Hansard Oct 19th 1999 Col 260). The Acquis and the Dublin Convention allowed EU wide controls to be codified and in many cases stretched to the existing external limits of the Union. This was not taken as a reason to relax national controls though. In essence the Government argued that the diverging interests of the other members of the EU, especially those involved in the Schengen system who therefore had more relaxed frontier controls, and that of the UK demanded a dual approach. This led to an acceptance of and pushing for tougher and more restrictive EU wide policy, while also maintaining tough and ever more restrictive national policy. In many areas the two coalesced but the Government were clear that they would not hesitate to go alone in instituting tougher and more restrictive practices than the EU as a whole.

Another aspect of the externalisation process was the lauded juxtaposed controls. Hughes pointed out that "It will mean that British police officers and immigration officers will in effect move our border to Calais and be able to inspect all passengers before they come on to British soil" (Hansard Standing Committee B Jan 8 2004 Col 25). Such a strategy also included the continuing use of visa regimes and the deployment of immigration staff overseas, not just in places where there were agreements regarding juxtaposed controls, but also other countries producing large numbers of asylum claims or illegal migrants. The rate of visa refusals rose from

6.5 per cent in 2000 to 15.4 per cent in 2004 with the highest rates being found in Asian and African nations (IAS Briefing June 29th 2005).

These visa regimes were later joined by transit visas and were seen as an effective tool in externalising control measures. Essentially the Government used visas as well as authority to carry schemes as a means of preventing individuals, but also groups from certain countries, from entering the UK where they could either apply for asylum or overstay their visa.

More recently the Government announced plans to fingerprint all visa applicants, whether successful or not, by late 2008 (Hansard March 29th 2007 Col 1651). However, although no general audit had ever been done of the nationality of illegal overstayers, it was widely felt that the majority had arrived in the UK as Working Holiday-Makers, and thus were mostly from New Zealand, Australia and South Africa, none of which were ever subject to a visa regime or campaigns in the media. The strong suspicion remained that there was a discriminatory aspect to Governmental focus. This appears to be replicated or reflected in public opinion. Jennings argues that there is a hierarchy of wanted-ness among the British public, with Australians and New Zealanders the most wanted. He points out the irony in the fact that the worst offending nations with regard to overstaying are the most publicly tolerated (Jennings 2005).

The externalisation of migration controls was also available in the case of some individuals who did make it to the UK. Safe third country provisions allowed the Home Office to return an asylum applicant to a designated safe country without first hearing the case. Where the third country was another EU state or designated, they would have no in-country right of appeal. In addition Section 11 of the 1999 Act made such a process even easier by not requiring the Home

Secretary to certify a country as safe, but merely that the country had accepted responsibility for the individual asylum seeker.

Agreement to return asylum seekers without first hearing their case may have been contrary to the principles of the Geneva Convention but with another member state accepting their responsibility for hearing the case in line with Geneva requirements, the Government were successfully able to transfer claims abroad. This was later joined by the Dublin Regulation which, aided by Eurodac, enabled still more individuals to be removed without first hearing their case. Along with common standards and the receptions directive these three aspects of EU policy were seen as the way to end an assumed but never empirically shown, asylum shopping.

The diffusion of immigration controls both downwards and upwards continued to place immigration responsibilities on non immigration bodies. While immigration officials had their powers as well as responsibilities incrementally extended, non-immigration bodies were also the recipients of delegated powers. Airline carriers, road haulage and Eurostar are three examples of travel related delegated powers and responsibilities. Airlines and haulers argued vociferously against such delegation but to no avail. The interests of control were primary. Essentially all three would have a legal requirement to aid the policing of irregular movement to the UK. This was joined by the increased use of sophisticated technology such as Iris scans and biometric controls, all aimed at the prevention of arrival in the UK.

For asylum seekers, as well as external controls, internal controls were also being pursued through diffused practices. This involved the increased use of detention, removals, reporting requirements and even electronic monitoring, all of which contributed to the perception of asylum seekers as a problem to be dealt with. The delegation of immigration control to non-

immigration bodies such as to employers and marriage registrars mirrored the stretching of borders to also include the stretching of immigration enforcement.

**New Labour Immigration Policy; a symbiosis**

On the basis of this analysis, it may be argued that 'New Labour Immigration Policy' is something of a misnomer, and that the reality was that the Government were simply 'muddling through' and satisficing (Simon 1957). Neil Gerrard argued that "there hadn't actually been a real debate about immigration policy for a long long time" (Interview May 10th 2007). Essentially all Acts passed until 2002 "were much more concerned with the mechanics, and you had arguments about whether there should be appeal rights, it was all about mechanistic stuff and it wasn't really about policy" (Interview May 10th 2007). A former Immigration Minister agreed, arguing that "I remember thinking then that what there wasn't was an immigration policy and that's not surprising because I think its fair to say that governments hadn't really had an immigration policy" (Interview Aug 31st 2007). While much of the literature, and certainly many of the interviewees for this research, argue that the managed migration programme being developed in about 1999/2000, was something of a turning point, in practical terms it could be seen as less significant, and more a codification of existing policy.

The increases in labour migration were occurring without this turning point and it is important not to overstate its significance. That said, however, the very act of bringing labour migration to some degree out into the open, in a form of bounded socialisation, was symbolically important. The developing managed migration agenda, it was argued "combines rational and controlled routes for economic migration with fair, but robust, procedures for dealing with those who claim asylum" (Home Office 2002b). This continuing movement and the jumping of hostility between migrant groups is further discussed in the next chapter.

Another development over the final years of Blair's premiership was the argument that immigration had been a taboo subject, despite the legislative activism. Reid argued that despite continual policy intervention, a debate on immigration had been somehow emasculated by political correctness. He continually emphasised the need to weigh the economic benefits of migration with the strains that can be placed on public services by increased headcounts (Guardian August 7th 2006). The theme of censorship by political correctness was an increasingly articulated one among Government Ministers and can be dated back to when Tony McNulty was Immigration Minister. He argued in relation to the 2005 election that "There is no doubt, in the broadest of terms of British public policy over 30 years, that we have collectively run away from a substantive debate on asylum and immigration" (Hansard Nov 16th 2005 Col 1063). This theme acted to further problematise migration as well as placing responsibility for such problems on more liberal opposition among NGOs and the Trade Union movement.

Thus New Labour policy in immigration matters had witnessed several continuities including legislative activism and a form of crisis management. While these were cumulative and substantive, they were also made quickly and Acts followed one another in quick succession, meaning that the impacts on one were not clear prior to the institution of the next.

## Conclusion

This chapter has integrated many of the questions and findings of the previous empirical chapters. In particular it has highlighted a number of continuities in Labour immigration policy. The characterisation of different migrant types as wanted or unwanted has been one such continuity. However, as has been shown, what constituted the unwanted was not static and changed during the ten years under review. The chapter has also examined the linked issues of

framing and symbolic politics. The way migrants, particularly unwanted migrants, were framed and the symbols and language used to decribe them was given examination. As with this symbolic politics, the role of the audience is also a key public policy issue and this was given examination in this chapter, particularly in relation to the reasons for the direction of policy. Finally the chapter has linked the two related developments of internationalism and the extension of controls, extension both geographically and in terms of the actors involved. The next chapter examines these developments in policy and politics in relation to their consequences.

# Chapter 9 - The Audience; the Other and the Institutionalisation of Policy Feedback

## Introduction

The previous chapter revealed the mixed messages being sent by the Government regarding immigration. While many within the Government felt that media headlines demanded that concern be assuaged for electoral reasons, the evidence underpinning the crisis perspective is limited. Thus one of the key questions for both this chapter and the overall thesis is; did immigration policy create an immigration crisis? This chapter addresses this key issue and also engages with political images and symbols and their importance in framing the immigration debate. Political legitimacy and the role of the audience are also addressed in the following chapter. Consequently the chapter seeks to answer the question; how did immigration policy and policy-making affect the legitimacy of the system from the perspective of key audience(s). What the chapter goes on to demonstrate is that the problematising of certain migrants escaped the control of the Government. There was slippage as hostility towards migrants not only became institutionalised but also extended to other migrant groups. Therefore a key question to be addressed here is; did the Government lose control of the immigration debate?

Feedback effects are a key part of this thesis. While chapters 4-7 have detailed feedback effects and path dependence, this chapter examines such effects in relation to both immigration and non-immigration policy consequences. The key question to be addressed is; what was the impact of feedback effects on the emerging issue of community cohesion? The chapter concludes by suggesting that theories of migration should take account of this political nuance, that the political atmosphere into which migrants would be required to live may have an impact on migratory choices.

**A New Labour Approach?**

The fact that the Government continued to legislate on immigration, with positive messages regarding 'wanted' migrants being drowned by negativity over asylum, will be shown in this chapter to have fed the immigration 'crisis'. Former Conservative Immigration Minister Humfrey Malins, commented directly on the question of issue definition and its role in politics: "what is an issue, does the press write something up because it's an issue or does the press writing it up make it an issue, its something we'll never know the answer to" (Interview 9th May 2007).

Despite the overall lack of clarity in New Labour's approach, as shown in the previous chapter, there were a number of consistent themes to emerge from Government policy. What will be highlighted below is that the prevention of 'unwanted' migrants from arriving in the UK has been a consistent Government goal. In addition, the desire to make life as uncomfortable as possible for those 'unwanted' who did manage to get to the UK (rationalised in terms of the removal of 'pull factors') has also been consistent.

