

CHRISTINA HAMER

STATE ACTORS AND THE EFFECTS OF INTERNATIONAL CRISIS ON ASYLUM
POLICY SYSTEMS IN CANADA AND TURKEY

Bilkent University 2018

STATE ACTORS AND THE EFFECTS OF INTERNATIONAL
CRISIS ON ASYLUM POLICY SYSTEMS IN CANADA AND
TURKEY

A Ph.D. Dissertation

by
CHRISTINA HAMER

Department of
Political Science and Public Administration
İhsan Doğramacı Bilkent University
Ankara
December 2018

To Kevin, Sarah, Nicholas, Devin, Vicky and Arthur



STATE ACTORS AND THE EFFECTS OF INTERNATIONAL CRISIS ON
ASYLUM POLICY IMPLEMENTATION IN CANADA AND TURKEY

The Graduate School of Economics and Social Sciences
of
İhsan Doğramacı Bilkent University

by

CHRISTINA HAMER

In Partial Fulfillment of the Requirements for the Degree of
DOCTOR OF PHILOSOPHY IN POLITICAL SCIENCE

THE DEPARTMENT OF
POLITICAL SCIENCE AND PUBLIC ADMINISTRATION
İHSAN DOĞRAMACI BİLKENT UNIVERSITY
ANKARA

December 2018

I certify that I have read this thesis and have found that it is fully adequate in scope and in quality as a thesis for the degree of Doctor of Philosophy in Political Science.


Associate Professor Dr. Saime Ozcurumez
Supervisor

I certify that I have read this thesis and have found that it is fully adequate in scope and in quality as a thesis for the degree of Doctor of Philosophy in Political Science.


Professor Dr. Sema Buz
Examining Committee Member

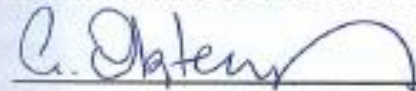
I certify that I have read this thesis and have found that it is fully adequate in scope and in quality as a thesis for the degree of Doctor of Philosophy in Political Science.


Associate Professor Dr. Zeynep Kadirbeyoglu
Examining Committee Member

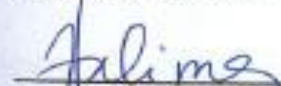
I certify that I have read this thesis and have found that it is fully adequate in scope and in quality as a thesis for the degree of Doctor of Philosophy in Political Science.


Assistant Professor Dr. Meral Ugur Cinar
Examining Committee Member

I certify that I have read this thesis and have found that it is fully adequate in scope and in quality as a thesis for the degree of Doctor of Philosophy in Political Science.


Associate Professor Dr. Cagla Okten
Examining Committee Member

Approval of the Graduate School of Economic and Social Sciences


Professor Dr. Halime Demirkan
Director

ABSTRACT

STATE ACTORS AND THE EFFECTS OF INTERNATIONAL CRISIS ON ASYLUM POLICY IN CANADA AND TURKEY

Hamer, Christina

Ph. D., Department of Political Science and Public Administration

Supervisor: Assoc. Prof. Dr. Saime Özçürümez

December 2018

Over the last 25 years, the literature suggests that asylum policies in industrialized countries have become increasingly restrictive and selective. Although there is academic debate, particularly in connection with security studies, presently accepted definitions of 'refugee' and 'asylum' tend to be informed by the Convention and its creation in response to movement of people coming out of devastating conflict. This research examines six influential factors identified as affecting the implementation of asylum policy within four different historical cases of refugee influx stemming from international conflict: Canada and Turkey, 1988-1992 and 2001-2005. It uses a new method, ADVIAN classification, to analyze non-linear relationships amongst factors to understand which are the most active, passive, and critical, and how the factors interact as a system. This research uses data from the study of primary historical documents and information from elite interviews. By understanding the relationships and status of each factor within the system, this research contributes to understanding asylum policy as comparative systems and identifies common interactions amongst factors across diverse cases.