The other consistency in policy has been the view that labour migration, or different types of labour migration, are essentially 'wanted', although the contours of wanted-ness change and evolve. The desire to provide a pluggable supply of labour for employers, or for 'the health of the economy', was evident throughout New Labour's period in office. However, the parameters of the 'unwanted' was to change and morph beyond those initially identified as such by the Government. Malins argues that legislative attention has tended to focus on unwanted migration, implying some degree of privatisation of labour migration practices. "In one sense there is a

theme throughout the acts, that immigration is necessarily a bad thing and the acts are devoted to how to stop it or how to make it more difficult and less attractive" (Interview May 9th 2007). Nevertheless labour migration continued to expand outwith the parameters of the Acts. Blunkett proclaimed that "I have put in place that we will have a doubling of the number of visas for work permits given in the year ahead to 175,000 - the largest number in Europe, six times the number of work permits granted in Germany this year" (Speech to Labour Conference Oct 1st 2002). While Blunkett sought to portray the UK as exceptional in European terms, Blair later linked such movements to the 'unwanted'.

> Population mobility and migration has been crucial to our economic success, migration levels in the UK are in line with comparable countries, we are already selective about who comes into Britain and many that do are essential to our public services. But precisely because stopping migration altogether would be disastrous for our country and economy, it is all the more vital to ensure the system is not abused. There are real concerns; they are not figments of racist imagination; and they have to be tackled precisely in order to sustain a balanced and sensible argument about migration (Speech to CBI April 27th 2004).

While formal Acts focussed on the unwanted-ness of asylum seekers and 'illegal' immigrants, in practice economic migration became easier rather than more difficult. Nevertheless migration as a bad thing was the dominant image of Government policy. This had its own rationale and crucially also its own implications which are explored below.

## The Image of Control and the Audience

Being seen to have control over borders and migration issues was key to Government thinking. Such a process fed into the duality of the immigration system as well as issues of crises and legitimacy. While labour migration was initially subject to little control beyond 'what the market decides', constant focus and control measures on the asylum side were used as a means of asserting toughness and directing attention away from the much more numerically significant

labour migration (See Appendix 2).

Thus immigration and immigration control came to be a core issue of legitimacy for the Government. This should come as no surprise as border issues are inextricably linked to conceptions of 'us' and 'them', which in turn can be seen as conforming to notions of democratic legitimacy. Who belongs and who does not rests on the legitimacy of both their own claims to belong and the Government's role of mediating that belonging. Koopmans and Statham argue that in a sense citizens 'grant' the right to rule and bestow legitimacy on the rulers (Koopmans and Statham 2000). So who 'we' are determines not only who they (the Government) have the right to rule over, but also who is allowed a role in this granting of political legitimacy. Huysmans adds that wider political issues were the driver in making immigrants 'scapegoats' for reasons of legitimacy (Huysmans 2000 769) and Alink et al argue that crises are periods in which policy sectors experience legitimacy shortfalls (Alink et al 2001 287). Thus perennial crises can produce a continuous legitimacy deficit. However, what is also clear is that the legitimacy of the immigration system in the UK since 1997 did not increase in the minds of the public or politicians as a result of legislative activism, but that constant changes helped to create a feeling of crisis that had a negative impact on perceptions of the system's legitimacy. That is, the legitimacy of the system and legislative activism had an inverse relationship.

The legitimacy of the system was linked by the Government to perceptions of fairness, not fairness to migrants, which would have produced a different type of discourse, but fairness to the indigenous population. During the 2005 election, Blair argued that

> Concern over asylum and immigration is not about racism. It is about fairness. People want to know that the rules and systems we have in place are fair - fair to hard-working taxpayers who deserve to know that others are playing by the

> rules; fair to those who genuinely need asylum and who use the correct channels; fair to those legitimate migrants who make such a major contribution to our economy (Telegraph April 22nd 2005).

As mentioned in the previous chapter, being seen to be 'in control' rather than control itself was key, but that would also have ramifications. One immigration judge argued with regard to the asylum process that "the removal of one level of appeal by the recent legislation has been for public consumption and public consumption only" (Interview Aug 17th 2007). For him the continual focus on restricting appeals was about the image of control rather than the reality of perhaps some lack of control. He argued that the real appeals process remained similar to that which had gone before, but that for political reasons the Government had sought to highlight the limitation of appeal rights. As mentioned in Chapter 8, displacement was also accepted as an outcome that the Government were to some extent comfortable with. Image thus over-rode the reality of the lack of controllability of migratory movements.

The lack of trust the public appeared to have had in the controllability of the system was not confined to issues of asylum, however. Furthering Blair's view that asylum issues were essentially 'sorted' after the resignation of Beverley Hughes, David Blunkett added that "As I have done on asylum, I will ensure we get a grip of these problems, that we restore confidence and trust" (The Herald April 7th 2004). Thus as asylum numbers dropped and labour migration issues came more into the open, attention was re-focused, and lack of trust in the overall system, not just asylum, came to the fore, one of the unintended consequences of both the harsh asylum system and the legislative activism, the political and public debate and the increasing complexity and thus misunderstanding of that system.

Thus there was an acceptance that control measures had contributed to making people rely on illegality in order to leave their country or region of origin. The pre-arrival certification of asylum seeking began in 2003. The difficulties genuine asylum seekers were having in reaching the UK was implicitly highlighted, difficulties being incrementally extended with the passing of each Act, as well as non-primary changes. Nevertheless, the issue of numbers re-emerges as an important symbol of control. Blunkett argued that

> We will begin a new programme, organised with the United Nations High Commissioner for Refugees, which will screen applicants for asylum in regions of the world where people are experiencing the threat of death or torture. We will initially take 500 refugees, rising to a larger number as we develop the programme—thereby preventing people having to present through the use of smugglers, traffickers and organised criminals (Hansard Jan 20th 2003 Col 5).

The distinction made between the legitimate fleer and the illegitimate who arrive of their own accord was numerically significant, with just a small number ever likely to receive such pre-arrival status, while large numbers were labelled 'bogus' due to them arriving by their own means. Compare, for example, the 500 pre-determined refugees characterised as the deserving, with the figures in Appendix 2 which show that in no year under review did spontaneous arrival numbers fall below 22,000.

The decision on A2 nationals is also interesting in that it gives some evidential weight to Weir's arguments that some interests are more malleable than others, that there is room for persuasion (Weir 2006 175). While in economic terms it may have been beneficial to allow open access to the A2, that economic interest was overcome by the political interest of maintaining the legitimacy of the system through the use of control measures (see Spencer 2008 353). Interestingly employers organisations were supportive on the whole, arguing for a 'pause' (Susan Anderson from the CBI in Financial Times Aug 23rd 2006), and thus they were prepared

to go against their own objective interests for a time for non-economic reasons. It was in the interests of all to prevent a real competition between alternatives as this would have opened up the field to more scrutiny, possibly increasing the number of options, which for Weir opens the possibility of existing constellations becoming unstuck (Weir 2006 175), meaning a combination of non-decision making and policy privatisation occurred. That said, as mentioned in the previous chapter, employers were able to source A2 nationals in certain areas, such as for food processing and agriculture, and so the image of restriction on A2 movement was not completely borne out in reality.

**Symbols and the Institutionalisation of Hostility**

As mentioned above, the restrictions placed on residence rights of the low-skilled conform to a form of guest-work that Britain had traditionally avoided. Even in relation to EU nationals Blair hinted at such developments, arguing that accession gives *people* the right to move, but not necessarily workers (Hansard Feb 11th 2004 Col 1407). This distinction is an important one for the way the Government presented their policy, particularly regarding access to benefits and restrictions on A2 nationals. In a sense potential citizens in the form of highly skilled migrants are at the top of a hierarchy of wanted-ness, with short term labour migrants next and others occupying lower places. Nations and regions of origin also cross cut skill levels to provide a matrix of wanted-ness (see for example the decision to end all low skilled labour migration from outside the EU). While increased attention began to be paid to labour migration issues the enlargement of the EU provided the Government with an opportunity to appear tough on low skilled migrant workers, the subject of much recent ire, while continuing to provide an excess of such labour through only the most limited of restrictions on A8 nationals.

There was an assumption in Government that many nationals of A8 nations were illegally

working in the UK prior to the 2004 enlargement. Allowing such nationals to legally work along with employer sanctions, although little used, was presented as the way to address this problem. This would allow two audiences to be assuaged. Employers would gain access to more workers and those hostile to migration would support increased enforcement. However, arguments against regularisation were essentially reversed with regularisation of illegally working A8 nationals being seen as a valid solution to illegal working and not an encouragement of future illegality.

Nevertheless, wanted-ness and legitimacy continued to problematise the policy field, aided by language and symbols that characterised migration as a threat. In an interesting speech to the Labour Party conference John Reid implicitly acknowledged the discomfort that harsh language and policy towards the 'bad' migrants caused to one 'audience'. He argued that

> We didn't sign the party membership card because we were motivated by a driving desire to deport illegal immigrants from our shores. We joined this party because we wanted to see a more equal and just society, where people are no longer held back by the accident of birth, where everybody has the chance to make the most of their potential (BBC September 28th 2006).

He went on to say "we still want that. But we have come to realise that without security, none of the other things are possible" (BBC September28th 2006). Thus it was only by controlling migration that security could be realised, allowing for policy focus on wider issues of equality and fairness. It is worth adding, however, that security is a relative term and thus Government is always able to institute controls to increase security while never achieving it in its totality. This point re-emerges in a Government response to the House of Lords European Committee 10th Report which was critical of the Hague programme[15] placing emphasis on security at the

[15] In November 2004 the Governments of the EU signed up to the Hague Program. It aimed to develop European competencies and standardisation in a number of areas, particularly ; Guaranteeing fundamental rights, procedural safeguards, and access to justice;

expense of a rights based approach. The Government responded that it agreed on the need to find "the right balance between protecting people in the exercise of their fundamental rights and ensuring that they live in a secure and just Europe", but that "*Improving security is vital and without it freedom and justice could not flourish*" (Filkin 2003 my emphasis)

Blunkett had earlier argued that "it is a simple, historical fact that for progressive politics to flourish, for liberal ideas to be listened to, we have to have stability and order. Policies need to work; they need to build trust and confidence in the population as a whole" (Speech to Labour Conference Oct 1st 2002). Thus as far as issues pertaining to migration were concerned the hierarchy of importance explicitly places security and control first, with rights as supplementary.