Keywords: Asylum Policy, ADVIAN Classification, Canada, Impact Factor Analysis, Turkey

ÖZET

KANADA VE TÜRKİYE İÇİN DEVLET AKTÖRLER VE ULUSLARARASI KRİZİN İLTİCA POLİTİKASI ÜZERİNE ETKİLERİ

Hamer, Christina

Doktora, Siyaset Bilimi ve Kamu İdaresi Bölümü

Tez Danışmanı: Doç. Dr. Saime Özçürümez

Aralık 2018

Son 25 yılda ilgili literatürün bulgularına göre gelişmiş ülkelerin iltica politikaları gittikçe daha kısıtlayıcı ve seçici bir hal almıştır. Güvenlik alanındaki çalışmalarla da ilintili olarak 'mülteci' ve 'sığınmacı' tanımlarındaki değişimlerle ilgili akademik tartışmalar sürmekte de olsa genelde Cenevre Sözleşmesi tanımı ve but anıma göre çatışmadan kaçmak amacıyla başka bir ülkeye sığınan kimselerin mülteci tanımı altında değerlendirilmeleri söz konusudur. Bu araştırma iltica politikalarını etkileyen altı ana unsur dört tarihsel vaka için incelemektedir. Bu vaka analizi Kanada ve Türkiye için 1988-1992 ile 2001-2005 yılları arasında yaşanan ve çatışma sonunda ülkelerinden ayrılarak Türkiye'ye ya da Kanada'ya sığınan ya da iltica talebinde bulunan kişiler için uygulanan iltica politikalarını incelemektedir. Çalışma yeni bir metod olan ADVIAN kategorilendirmesi kullanarak unsurlar arasında lineer olmayan ilişkilerden yola çıkmak suretiyle aktif, pasif ve elzem unsurları ve bu unsurların bir sistem olarak nasıl etkileştiklerini incelemeyi mümkün kılar. Çalışma incelenen dönemlere ilişkin raporlar ve yayınların incelenmesinin yanısıra her iki ülkede elit mülakatlarıyla araştırılmıştır. Farklı unsurların aralarındaki etkileşimin incelenmesi suretiyle bu araştırma, iltica politikalarının karşılaştırmalı olarak incelenebilmesi ve farklı vakalarda ortak etkileşim örüntülerinin oluşması konusunda araştırmalar yapılabilmesine katkıda bulunmaktadır.

Anahtar Kelimeler: ADVIAN Classification, İltica Yönetimi, Kanada, Türkiye, Vurma Faktör Analizi

ACKNOWLEDGMENTS

As much as a PhD sometimes feels challengingly like a solitary pursuit, this thesis emerged from years of invaluable support and learning from others. I am so grateful for the simultaneously dynamic and patient guidance I received from my supervisor, Dr. Saime Ozcurumez. She knew exactly how to ask gentle but incisive questions that would propel my understanding forward. She always found 30 extra minutes for my 1 minute questions. Her extra efforts to provide financial support for my research, professional support for my applications to conferences and visiting PhD positions, and incredible intellectual support towards being published provided the continuous foundation for my studies and my research.

I am grateful to the people who have made up the intellectual community that juggled and tested the ideas that have become this thesis and my education. I genuinely appreciate the time and efforts of my thesis committee members, Dr. Zeynep Kadirbeyoglu and Dr. Meral Ugur-Cinar, and for their willingness to move through the process of my thesis writing. Sincere thanks to Dr. Sema Buz and Dr. Cagla Okten as externals on my dissertation committee for such valuable perspectives and questions. I also appreciate the support from Prof. Amy Verdun

and Prof. Oliver Schmidtke during my visiting PhD positions at the University of Victoria.

Conference discussants, peer reviewers, department colleagues, friendly readers, all helped move the ideas of this thesis into an actual thesis. Interviewees who gave their time and expertise also gave greater depth and substance to the many reports I read.

There are family and friends who have been just as much a part of the late-night puzzling conversations and eureka moments that weaved this research together. Most importantly, however, family and friends have provided the emotional, psychological and nutritional sustenance that have kept me going over the years. I am grateful to Petra, Jermaine and Julinda for the patient hours listening to me get excited about ideas I had to turn around and give up after reading a new piece of literature.