Stone's 'causal stories' describe the means by which an issue is framed in order to justify policy interventions (Stone 1989). The relationship between the framing of immigration according to the harm that it causes and policies then created to remove or control the potential for harm shows the importance of symbols in allowing room for policy that would otherwise be seen as unpalatable. Blunkett and Reid acknowledged the discomfort caused by both harsh language and measures, but created the spectre of danger to assuage opposition. The framing is thus key. Rein and Schon define framing in a way that allows room for it to be seen as instrumental, "a perspective from which an amorphous, ill defined, problematic situation can be made sense of and acted upon" (Rein and Schon 1993 146). However, in this case it has operated in the other direction whereby prior to open framing, migration, or at least unwanted migration, was constructed as a problem. This form of issue definition is important. If migration is seen as a problem and is therefore framed as such, those doing the framing bare the burden of

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fighting organised crime; repelling the threat of terrorism; providing protection to refugees; and regulating migration flows and controlling the external borders of the Union.

responsibility for the problematising of the issue. In addition, appeals to security and the framing of policies as being about the prevention of threat turned migration into an increasingly hostile policy field.

Language is closely linked to perceptions that the public have regarding immigration as a result of its framing. The language of harm and the constant use of the terms 'bogus' and 'abuse' contribute to crisis creation. This concept of migrants abusing 'us' had been a recurring one and has contributed hugely to the perception of a system in crisis. Former Junior Minister and twice Chair of the Home Affairs Select Committee Chris Mullins, commented that "It's rapidly dawned on the public, possibly slightly ahead of the politicians that we've been taken for a giant ride and as this news has sunk in we have become more robust in dealing with it" (Interview June 9th 2007).

While Mullins criticism was aimed at asylum seekers, the public do not distinguish well between different types of migrants, and thus the hostility towards asylum seekers morphed into hostility towards migrants more generally. Best argued that

> the whole thing has become disproportionate and it reflects, as indeed at one level some might think perhaps politicians should reflect this anyway, it reflects a growing public concern about abuse of the immigration system but I believe that concern to be self generated. I think it's a vicious circle, I think the more politicians talk about the problems of migration policy, the more people pick up on it and it just snowballs (Interview June 14th 2007).

Blunkett explicitly linked public perceptions of certain types of migrants to the way in which they arrived in the UK, perhaps one of the reasons behind the pre-arrival accreditation system being advocated. In a speech to the Labour Party conference he argued that pictures of people arriving in the UK through the channel tunnel "far from encouraging people to provide a warm welcome, frightened people into believing that we were being overwhelmed. We were not"

(Speech to Labour Party Conference Oct 1st 2002). While the media certainly bore a degree of responsibility for public hostility, the Governments language also served to inflame an already potentially volatile situation. It is difficult to see how Blunkett's talk of schools being swamped and constant focus on the need to control 'illegals', 'clandestines' and 'bogus' asylum seekers, all based around the concept of 'them' coming here to take from 'us', could do anything other than feed into this hostility. As Edward Said argued, "the first step in the dehumanization of the hated Other is to reduce his existence to a few instantly repeated simple phrases, images, and concepts" (Said 2005 217), just what New Labour's terminology was doing regarding unwanted migrants. In the same conference speech Blunkett went on to link control of the unwanted to acquiescence for the wanted

> The real task for all of us – and I say it to those who criticise me – is to take on those who are building up a campaign now (read the papers to see it) against any inward migration to our country whatsoever. They are arguing that we cannot take more citizens from across the world. I argue that we cannot afford not to take them from across the world to build our economy, to contribute to our wellbeing (Speech to Labour Party Conference Oct 1st 2002).

Murray Edleman argued that "mass publics respond to currently conspicuous political symbols: not to 'facts' and not to moral codes embedded in the character or soul, but to gestures and speeches that make up the drama of the state" (Edelman 1985 172). Thus the 'mobilisation of bias' through language and symbols creates a public acquiescence to policy that may have been more strongly opposed otherwise (Schattschneider 1960). Once bias has been mobilised it then becomes more politically safe to socialise the issue of conflict. However, as far as UK immigration is concerned 'control' over both discourse and wider politics then dissipated, and in order to re-assert it the Government return consistently to 'control' of migratory movements and an assertion of strength and willingness to be prescriptive.

Language and metaphors pertaining to immigration thus took the form of discursive 'othering' (see Triandafyllidou 2002 for a discussion of 'othering' in Europe). The continued toughness, in a sense its own developing political and linguistic institution, persisted. Even at the point at which the Government began to highlight the economic contribution of labour migrants, this positive message was followed by toughness with regard to asylum seekers and eventually the more catch all 'illegal immigrant' to essentially encompass all non accepted economic migrants or pre-accredited refugees. Blunkett for example argued that

> the contribution that is being made overall by migration into this country is something just under 0.5 per cent contribution to GDP. It's a substantial tranche of our well-being and the flexible way in which we've been dealing with these issues over the last 3 years has actually accelerated that process. But it has to be underpinned with quite clear and tough, reassuring policies (Speech to TUC Nov 10th 2004),

specifically with regard to asylum seeking but also increasingly with one eye on illegal migratory movements that would not end in an application for asylum.

Later Charles Clarke was more explicit in his conceptualisation of the 'good' and the 'bad' migrants. In February 2005 he argued that

> this country needs migration - tourists, students and migrant workers make a vital contribution to the UK economy. But we need to ensure that we let in migrants with the skills and talents to benefit Britain, while stopping those trying to abuse our hospitality and place a burden on our society (Home Office Press Release 7 February 2005).

The juxtaposition of the good, those who come on work permits or as part of labour migration schemes along with fee paying students, and the bad migrants, those who would abuse our system and threaten the fairness of society, was clear.

Thus the discursive *and* legal criminalisation of the unwanted is evident. Jack Straw, partly in

response to Reid's assertion of the Home Office being 'not fit for purpose' blamed its problems on its 'dysfunctional customers'. He argued that

> The fundamental problem with the Home Office is not the quality of the staff but the nature of the individuals it has to deal with….They are dysfunctional individuals many of them - criminals, asylum seekers, people who do not wish to be subject to social control. It is that which places the burden on the staff and provides a challenge both to staff and to ministers (Daily Mail May 25th 2006).

Blair added that "the world is changing so fast that the reality we are dealing with - mass migration, organised crime, ASB - has engulfed systems designed for a time gone by. When we can't deport foreign nationals even when inciting violence the country is at risk" (Speech to Labour Party conference Sept 26th 2006). The linking of anti-social behaviour, organised crime and even terrorism with migration and risk clearly shows this discursive congruence. Blair also argued that liberty was essentially a zero sum game, that "Each time someone is the victim of ASB, of drug related crime; each time an illegal immigrant enters the country or a perpetrator of organised fraud or crime walks free, someone else's liberties are contravened, often directly, sometimes as part of wider society" (Speech at Bristol University on Criminal Justice June 23rd 2006). Reid had also made this point, asking "What price our security, at what cost can we preserve our freedoms?" (Speech to DEMOS Aug 9th 2006). The answer was that our freedoms could be preserved only by their dilution, circumvention or even removal, although it was only ever likely that 'their' freedoms would be removed in their entirety, whether through internal restrictions, prevention of arrival or deportation.

Thus asylum and illegal working were identified as a threat while wanted labour migrants were perceived more positively, although it was comparatively less discussed. With regard to economic migration Flynn points out that "the common denominator across the range of these different procedures is that employers would call the shots in determining the shape of a labour

market that made more effective use of migrant workers" (Flynn 2005 477). A series of streams were created that allowed employers to gain access to workers of varying skill levels in various sectors and for varying lengths of time. The SAWS, the SBS and the WHS all provided for primarily short term and low skilled migration, while the entrepreneurs scheme and the HSMP provided employers with easier access to skilled workers from abroad. Even within the 'good' migrants' category, there was a hierarchy of wanted-ness. Low skilled migrants would not be considered for permanent residence while high skilled or wealthy migrants would be. Meanwhile, access in the first place required a job offer for all but the most highly skilled workers. This is not to say that low skilled migrants were not wanted, they were, but they would not be entitled to rights on the same basis as higher skilled immigrants. Thus the notion of stratified rights re-emerges. In the Governments response to a House Of Lords European Select Committee report, they spelt this out explicitly.

> The net long-term benefits of admitting low-skilled workers permanently are less clear that they are in the case of highly skilled workers. If they are being admitted to undertake low paid work, there is inevitably a question about the balance between the economic contribution they would make and the burden that they and their families might in the long run place on the welfare system and public services (Filkin 2003).

The potential for a biased entry system is a constant one in UK immigration policy which has links to 'othering', and plans to increase employer access to an international workforce did not eliminate such concerns. A discriminatory element of labour migration remained with a financial bond scheme in the Five-Year Strategy being used "for specific categories of migrants where there is evidence of abuse to guarantee that they go home when they are supposed to go home" (Home Office 2005b 6). Clearly such processes would make it more difficult for individuals from certain parts of the world to come and work in the UK which, although far from new, re-emphasised concerns of system bias.

Boleat implies a fear of difference in relation to the types of migrants, as well as questions as to the stresses and strains being created. He stated that "Because the Poles were white and because on the whole they integrated absolutely there hasn't been nearly the same public concern" (Interview June 19th 2007). Thus not only was there a legal difference between European and non-European migrants, there was also an ethnic one whereby the 'wanted' were partly determined by ethnicity. Add to this the issue of social class and the ability of the wealthy to easily migrate and the complex interplay of 'others' is evident. Nevertheless, control of the parameters of the debate was dissipating and those who had previously been seen as unproblematic were now included within the 'unwanted' or problematised population.

**The Changing Contours of 'the Other'**

The issue of Britishness has clear links to the conception of who 'we' are and thus who 'they' are. In a Channel 5 programme on Big Ideas, David Blunkett argued for a progressive form of British nationalism, but implicitly linked it to notions of 'the other'.

> For my generation, the war had defined our national identity very clearly. We, the British, had won the battle against the Germans; we knew who we were…. defining who we are has become much harder. We clearly need a new definition that suits our age. To find one, I believe we need to explore the idea that lies behind national identity; Nationalism (Channel 5 May 1st 2007).

Thus the notion of who 'we' are was easier when there was an easily identifiable 'them'. Britishness could therefore be seen as being in need of an identifiable and modern 'other'. Barbara Roche had also argued that Britishness be embraced, "I think you need to reclaim being British for the left. I'm proud to be British. It means fairness and tolerance - we all have our own definition, and we all bring our personal history" (New Statesman Oct 23rd 2000). Blunkett

further argued that

> over the past 10 years I've become a champion of British National Identity…. My political career has been a journey from a young man deeply sceptical about nationalism and all that it meant in the 20th century through to the present day where I'm now convinced that a sense of identity and belonging is crucial to our well-being (Channel 5 May 1st 2007).

This change had an impact, seen in the 2002 Act, but was even more important in terms of the integration and cohesion agenda. Flynn argues that Blunkett

> came to the conclusion that nationalism had to be defined in a progressive way but that that had to be a clear constituent element of your policies. And I think that that was rolled out into his immigration policies at the same time, that it was both a way of saying that if immigrants are willing to work for the community that the numbers don't bother us but the other side of it was that it will be in the service of British interests (Interview June 13th 2007).

Appeals to the national interest are often made by politicians. As far as immigration policy was concerned the interests of the nation were defined by the Government in relation to fairness and control but also the needs of employers. However, on a more theoretical level the need to gain acquiescence for policy often leads to appeals to a national interest. It was this type of appeal to fairness and the needs of the indigenous population that, for example, were used to justify the removal of asylum seekers from the more general rights of citizens. As shown in Chapter 3 the social security rights of asylum seekers were separated from those of citizens, via NASS, an explicit formulation of an 'us' deserving category regarding rights and expectations, and a 'them' undeserving category. It is also worth adding that the contours of deserved-ness were also changing with regard to the host population, through labour activation policies and forms of workfare.

Nevertheless the potential for 'bounded innovation', to use Weir's term (Weir 1992), is evident in the period under review. Not all ideas have the same chance to 'make it' in terms of policy

influence, a form of non-decision making takes place. So with regard to immigration, absolute open or closed doors were not conceivable. Employers and the Government argued for excess labour supply so that the immigration system served the 'needs' of the economy, but for reasons of democratic legitimacy that could not be absolute. Thus the institutional arrangements arrived at allowed the maintenance of existing policy trajectory without creating opposition among elite interests and without threatening the overall legitimacy of either the policy itself or the system that required it, an accommodation with consequences for future policy.

Initially asylum seekers were presented as a threat to the social security system. However this construction of asylum seekers as a threat later extended to 'illegals' and labour migrants at the point at which asylum seekers no longer dominated discourse on immigration related issues in the public domain. At that point lower skilled labour migrants were seen as placing strains on public services due to the sheer scale of their movement. While little could be done regarding A8 migrants, a large proportion of overall numbers, the Government aimed their restrictions at non-EU low skilled workers, who would no longer be able to enter Britain to work.

John Reid would later argue that despite four major pieces of legislation and constant rule changes that restricted access to social services, the Government felt there was "an underlying reality that we have not been tough enough in policing access to such services as council housing, legal aid or NHS care" (Guardian February 24th 2007). The solution was "a package of measures that will shut down access to benefits and services for those that should not be here. Living here illegally should become ever more uncomfortable and ever more constrained" (Guardian February 24th 2007). Such arguments continued to create negative perceptions of 'the other'. Discourse though, had 'jumped' from one focused on asylum seeker 'abuse' to one

labeling individuals rather than their behaviours as illegal, a move that has no parallel in British law which is based on the illegality of acts rather than people (workshop at Annual Compas Conference July 2nd 2008).

Flynn, however, argues that the move away from the language of 'bogus' and 'abuse' relating to asylum seekers was "because basically they feel they've won that battle, they've got the numbers down to about a fifth of what they were in 2002" (Interview June 13th 2007). While Spencer has argued that positive language regarding the need for economic migration was consistently drowned out by negative language concerning asylum seekers, she also argues that any positive images were subsequently overtaken by 'the language of harm'. For her the epitome of this development was John Reid's proposal for 'Immigration Crime Partnerships' in 2007 (Spencer 2008 359). She argues that at least part of the reason for this is that asylum figures had dropped, resulting in more attention being paid to 'illegal' immigrants. It may be possible to extend that analysis further, that public hostility as well as a series of negative asylum institutions required somewhere else to go in a form of institutional, or more accurately policy and attitudinal, layering or conversion.

Reid later counter-posed the issue of fairness to the indigenous population with the underhand behaviour of migrants.

> It isn't fair when desperate people fleeing persecution who need asylum are put at risk because criminal gangs abuse an antiquated asylum system. It isn't fair when someone illegally enters our country and jumps the queue. It isn't fair on British workers if they find their terms and conditions undermined by unscrupulous employers deliberately taking on cheap illegal labour. And it isn't fair, or sensible, if in assessing immigration levels we don't take into account the effects of immigration on the schools, and hospitals and housing. So, I'm putting fairness at the heart of everything we're doing in the Home Office (Speech to Labour Conference Sept 28th 2006).

The use of such threat scenarios is utilised in politics as a way to "evoke a conditioned uncritical response" (Edleman 1985 124), among the populace. Language and symbols are used to stunt opposition. However, asylum seekers as a threat to national security and the welfare state were not the only negative images conjured up.

In a BBC interview John Reid argued that "It is unfair that foreigners come to this country illegitimately and steal our benefits, steal our services like the NHS and undermine the minimum wage by working. Year on year, we are going to make it even more difficult for them to do that" (BBC March 7th 2007). This move towards the language of harm and fairness to include non asylum seeking migrants indicates an expansion of the problematised population.

The focus being developed was highlighted in an IAS briefing regarding the second reading of the 2006 Act. In it they argued that

> Until recently ministers distinguished between two types of immigrant: those who come openly to Britain in order to work or live with their families and those who arrive clandestinely as asylum seekers or illegal labourers. To the former they were kind, relaxing immigration rules and opening new routes to settlement. The latter were subjected to draconian new laws and a steady deprivation of legal rights (IAS Briefing June 29th 2005).

As already alluded to, this distinction started to be questioned as certain types of economic migrant were problematised and began the process of exclusion. The IAS continue

> It is not that the government is going soft on asylum-seekers and illegal immigrants: if Labour's plans are enacted, more would be refugees will be locked up and may be deported after five years if the situation in their home country is deemed to have improved….what has changed is that the government is now talking tough about foreign workers, students and wives…..most striking are reforms aimed at less skilled workers, who will no longer be able to work their way towards citizenship-a nod towards a German-style guest-worker policy, which Britain had strenuously avoided until now (IAS Briefing June 29th 2005).

Control measures were indeed set to become a more ubiquitous aspect of immigration policy, with only the high skilled not being subject to much of its reach. Liam Byrne announced steps that were claimed to be focused on illegal working in May 2007. These involved both internal and external measures that were designed "to ensure that we do not just stop illegal journeys to the UK, but the illegal jobs that draw illegal migrants to our country" (Hansard May 15th 2007 Col 32WS). 'Illegal jobs' were now being openly contextualised as a pull factor, despite the lack of enforcement of Section 8 sanctions on employers (see for example Somerville 2006 31).

The 2005 election is particularly noticeable for hostility towards migration, and was indicative of this expansion of the migrant populations characterised as 'unwanted'. While the Conservatives called for an annual limit on total migration and accused Labour of being soft (see for example Lynton Crosby BBC April 11th 2005), Labour again linked the issue of asylum to criminality by pointing to the opposition of the Conservatives to control measures they had attempted to introduce. Blair argued that

> they tried to stop us fining lorry drivers caught smuggling illegal immigrants into the country – by voting against our £2,000 civil penalties. They voted to restore benefits to asylum seekers in 1999, and argued against our proposals to remove support from families whose claims were rejected and who had exhausted the appeals system but still refused to go home. They even voted to allow child abductors, thieves and bomb hoaxers to remain as refugees when the government wanted to exclude anyone sentenced to prison for two or more years from lodging an asylum claim in 2002 (Guardian April 29th 2005).

As a result of large-scale movement from the A8, the 'sustainability' of the system was called into question. The integrity of the system once more appeared to be at stake with Reid arguing that "a large majority don't think the British government has been open and honest about the scale of immigration to the UK" (Guardian Feb 24th 2007). Not only did this bring the system itself into a legitimacy vacuum it also created problems of racism if not dealt with. He continued that "if we on the progressive left do not address this issue, others on the far right will misuse it

for the most evil of purposes" (Guardian Feb 24th 2007).