For Kevin, who kept me sane, fed, warm, smiling and hopeful, I am deeply grateful.

TABLE OF CONTENTS

ABSTRACT	iii
ÖZET	iv
ACKNOWLEDGMENTS.....	v
TABLE OF CONTENTS.....	vii
LIST OF TABLES	x
 CHAPTER 1: THE PROBLEM WITH MONOCAUSAL EXPLANATIONS AND COMPLEX SYSTEMS.....	 1
1.1 Recent History of Asylum Policies – A Global Overview	6
 CHAPTER 2: THEORY AND METHODOLOGY: DIVERSE CASES AND GRADUAL INSTITUTIONAL CHANGE.....	 10
2.1 A Theory of Gradual Change and the Nation-State.....	12
2.1.1 Modes of Gradual Institutional Change	15
2.1.2 Characteristics of Context and Institution	18
2.1.3 Application of Theory	21
2.2 Case Study: Diverse Case Study	21
2.2.1 Canada and Turkey: Diverse Cases	21
2.2.2 Study Timeframe	24
2.3 ADVIAN Classification -- Impact Factor Analysis	26
2.3.1 Factors Utilized in this Study	30
2.4 Research Protocol	33
2.5 Four Research Propositions	35
2.6 Limitations of the Methods	36
2.6.1 Impact Factor Analysis and the Six Factors	36
2.6.2 Diverse Case Study	37
 CHAPTER 3: THE CANADIAN ASYLUM SYSTEM.....	 38
3.1 Overview of the Canadian Asylum System: Laws, Regulations and Institutions	39

3.2 The Canadian Asylum System and Its Context (1988-1992)	43
3.2.1 Scoring the Factors: Canada (1988-1992)	46
3.2.2 The Refugee Determination System and Historical Experience.....	53
3.2.3 The Refugee Determination System: An Independent Tribunal?.....	56
3.2.4 Asylum Law and Domestic Policy Preferences of Decision-Makers: Rejected Does Not Mean “Bogus” or Does It?	59
3.2.5 The International Context	63
3.3 Conclusions on the Canada Case (1988-1992)	65
3.4 The Canadian Asylum System and Its Context (2001-2005)	67
3.4.1 Scoring the Factors: Canada (2001-2005)	69
3.4.2 Institutional Effects: Shifting Responsibilities and Power Distribution	75
3.5 Conclusion on the Canada Case (2001-2005)	78
CHAPTER 4: THE TURKISH ASYLUM SYSTEM.....	80
4.1 Overview of the Turkish Asylum System: Laws, Regulations and Institutions	81
4.2 The Turkish Asylum System and Its Context (1988-1992)	85
4.2.1 Scoring the Factors: Turkey (1988-1992)	87
4.2.2 Domestic Policy Preferences of Decision-Makers and the Refugee Determination System: Mass Influx	94
4.2.3 International Context and the Refugee Determination System...	97
4.2.4 Historical Experience	98
4.3 Conclusions on the Turkey Case (1988-1992)	99
4.4 The Turkish Asylum System and Its Context (2001-2005)	100
4.4.1 Scoring the Factors: Turkey (2001-2005)	105
4.4.2 Institutional Interactions: Constant International Negotiations.....	108
4.5 Conclusions on the Turkey Case (2001-2005)	110
CHAPTER 5: DYNAMISM AND BALANCE: COMPARATIVE SYSTEMS ANALYSIS	113
5.1 Canada Over Two Decades: An Increasingly Complex Domestic Policy Landscape	114
5.2 Turkey Over Two Decades: Internationally Permeated Sovereignty	117
5.3 Canada and Turkey: Comparative Trajectories	119
CHAPTER 6: CONCLUSIONS AND IMPLICATIONS FOR FURTHER RESEARCH.....	124

REFERENCES.....	131
-----------------	-----

APPENDICES

A. List of Analyzed and Referenced Laws and Court decisions by country...	144
B. List of Other Primary Documents Analyzed	146
C. List of Elite and Expert Interviews	148
D. Latent Content Analysis Coding Codebook	149