Not only do decisions made previously impact upon choices that are then made, so too, following Cobb and Elder, are the very legitimacy of those involved in the policy arena. Thus while on the employment side the needs of the Government and employers are primary, they are not only the most legitimate actors but in some sense the only legitimate actors. On the asylum side the legitimacy of both the judiciary and liberal NGOs is called into question. The Government consistently sought to undermine the role of NGOs and were dismissive of their arguments. The judiciary on the other hand were criticised for a too liberal approach to issues of human rights contained within the Human Rights Act, but that liberalism was seen as having a degree of illegitimacy when counter posed with the will of Parliament (Evening Standard May 12th 2003). On the other side anti-immigration media and activists formed a powerful coalition in which 'baying and screaming' (Interview June 27th 2007) came to impact on Government policy. These issues of legitimacy shortfalls and a dominant hostile discourse then impacted upon the Government's goal of 'community cohesion'.

**The Impact on Community Cohesion**

Both Lavanex (Lavanex 2001 b) and Katroyano (in Christainsen 2004) have postulated the possibility that frames can develop and become independent from the power relations that ascribed them importance once they become to some degree institiutionalised. This argument certainly appears to have applicability in this case. The language of harm and the creation of a set of 'others' against which 'we' require protection did indeed reach beyond the limits set by the frames in the first place. As Best argues, the hostility became mutually re-enforcing (Interview June 14th 2007) and was then able to 'jump' targets, to those the Government initially perceived as being on the good end of the good – bad continuum.

Thus as frames morph and become institutionalised they exhibit a degree of independence. However, institutions do not only impact on the issue that they were created for, but also have impacts on other fields as well. Intended and unintended effects result from practically all forms of institutional construction. The 'bundling' of all immigration issues together was a result of the Government's consistent rhetorical conflation of all migration matters. Blaming 'bad' migrants in the form of asylum seekers primarily but also forms of illegal movement, for numerous societal ills had the effect of creating hostility towards all migrants, although usually more so those who are perceived as being 'most different'.

The consensus that developed in the 1960s that good race relations required firm migration control, at least at a rhetorical level, re-emerged although it was now linked to 'community cohesion'. Prior to Labour being elected migration was constructed as a potential threat to the social security system at the domestic level and was increasingly seen as an issue of national security within international forums such as the EU. However, that construction was firmly embedded by New Labour within both political and public discourse, thus creating some of the very cohesion problems that they then had to deal with.

Ruth Kelly, as Communities Secretary, argued at the launch of the Commission for Integration and Cohesion that "the landscape is changing before our eyes and for some communities life in Britain feels different today than it did two weeks ago" (Guardian Aug 22nd 2006). Thus the change itself was not necessary the problem but the pace of change. She called for "a new honest debate about integration and cohesion in the UK" (Guardian Aug 22nd 2006).

Linked to this community cohesion agenda was the growing hostility faced by existing migrant

populations, particularly Muslim communities, who also started to be conceptualised as 'an other' with little loyalty to Britain and Britishness. Blunkett alluded to as much at a speech to the Labour Conference when he stated that

> when I wrote a detailed essay in a book of essays, just a few weeks ago, and argued that as well as the mother tongue, English mattered in the home of Asian families, when I argue for an understanding of citizenship and our democracy, I do so not to dictate, but because through speaking English, through an understanding of citizenship, the opportunity for education and employment is opened up. …. That isn't linguistic colonialism, it is just good common-sense (Speech to Labour conference Oct 1st 2002).

Somerville alludes to the pressures on "Britain's traditionally liberal religious accommodation policies" (Somerville 2009). Government policy and pronouncements essentially had the impact of problematising certain existing ethnic minority populations. Somerville points to Jack Straw's comments in 2006 that the headscarf represented 'a visible statement of separation and difference' (Somerville 2009), and thus responsibility for problems in terms of lack of cohesion were increasingly placed at the door of the problematised communities.

In Tony Blair's later years he began to argue that total migration was an issue of real concern, in contrast to the previous focus solely on the asylum side. By 2004 a debate was seen as being required, something the Government now seemed to be arguing had been lacking for the previous seven years of their incumbency. However, this new debate was called for not due to Government failures or migration numbers, but due to British National Party successes (Sales 2005 446). Thus the hostility that the Government had helped to foster towards asylum seekers, which had now encompassed total migration, including existing minority ethnic populations, prompted some Government introspection. However, the result was not a more nuanced approach to the problem that they had helped to create, but a further 'crack-down' on illegal

migration, accompanied by demands that existing ethnic minority communities integrate more. The lack of integration, as characterised by the Government, was seen as being the fault of both newer and long term settled Black and Minority Ethnic communities. This led to the Government using BNP ideas and rhetoric in order to defeat the BNP, 'to cure the patient the patient must be killed' (Bigo 1998 160).

Industry Minister Margaret Hodge created some controversy when she called for the allocation of housing to no longer be based purely on need, but instead on longevity of stay in the area. She argued for a policy stance where "the legitimate sense of entitlement felt by the indigenous family overrides the legitimate need demonstrated by the new migrants" (Observer May 20th 2007). She also implied that new migrants were being given priority in housing lists. This argument was attacked by Jon Cruddas, running for Deputy Leader of the Labour Party, as not only being wrong, but also being inflammatory. He argued that "Housing is allocated according to need and it is disingenuous for Margaret Hodge to suggest otherwise" (The Independent May 26th 2007). Another candidate for Deputy Leader, Alan Johnson, also felt that the facts were wrong and that "The problem with that is that's the kind of language of the BNP, and it's grist to the mill of the BNP, particularly as there is no evidence that there's any problem in social housing caused by immigration**,** none whatsoever" (The Times May 25th 2007). Nevertheless this periodic scapegoating added to the sense of crisis and acted to increase overall hostility, negatively impacting upon the Government's own goal of community cohesion.

The lack of public knowledge of the realities of immigration is at least partly due to the atmosphere in the immigration system, one that the Government helped to create. Liam Byrne argued that there were three reasons for public concern. The lack of understanding of the

distinction between legal and illegal immigration and concern with both was, according to Byrne, due to "first the huge spike in asylum claims we saw at the turn of the century. Then, the unpredicted influx of newcomers from the new Eastern Europe. And last year, the crisis of foreign prisoners released without a review of whether they should be deported" (Speech to KPMG June 4th 2007). While the foreign prisoners issue was a relatively minor one, and it's difficult to see exactly why it was given such prominence, the other two issues raised are interesting. The 'spike' was indeed large and resulted primarily from international political turmoil. Somerville points out that in 2002, the years with the largest number of asylum applications, the main countries of origin among those seeking asylum in the UK were Iraq, Zimbabwe, Somalia, Afghanistan and China (Somerville 2009). Nevertheless labour migration outstripped this spike with little or no attention. Enlargement on the other hand shows the economic imperative as being almost absolute, with the Workers Registration Scheme as a sop to opposition to open labour markets, particularly so soon after the visa scandal that led to the resignation of Beverley Hughes.

Nevertheless in the latter years of Blair's premiership attention to non-asylum immigration matters was no longer simply a question of what the market demands. While it was easier to take this position after the enlargement of the EU, when an extra 20 per cent was added to the EU population, meaning millions more workers could be sourced, it marks a change in discourse nevertheless. The Migration Impacts Forum was a means by which the Government could attempt to be seen as responding to public concerns about pressures put on public services. However, emerging cohesion issues primarily concerned enlargement nationals and thus there was little or nothing this policy would do to address such an issue.

Nevertheless the concept of harm, and as far as Government policy was concerned harm

reduction, was taken up in the run up to Gordon Brown replacing Tony Blair as Prime Minister. Byrne argued that "a small number of schools have struggled to cope, that some local authorities have reported problems of overcrowding in private housing and that there have been cost pressures on English language training" (Hansard Nov 2nd 2006 Col 180WH). He continued that "the answer is in action that is simultaneously firm and fair" and that "prioritising harm reduction has to be a core element, as do much more effective cross-Government working and shutting down the magnet of illegal working" (Hansard Nov 2nd 2006 Col 180WH).

Some Government policies had actively operated against 'community cohesion'. One of the first policy u-turns of the Government was one that they accepted as having the potential to work in the opposite direction of the community cohesion agenda to come. The acceptance of Section 8 was justified on the basis that "the mischief caused by removing Section 8 would be greater than that caused by its remaining, although we acknowledge that it causes discrimination" (Hansard Jun 16th 1999 Col 491). At this delicate point in time, just after the MacPherson report had been published, and thus the issue of institutional racism had crept into general language, the Government accepted that the potential for racism in workplaces was the lesser of two evils when put against the symbolic crackdown on illegal working, symbolic due to the relative lack of enforcement. This case is also an interesting example of how quickly a practice can become institutionalised.

There was also criticism of the effects of the 1999 Act by a coalition of Race Relations organisations. A dossier submitted to the UN's Committee on the Elimination of all forms of Race Discrimination (Cerd) argued that the 1999 Act had "created racial tensions rather than racial harmony" (The Herald August 14, 2000). Such tensions were to become an important facet of the Government's developing outlook regarding immigration and nationality. Thus

following from Pierson, policy creates tensions that policy then reacts to (Pierson 2006). Such a development highlights unintended consequences that can occur as a result of policy decision-making.

The result of this focus on cohesion were numerous reports such as the Cantle Report that focused on and problematised the notion of segregated communities. Indeed the whole multicultural model was being challenged, at least in part by the emerging argument pertaining to 'Britishness'. More attention was also being paid to the relationship between migration and citizenship with the Government strongly arguing for a new celebration of what it means to be British. For wanted immigrants this would entail citizenship and language tests and for existing immigrant communities would encompass more attention to integration, and restrictions on links with the community's nation of origin. This would be done through restrictions on family visits without financial bonds and a questioning of arranged marriages with citizens of other nation states. Blair had earlier argued that integration was a 'quiet success story' (Speech to CBI April 27th 2004), and one senior Labour MEP questioned why the Government were problematising the unproblematic (Interview June 26th 2007). Thus the importance of the audience is seen. If citizenship, race relations and integration were not overly problematic, it was the need to be seen as assuaging a certain section of the public that is evident. Nevertheless the prominence given to that audience acted to reinforce their arguments and concerns, with further deleterious effects on cohesion.

One of the immigration outcomes of these developments was to make it increasingly difficult for certain types of migrant to be accepted for both work permits and citizenship. A decision was made in 2006 to end any further low skilled migration from outside of the EU. The Government

had created a system of stratified rights to citizenship, with low skilled workers having practically no opportunity to become citizens. The new step meant that there would be practically no opportunity to even become workers for non EU low skilled workers. In essence, only those with financial clout or high skill levels would now be accepted. Once more the target of policy was an area not seen to be creating the problem. The Government knew that any issues of concern now centred around the volume of movement from new EU countries and illegal migration, but their belief in a European labour market, as well as the fact that EU restrictions would soon be illegal, meant that attention could not be focused there, and so non-EU low or medium skilled workers became the focus of blame, the new 'other'.

This was accompanied by a move from permanent refugee status to just Temporary Leave to Remain, a period in which conditions in the Country of Origin would be kept under review. This five-year period in which people recognised as being at risk in their nations of origin would have just temporary status would have major implications with regard to their ability to integrate, and this would undermine the Governments aim of community cohesion. Adding to these problems is the Government's more recent proposals to move towards probationary periods of citizenship. Indeed the period of probationary citizenship only begins after a migrant has been resident in the country for five-years, meaning that it can potentially take up to 10 years for someone wishing to become a citizen to be able to do so, clearly impacting further on the integration of the people involved. There were obvious ramifications from all of these developments for the integration of accepted refugees and certain labour migrants. Yet they remained a soft target for policy and discourse.

**Effects on Economic Goals?**

One such ramification could be that less 'wanted' migrants would wish to come to Britain, or

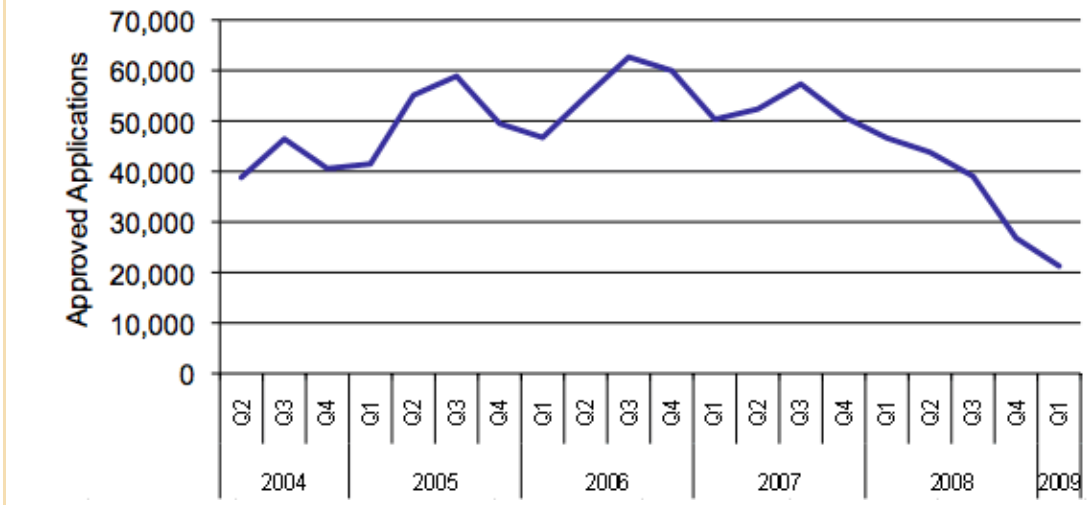
alternatively that those who stay or arrive are subject to increasing pressures in both economic and social matters. Indeed, there does appear to have been a downturn in A8 nationals choosing to register to work in the UK. In the period April to June 2008 there were 40,000 registrations from A8 nationals, down from 54,000 in the same period the year before (see table 6). In the most recent Home Office figures there is a drop of some 26,000 in applications for the WRS between the first quarter of 2008 and the first quarter of 2009. This downward trend has now been evident for 2 years (Home Office 2009), and thus existed prior to the economic slump. Therefore, economic rationales for less movement may not explain this drop in full. The number of A8 nationals' registering is now at its lowest point since accession in 2004. In addition the number of A2 nationals also fell to just 7000 between April and June 2008, down from 10,860 the year before. This downward trend also continued into 2009 (Home Office 2009). This means that a simple argument that conditions since the first enlargement have improved, leading to some equalisation which prompts many people to return home is insufficient, as the same 'trickle down' effect would not be expected from the A2. In addition, the current recession appears to be hitting the economics of the accession states harder than the UK, meaning the equalising effect has been at the least delayed.

IPPR research found that half of the million A8 nationals who had come to work in the UK since 2004 had now returned home (Pollard et al 2008). While many A8 nationals undoubtedly only planned to stay for a short time, and others migrate more cyclically and according to seasonal work patterns, the fall in applications and the numbers that appear to be returning to their country of origin are significant nevertheless. Gerwyn Davis from CIPD appears concerned that the supply of workers will, or may already have 'dried up', "this situation could worsen in the next few months as employers struggle to find unskilled workers in particular" (Observer 24th Aug 2008). Jack Mathews, Chief executive of the Government skills council for food and drinks

industry, also argues that "there is an element of complacency. Many employers have taken migrant labour for granted" (Observer 24th Aug 2008). While under-employment is an issue for all BME communities in the UK, it is also evident among recent labour migrants who are carrying out work well short of the level of their qualifications and skill levels. Adding to the problem of under-employment is the issue of anti-immigrant hostility.

Table 6

**Number of Initial Work Applications from A8 Immigrants, 2004 to 2009**




*Source*: Home Office et al., various years.

(Taken from Somerville 2009)

In evidence to the Communities and Local Government Committee Sarah Spencer pointed to the limited rights that new arrivals have. The lack of welfare rights for many migrants may also impact upon intentions to stay as well as poverty levels among those who do remain during the current recession. Immigrant groups have historically been worse effected in terms of losing jobs than other groups (Somerville and Sumption 2009), which would have an impact in terms of both economic effects and community cohesion. There appears to exist something of a symbiotic

relationship between the lack of rights, the length of time new migrants plan to stay in the UK and the political and social environment in which they must live. Spencer specifically refers to the reaction of the public as having the potential to impact upon the decision-making of migrants (Hansard April 1st 2008 Select Committee on Communities and Local Government Questions 175-179). In evidence to the Communities and Local Government Committee she highlighted recent research conducted by the Joseph Rowntree Foundation that found that 'sense of belonging' was impacted upon by the levels of discrimination (Hansard April 1st 2008 Select Committee on Communities and Local Government Questions 175-179), that migrants wanted to 'belong' but were being prevented from doing so, contrary to the Governments perspective that lack of integration was a result of the behaviour of the immigrant communities themselves. Although many reasons for this discrimination were mentioned, one key variable was seen as being

> the national discourse about migration and about Muslims, that the negative terms of the debate, the suggestion that migrants were a drain on public services, a perception that they do not share our values, and association with terrorism, undermined their attempts to create a more inclusive sense of community, sense of shared citizenship (Hansard April 1st 2008 Select Committee on Communities and Local Government Questions 175-179).

Danny Sriskandarajah from the IPPR points out that "Britain has been lucky – although it has lost substantial numbers of people, it has attracted more than a million skilled immigrants to replace them. If they stop coming then that would be a problem" (Telegraph Feb 26th 2008). Initial evidence of highly skilled workers is not conclusive, as the Tier 1 applying to highly skilled migrants only began in January of this year while the Highly Skilled Migrants Programme only ended in June 2008. Indeed there is limited evidence regarding both the level and the reasons for migratory movements away from the UK at present. These trends will require close attention in the coming years.

The UK also now has its lowest level of asylum applications since 1993, with just 5720 in the second quarter of 2008, although there was a slight upturn in late 2008/early 2009. The UK therefore joined France and Germany in bucking the EU trend of increased claims for asylum (UNHCR 2008). The research on asylum choices highlights that asylum seekers seldom make initial choices as to where to seek asylum, but that any choice that is available is most likely made 'on route'(Robinson and Segrott 2002). It is thus possible that asylum seekers arriving in the EU choose not to make their way to the UK anymore, either due to the atmosphere and conditions they would experience here, or to the fact that they would likely be returned to the first EU country they arrived in, or both.

What both of these cases suggest is that for one reason or another, the UK is not now being seen as much as a destination of choice for either A8 migrants or for asylum seekers. The reasons for this are worthy of future qualitative research.

## Conclusion

Throughout Labour's period in office migration issues have been presented as if the system was in perpetual crisis. While questions of identity and belonging as well as human rights are always likely to produce normative responses, an objective crisis is not evident from the scale of migratory movements over the past decade. Nevertheless, the Government, aided by the media, have responded by constant legislative interference and a hostile discourse. Part of the rationale for this was undoubtedly electoral, with the Government assuming that the hostility towards those migrants being characterised negatively could act as an electoral boon for the opposition. However, a degree of institutional path dependence is also evident. In a sense the initial decision making over asylum seekers, and the language used by the Government to justify those decisions, created a policy momentum that they could then not omit themselves from, should

they have wished to do so. In addition, little attention was given to the role of feedback. In essence the very 'hostile audience' that the Government has sought to assuage through their policy making grew inexorably, and thus demanded further hostile and restrictive legislation. Thus policy feedback and consequences require more attention within the field of public policy. These impacts of the public policy process along with their consequences should add a new nuance to theories of why migration takes place in the circumstances in which it occurs.