LIST OF TABLES

1.	Contextual and Institutional Sources of Institutional Change	19
2.	Canada and Turkey: Diverse Cases	22
3.	Impact Factor Analysis: ADVIAN Classification	28
4.	Factors in the Asylum System	32
5.	Impact Factor Analysis in 1988-1992 Canadian Asylum System.....	52
6.	Impact Factor Analysis in 2001-2005 Canadian Asylum System.....	74
7.	Impact Factor Analysis in 1988-1992 Turkish Asylum System.....	92
8.	Impact Factor Analysis in 2001-2005 Turkish Asylum System.....	108
9.	Comparative Impact Factor Scores: Canada and Turkey.....	122

CHAPTER 1

THE PROBLEM WITH MONOCAUSAL EXPLANATIONS

AND COMPLEX SYSTEMS

Asylum policies reveal how a country responds to another country's citizens for whom the social contract has broken down. Yet, asylum policy responses and changes reveal more about how the country's institutions function and the sets of rules by which those institutions are directed. Asylum policy and refugee studies literature suggests that industrialized states have been on a policy trajectory of either greater restriction (Castles and Loughna 2003) or restriction through increased selectiveness (de Haas et al. 2013) about who may cross the border due to mass influx, austerity, local population fatigue (Jacobsen 1996) and support for Radical Right (Norris 2005). This literature suggests that political and financial agency can explain a two and half decade trajectory in policy change for dozens of countries. However, these studies have missed the critical balance of structure that mediates agency, and to include analysis of structure in policy change in industrialized countries is to engage with the complexity of institutions and institutional interactions. Asylum policy change in industrialized countries cannot be

explained without understanding the influence and impact between institutions involved in the asylum policy system. This research is situated between asylum policy and refugee studies, policy change and organizational dynamics research in order to examine how the interactions among institutions involved in the asylum policy system affect the trajectory of asylum policy change.

This research does not examine particular policies in detail and as such does not engage with the literature on policy change and the “dependent variable problem” (Green-Pedersen 2004) and the issue of how to define “policy change” (Hall 1993).

This research focusses on a concept of policy trajectory in which restrictive or selective policies increasingly limit who can access asylum claims mechanisms and liberalized policies expand who can or how they can access asylum claims mechanisms. By using a restrictive-expansive conceptualization of policy trajectory, this research is able to engage with a part of the policy change literature and the refugee studies literature and focus on the influences asserted or received by institutions and the policy context in which those institutions function.

To conceptualize institutions as active bodies that interact and have influence, this research assumes a theoretical perspective from historical institutionalism in which institutions are dynamic structures that can change. While exogenous shocks and rational choice have dominated institutional change theory, the question of how institutions change gradually, either internally or through interaction with other institutions, is a puzzle yet little attended in Comparative Politics. Gradual institutional change (Mahoney and Thelen, 2010), theorized on a model of distributional power and degrees of agency in terms of rule application and

modification, suggests strategic, incremental and specific shifts within institutions that, over time, either move an institution and its purpose within its context or reshape an institution and its effective functionality.

In industrialized countries, incremental change can occur due to reinterpretation of established rules by decision-makers who occupy positions of power. However, these reinterpretations are also responses to pressures on the rules through anything from developed institutional pathways to spontaneous events.

A critical reinterpretation of the rules in the Canadian case occurred due to Satnam Singh and 6 other individuals being denied refugee status by the Canadian Minister of Immigration based on formal advice from the Refugee Status Advisory Committee and then a further adjudication by the Immigration Appeal Board (IAB). In the early 1980s, asylum claims in Canada were evaluated based on the 1976 Immigration Act and the IAB had based their decision about Satnam Singh on the appropriately filed legal claims and documentation. Singh, along with the 6 other individuals, appealed the IAB decision to the Supreme Court of Canada. The IAB had decided that Singh was not eligible for Convention Refugee status based on the IAB's own ruling that Singh would not face political persecution were he returned to India.