# Chapter 10 - Conclusion

## Introduction

The main rationales for this study were both an interest in the cross-over points between public policy analysis and immigration theory and an interest in the relationship between policy-making, institutionalisation and the audience. While the theoretical suppositions underwent reflection and change, the result has been a rich case study of public policy, applicable beyond either the realm of immigration policy and of relevance to more than just the British policy process. Indeed any policy area where policy is framed within a populist discourse would be testable against the hypothesis used.

Comparative work would of course further many of the insights made. However, the thesis works as a standalone piece of research. The combination of openness and restriction in relation to migrant type, as well as the consequences, raises issues generalisable to other nation states and political parties. However, the study also highlights more distinct aspects of New Labour policy-making. The mix of populism, media management and a successful election machine combined with the target driven nature of the Labour Government to provide insights into both the means by which policy was made, but also its effects.

The work conducted here is also rooted in classic works of public policy and political science. While symbols and symbolic action have been highlighted in terms of issue framing and issue definition, the thesis has also highlighted the necessity of examining the consequences of policy developments, including the ratcheting effect of discourse within public debates. It has been demonstrated that immigration policy has institutionalised hostility and created a new immigration audience to which future policy has responded with further restrictive policy.

Indeed the concerns regarding immigration have been shown to have outgrown the initial dual construction to impact upon all migrant groups; including wanted labour migrants and long term settled migrant communities at whom the community cohesion agenda was aimed. It is the key argument of policy making politics, engaging with Theodore Lowi's seminal work, that this thesis has developed and related to the politics of immigration policy.

This chapter begins by highlighting the structure of the thesis and how they flowed and coalesced. This includes a brief synopsis of each chapter and discusses a number of the chapter specific research questions. The chapter then goes on to address the empirical data against the overall hypothesis, as well as highlighting a number of continuities in policy over the decade under review. The concluding remarks re-affirm the empirical and theoretical contribution made by the thesis.

**Chapter Structure and Research Questions**

Chapter 2 highlighted the importance of combining public policy approaches with theories of migration, thereby allowing a more comprehensive understanding of migratory movements to be developed. Chapter 2 also introduced the key public policy concepts that the thesis incorporated into immigration policy analysis. In particular symbolic politics, issue framing and the audience were introduced. The chapter then went on to address the importance of institutionalisation and feedback effects that were later related to the empirical work in the thesis. The chapter ended by arguing that public policy approaches add a new nuance to theories of migration.

It was also important to place the empirical investigations within their historical context. Chapter 3 traced the history of immigration policy-making in the United Kingdom up until the 1990s. This produced an understanding of the institutional structure and context within which the New

Labour Government were required to operate. In particular the framing of migrants according to their wanted-ness was highlighted and historical continuities discussed. However, the chapter also raised the key issue of European influence on the British policy process, of importance to the chapters that followed.

Chapter 4 undertook analysis of the institutional structure inherited by the Labour Government and went on to analyse the first immigration act passed by that Government, the 1999 Immigration and Asylum Act. The chapter looked at the way immigration was framed and broadly found continuities with the framing of the previous administration. Policy was shown to have been aimed solely at asylum seekers who were problematised, while labour migration increased substantially with little political or public attention.

Chapter 5 examined the 2002 Nationality, Immigration and Asylum Act. Continuities in issue framing with the 1999 Act were emphasised but were joined by a new emphasis on the numerically larger labour migration numbers, who were being framed in a more positive but also less public way. Nevertheless, negative framing continued to create a feeling of immigration in crisis, seen in the attention now being given to integration and nationality that focussed on making the 'other' less different.

Chapter 6 moved on to analysis of both the 2004 Asylum and Immigration (treatment of claimants) Act and the initial enlargement of the European Union, as well as some of its impacts. The continuing effect of framing on integration, or cohesion as the Government preferred to call it, were highlighted throughout. The explicit conceptualisation of a dual immigration process, with migrants being characterised as wanted or unwanted, was also highlighted. It was this framing that had links to European enlargement, with some forms of labour migration also now

being framed negatively due to the availability of low skilled migrant workers from Accession countries.

Chapter 7 examined both the Five-Year strategy for immigration and asylum and the 2006 Immigration, Asylum and Nationality Act. This chapter furthered the findings in the previous chapter, which had found a dual immigration process, but the chapter shows the emergence of a continuum of wanted-ness with regard to the Government's view of migrants, rather than a binary good/bad categorisation. The points based system represented a codification of that process. However, the chapter also highlighted some of the ramifications of the overall problematising of non-asylum migration for the first time.

The final two chapters integrated more fully the developments in the theoretical chapter and lessons from the historically based literature review, with the findings in the empirical analysis. These chapters re-emphasised, in empirically driven form, the utility of the public policy approach and the need for migration theories to take account of the political atmosphere created by policy and policy-making when theorising about migrant choices.

Chapter 8 developed the links between earlier classic works of political science and the empirical work undertaken here. This showed the dual immigration structure established by Labour developing into an immigration structure with more than just two categories of migrants. Nevertheless the symbols and language used by the Government framed migration negatively and this framing, along with the contents and number of Acts passed, were shown to have characterised immigration in crisis terms. Chapter 8 also highlighted the ways that the government were able to circumvent international protection obligations with regard to refugees. Additionally, the chapter showed the extension of actors involved in the immigration process,

with both the diffusion and delegation of responsibilities highlighted. Thus the role of non nation-state actors has been shown to be of significance. Employers well as other national actors have been charged with a role. They have been joined by European institutions who have performed control functions but who have also enabled the labour migration regime to be expanded through the enlargement process. Thus the control of certain forms of labour migration and European enlargement are shown to have had a symbiotic relationship.

Chapter 9 then linked such findings to wider issues of migration, suggesting the need for migration theory to take domestic politics, rather than just economics, more seriously. This chapter also showed the inverse relationship between the framing of immigration and perceptions of the systems legitimacy. However, the chapter also highlighted the consequences of negative discourse and framing such that the Government's control over the terms of the debate and the migrants at whom it was aimed dissipated. Feedback effects were shown to have led to a ratcheting of anti-immigration discourse with concomitant effects on public opinion. The chapter concluded by arguing that this relationship between policy and politics, with its resulting effect on the political and social atmosphere, adds a new nuance to theories of why migrations take place to certain places at certain times.

**Key Findings**

The key research question for this thesis was 'has immigration policy created immigration politics?' This has been addressed throughout the empirical parts of this thesis. The politics of immigration in Britain reflects the initial construction and framing of policy by policy-makers and reflects a degree of institutionalisation in policy-making. This is not to say that the numbers of migrants did not rise and that certain elements of the public and opinion makers would not have been hostile towards migrants without this framing. It does suggest, however, that the

atmosphere has been hardened by both a problematisation of immigration and legislative activism, and that hostility has been institutionalised.

The overall empirical investigations highlighted a series of continuities in policy that were evident across all of the Acts examined. The 'discouragement' of asylum seekers through both external and internal measures, and a discourse of migration as a bad thing and a danger has predominated and has been one of the clearest themes. This involved making arrival to the UK in order to lodge a claim for asylum much more difficult, accompanied by the creation of harsh conditions for those who do successfully arrive. External and internal controls have in a sense worked in tandem. The externalisation of controls prevented arrivals but also questioned the legitimacy of all those who successfully found their way to the UK and claimed asylum, and thus created a sense of urgency and crisis within the immigration system.

The work here has also shown that the circularity of this process has had both displacement effects and further consequences. As asylum restrictions are expanded, more cases are inevitably refused. Thus the legitimacy of all cases are called into question, leading to a further ratcheting up of anti-asylum discourse and a move, it is suggested, on the part of the migrants themselves, from claiming asylum to irregularity. Internally this has been accompanied by the stratification of welfare rights as asylum seekers were removed from the more general social security system. This was a clear signal of the Government's view of asylum seekers in terms of their deservedness. 'No choice dispersal', detention and deportation formed other key planks of the harsh new system; all based on the concept of pull factors. Targets also became ubiquitous on the asylum side of immigration. The 'tipping point' target was a particularly controversial aspect of the system which took no account of the reasons behind at least some of the forced movement.

The labour migration regime, on the other hand, was subject to little restriction, with 'light touch' regulation predominant, consistent with other New Labour policy. The interests of employers have been primary. The need to source 'units of labour' led policy to be changed, tweaked and reorganised in a way that supported those interests. Thus, the number of work permits was increased, which along with various other employment schemes opened access to labour migration across a variety of industries and for different timescales, although the rights accruing to the migrants themselves varied according to skill type and nationality. As prime beneficiaries of increased labour supply employers, as well as some public bodies, were charged with enforcing immigration controls at the micro, or street level. Thus, for example, employers were required to check the immigration status of employees and transport companies were given the responsibility of controlling some entry procedures.

The most significant exception to this open labour market approach over the ten year period was the decision to restrict the access of A2 nationals to the UK labour market. Nevertheless, at a time when the supply of A8 workers showed little sign of slowing, this should not be overstated. The later decision to end all low skilled labour migration from outside the EU can also be seen as a form of restriction, although clearly the number of A8 migrants willing to do such work eliminated any immediate negative impact for employers. Slight restrictions in labour migration were a means by which the overall labour migration policy could continue relatively unscathed. Allowing A2 migration at a time of some apparent political and public unease would have raised wider issues and so such a second order issue was considered expendable. Nevertheless, this duality of the system was challenged and in the end superseded by a more widespread hostility that resulted from the vilification of the 'unwanted'.

The links between Labour's thinking and presentation, their electoral machine, and the opinions of the public have been given thorough empirical examination in this thesis. The dual immigration policy aimed at different groups of migrants reflected or refracted a dual framing. Throughout the period under review, the unwanted were consistently framed according to risk and threat, and many were effectively securitised. Nevertheless, although the framing of the unwanted was consistent, who constituted the unwanted morphed and changed. This framing of policy in a certain way to appeal to a specific audience, escaped the control of the framers. One ramification of that framing was that as the number of initially constructed unwanted migrants dropped off, the focus essentially jumped targets to encompass all migrant groups. That is, many of the 'wanted' migrant groups have been shown to have essentially been 'othered' in public discourse and the Government have then further responded to this incremental extension of 'othering'. This was then shown to have had further consequences with regard to the audience and the hostility that they felt towards migrants more generally.

This framing and the language and symbols that accompanied it, along with the legislative activism mentioned above, in essence created rather than responded to an immigration crisis. The relationship between issue framing and crises was a fluid one and was not unidirectional. However, there was clear evidence of the crisis at least in part being framed as such due to the way in which the issue was defined by the Government.

**Conclusion**

This thesis has made a number of key contributions to both the debates on immigration and immigration policy and to core issues of importance to scholars of public policy. With regards to the latter, the issues of symbolic politics, issue framing, crises and feedback effects add a considerable amount to existing debates pertaining to immigration policy. The way in which

policy is constructed can be path dependent but can also open space for institutional conversion, allowing that initial construction to be taken beyond the control of the institutional creators or progenitors. The thesis therefore shows how a 'way of doing things', or 'way of presenting things' can become institutionalised, but that the form of institutionalisation may not be that wished for by those who started the process. In this regard the use of symbols is of utmost importance. Feedback effects of policy creating politics that then make further demands on policy were evident throughout.

Immigration policy and its impacts should also be taken account of in any examination of why certain migrant movements occur at particular moments in time. Certainly push and pull theories, as well as network theories that focus to some degree on migrant choice, should integrate the political debate within that choice. Theories of migration have tended to focus on labour market demands, networks and global inequalities. While not suggesting that any of these theories, whether of the macro-structural variety, or the more micro-individualist ones are wrong and should be rejected, it is argued that the political climate into which migrants are required to move adds a missing dimension to such theories.

**Appendix 1 – List of Interviewees**

| | |
|---|---|
| Neil Gerrard | MP and only member of Home Affairs Select Committee continuously since 1993 |
| Immigration Judge | Senior Immigration Judge |
| Commission Official | Senior Official at the European Commission |
| European Parliament Socialist Group | Two Researchers for Socialist Group of the European Parliament |
| Keith Best | Chief Executive – Immigration Advisory Service |
| Don Flynn | Project Director – Migrant Rights Network |
| Liz Colett | Policy Analyst – European Policy Centre |
| MEP | Senior Labour MEP with Interest in Immigration |
| Sean Bamford | International Officer Trades Union Congress |
| Wilf Sullivan | Race Equality Officer Trades Union Congress |
| Civil Servant | Senior Home Office Civil Servant |
| Phil Douglas | Home Office Civil Servant seconded to Foreign Office |
| NGO Staff | Research and campaigns in immigration NGO |
| Former Minister | Immigration Minister During the period under Review |
| Chris Mullins | Former Foreign Office Minister and Twice Chair of the Home Affairs Select Committee |
| Mark Boleat | Chair of the Association of Labour Providers |
| Humfrey Malins | Former Conservative Shadow Immigration Minister and Head if the Immigration and Advisory Service |

**Appendix 2 – Asylum and Labour Migration – The Figures**

| | **Asylum applications** | **Decisions made** | **Successful Claims** | **Percent made 'in country'** | **Appeals Heard** | **Successful Appeals (1st stage)** | **Backlog** | **Work permits Issues** |
|---|---|---|---|---|---|---|---|---|
| 1997 | 32, 500 | 36,000 | 6,840 (19 per cent) | 50 per cent | 21,000 | 2,900 (14 per cent) | 51,800 | 63,000 |
| 1998 | 46, 000 | 31,600 | 9,164 (29 per cent) | 50 per cent | 25,300 | 4,048 (16 per cent) | 64,800 | 67,900 |
| 1999 | 71, 100 | 33,700 | 16,176 (48 per cent) | 59 per cent | 19,460 | 5,254 (27 per cent) | 101,500 | 76,000 |
| 2000 | 80, 315 | 109,205 | 31,669 (29 per cent) | 68 per cent | 19,395 | 6,012 (31 per cent) | 81,900 | 91,800 |
| 2001 | 71, 365 | 119,015 | 30,943 (26 per cent) | 65 per cent | 43,415 | 8,249 (19 per cent), | 38,800 | 108,825 |
| 2002 | 84, 130 | 64,410 | 21,899 (34 per cent) | 68 per cent | 64,405 | 14,170 (22 per cent) | 41,300 | 120,115 |
| 2003 | 49, 405 | 64,940 | 28,574 (44 per cent) | 72 per cent | 81,725 | 16,345 (20 per cent) | 23,900 | 119,000 |
| 2004 | 33, 960 | 46,020 | 11,045 (24 per cent) | 78 per cent | 55,975 | 10,635 (19 per cent) | 9,700 | 124,000 |
| 2005 | 25, 710 | 27,395 | 4, 657 (17 per cent) | 84 per cent | 33,940 | 5,770 (17 per cent) | 5,500 | 137,000 |
| 2006 | 23. 610 | 20,930 | 5,441 (26 per cent) | 85 per cent | 16,095 | 1,341 (8 per cent) | 6,400 | 145,000 |
| 2007 | 23, 430 | 21,775 | 5,662 (26 per cent) | 84 per cent | 14,055 | 3,385 (24 per cent) | 6,800 | 124,040 |
| Total | 415,255 | 455,975 | 172,070 (38 per cent) | | 394,765 | 78,109 (20 per cent) | | 1,176,680 |

(Figures adapted from Control of Immigration Statistics; Home Office)

**Appendix 3 – Legislation under New Labour**

## Timeline of Migration Policy and Legislative Milestones in the UK Government, 1998 to 2007

| Policy/Legislation | Type | Year | Overview |
|---|---|---|---|
| **Fairer, Faster and Firmer: A Modern Approach to Immigration and Asylum** | White Paper | 1998 | Instituted new controls but also a "covenant" with asylum seekers; emphasized "joined up" government and the need for administrative overhaul. |
| **Human Rights Act** | Parliamentary Act | 1998 | Incorporated the European Convention on Human Rights into UK law, giving human rights the status of "higher law." |
| **Immigration and Asylum Act** | Parliamentary Act | 1999 | Created a "covenant" with asylum seekers but generally restrictive; made provisions for a new welfare support system (the National Asylum Support Service). |
| **Race Relations (Amendment) Act** | Parliamentary Act | 2000 | Broadened antidiscrimination legislation to police and immigration service and created "positive duty" for race equality on public authorities. |
| **Antiterrorism, Crime and Security Act** | Parliamentary Act | 2001 | Part 4 of the act legislated that suspected terrorists who were immigrants could be interned (potentially on a permanent basis). The Special Immigration Appeals Commission (SIAC) reviews decisions, but the act does not permit judicial review of the SIAC. |
| **Secure Borders, Safe Havens: Integration with Diversity in Modern Britain** | White Paper | 2002 | Set out comprehensive reform, including the goal of "managed migration." |
| **The Nationality, Immigration and Asylum Act** | Parliamentary Act | 2002 | Increased restrictions on asylum (breaking the previous "covenant") and new enforcement powers, but noted support of economic migration. |
| Highly Skilled Migrant Program (HSMP) | Change to regulations | 2002 | Created an immigration scheme based on points that aims to attract high-skilled migrants. |
| **Asylum and Immigration (Treatment of Claimants, etc.) Act** | Parliamentary Act | 2004 | Further reduced asylum appeal rights and other restrictive measures. |
| **Controlling our Borders: Making Migration Work for Britain** | Five-Year Departmental Plan | 2005 | Published three months before the 2005 election, the plan set out a strong set of measures on gaining control of borders and managing migration through a new points system. |

| | | | |
|---|---|---|---|
| Improving Opportunity, Strengthening Society: The Government's Strategy to Increase Race Equality and Community Cohesion | Policy Strategy | 2005 | A race-equality strategy designed to cut across government, complemented by a cross-cutting, race-equality target, and overseen by a board of senior public figures. |
| **Integration Matters: The National Integration Strategy for Refugees** | Policy Strategy | 2005 | Strategy meant to integrate refugees, including new "integration loans" and the piloting of a one-to-one caseworker model. Built on strategy formulated in 2000. |
| **A Points-Based System: Making Migration Work for Britain** | Policy Strategy | 2006 | Proposed a five-tier economic migration system. Tiers equate to categories: (1) high skilled, (2) skilled with job offer, (3) low skilled, (4) students, and (5) miscellaneous. |
| **Immigration, Asylum, and Nationality (IAN) Act** | Parliamentary Act | 2006 | Mainly focused on immigration (rather than asylum), it included restrictions on appeal rights, sanctions on employers of unauthorized labor, and a tightening of citizenship rules. |
| **Fair, Effective, Transparent and Trusted: Rebuilding Confidence in Our Immigration System** | Reform Strategy | 2006 | Created the arm's-length Border and Immigration Agency, which replaced the Immigration and Nationality Directorate on April 2, 2007. |
| **Enforcing the Rules: A Strategy to Ensure and Enforce Compliance with Our Immigration Laws** | Policy Strategy | 2007 | Called for secure border control built on biometric visas and greater checks. |
| **UK Borders Bill** | Parliamentary Bill | 2007 | Proposes police powers for immigration officers and a requirement that foreign nationals must have a Biometric Immigration Document (BID). |

(Taken from Somerville 2008)

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