The case before the Supreme Court, however, was not argued on whether Singh had a bona fide fear according to the Convention. Singh's lawyer argued that the IAB decision had occurred only based on paperwork and that without the opportunity for an oral hearing, Singh had been denied his Charter rights (Section 7)

under the Canadian Charter for Rights and Freedoms which states that “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” (Constitution Act, 1982, Section 7) Counsel for the Federal government argued that Singh did not have such rights because he was not a citizen of Canada and therefore was not entitled to make a claim under the Charter.

First, the Court had to interpret Section 7 of the Charter, specifically the application of the word “Everyone.” Deciding that “Everyone” meant all people who found themselves within Canada regardless of citizenship, the Court then decided that Singh, as well as anyone finding themselves on Canadian soil, did indeed have rights within Canada. Additionally, the Court decided that because Singh did have a genuine fear of persecution if returned to India, that the procedure followed by the IAB, the procedure without an oral hearing, was in violation of the principles of fundamental justice referred to in Section 7 and that Satnam Singh was entitled to an oral hearing. (Case Study, <http://www.thinkinggovernment.com/wp-content/uploads/2011/07/Case-Study-Singh-v.-Minister-of-Employment-and-Immigration-1985.pdf>) This Court decided that:

the procedure for determining refugee status claims established in the Immigration Act, 1976 is inconsistent with the requirements of fundamental justice articulated in s. 7. At a minimum, the procedural scheme set up by the Act should provide the refugee claimant with an adequate opportunity to state his case and to know the case he has to meet...All seven cases are remanded to the [Immigration Appeal] Board for a hearing on the merits in accordance with the principles of fundamental justice. (1985, 1 SCR, 177).

Based on this decision, the Immigration Appeals Board, which had never held an oral hearing before, had to provide Singh with an oral hearing, and as well, set up a structure and hire the staff to now accommodate thousands of claimants' hearings. In fact, "[t]he Singh decision was largely instrumental in triggering legislative reform of the administrative framework for refugee determination." (Hurley 1996)

Another reinterpretation of the rules, this time in the Turkish case, occurred on June 14, 1989. While more than 51, 000 displaced Iraqis had crossed the Turkish border and tens of thousands still stay in camps in eastern Turkey and while Bulgarian Turks massed at the northwestern border of Turkey in Edirne, the Turkish Law of Settlement was specially amended to allow for the immigration and integration of 300,000 Bulgarian Turks. (Parla, 2003). Based on the original Law of Settlement No. 2510 from 1934, the amendment, Law No. 3583, allowed for immigration visas to be given to Bulgarian Turks to enter and settle in Turkey. Law No. 3583, while in legal alignment with the Law on Settlement that provided a person could immigrate to Turkey if they had Turkish heritage, also effectively shone a spotlight on Turkey's geographical restriction; although signed on to the 1951 Convention and 1967 Protocol, Turkey maintained that only asylum seekers coming from conflict from a European theatre could be resettled in Turkey. Along with the provision of "Turkishness" from the Law of Settlement, the Bulgarian Turks entering in 1989 were permitted to resettle while the Iraqis who entered just months before in 1988 could not. More specifically, the Iraqis were legally recognised as asylum seekers and were therefore offered assistance from Turkey in

the form of safe haven but did not fit the Turkish definitions for resettlement and could not become refugees.

Thus, this study considers two different countries' asylum policy systems, which contain multiple interacting institutions, and the greater context in which they function.

1.1 RECENT HISTORY OF ASYLUM POLICIES – A GLOBAL OVERVIEW

Over the last 20 years, asylum policies in industrialized countries have become increasingly restrictive (Castles and Lougha 2003; Hatton 2009). Although the tradition and conceptualization of asylum has been traced back to ancient times (Price 2009), current studies tend to examine a system of international asylum as a post World War II artifact stemming from the 1951 Geneva Convention and its further 1967 Protocol. Although there is academic debate, particularly and recently in connection with security studies (Guild 2009), presently accepted definitions of 'refugee' and 'asylum' tend to be informed by the Convention and its creation in response to people fleeing devastating conflict. As such, one might expect to see a resonance in the responses of industrialized countries, once countries of emigration now immigration (Schuster 2000), to refugee migration produced from further conflict in the world. However, according to UNHCR statistics, 80% of the world's refugees remain within their general geographic location constituted by the world's developing regions, while only 20% of the world's refugees are in industrialized countries (UNHCR 2011). In addition to more restrictive policy practices,

industrialized countries are also increasing policing and border control which effectively further limits who may make asylum applications as in the case of the UK (Schuster 2000), and creating further legal definitions for migrants who approach a country's borders without legal passage or documentation as in the case of Canada broadening the legal framework for human trafficking (Protecting Canada's Immigration System Act 2012). These country specific examples as well as burden shifting/sharing agreements such as the Dublin II and safe-third country agreements all contribute to a seemingly internationally more and more restrictive asylum framework.

The greater restrictions in and around asylum policy can be found in the reductions in services for asylum seekers as well as increased policing to limit who may be able to apply for asylum and harsher laws to penalize those who would transport migrants who would apply for asylum. These restrictions are in addition to already established 'safe third country' designations that deny the possibility of seeking asylum if a migrant has come from or passed through a country considered 'safe' before arriving at the country to which they would apply.

One general hypothesis is that industrialized countries are reacting to the mass refugee influx in the 1980s where more restrictive policies now are a type of 'backlash'. (Castles and Loughna 2003) Another states that asylum policy restrictions become a part of overall more restrictive migration policy in countries where based on populations' fatigue around migration influx in general prompts the rise of the 'radical right' politically. (Norris 2005) A third hypothesis is based on restrictive policies as an austerity measure, as a response to scarcity in economically

challenging times. (Scarpa and Schierup 2018) However, none of these hypotheses generates a definitive result that could explain why industrialized countries have been on a long trajectory of greater restriction, in particular considering that only 20% of the world's refugees are in industrialized countries. So the question remains, why are industrialized countries becoming more and more restrictive in terms of asylum policies? This study examines how institutional factors might be at play in the policymaking and changing process by looking at the role and actions of state institutions involved in administering asylum policy.

If policymaking and changing cannot be directly linked to refugee migration patterns (Hatton 2011) and cannot be generalized from examples within the EU context, then what explains the overall trend towards further restrictions? The expectations from the literature would be that countries implement more restrictive policies after or as a result of 'severe strain' (Hatton 2011) or in efforts to minimize cost and maximize benefits (Jacobsen 1996). Therefore, examining a country's policy responses to crisis induced mass influx that will make expected demands on that case country, should yield the results supporting the literature; there should be a direct dependence of change in asylum policy on the pressure created by mass flight. If this relationship does not emerge, then concerns of the literature that examine institutional interactions may offer further suggestions in that there is a more complex relationship involving domestic and international political and economic dynamics. Furthermore, not discussed at all in the literature on asylum and asylum policy is the idea of institutional development and the notions of persistence; put simply, are industrialized countries implementing

greater and greater restrictions on asylum despite decreases in refugee influx as a kind of persistent trend. If that were the case, then an examination into institutional behaviour should reveal that despite the potential shock of mass flight, despite shifts in foreign relations, despite changes in political party rule, policy trajectory should remain relatively intact and continue towards greater restriction.

Therefore, by focussing on Canada and Turkey, this study will investigate the effects of increased asylum influx and the asylum pressures those created on industrialized countries, as well as the responses of those countries and the context within which those countries responded. The overall goal is to try to assess whether or not there are common domestic or international institutional factors that have contributed to the similar policy responses of two very different countries, that represent diversely a set of industrialized countries.

CHAPTER 2

THEORY AND METHODOLOGY: DIVERSE CASES AND GRADUAL INSTITUTIONAL CHANGE

*No man ever steps in the same river twice,
for it's not the same river and he's not the same man.*

- Heraclitus

Heraclitus' words suggest that even when an object (however much still or in motion) appears to be consistent, for that object so many endogenous and exogenous factors change that the object is necessarily changed, either internally or with respect to its relationship with its context. This study considers institutions similarly; institutions are semi-open systems that operate within and interact with their environment, and consequently, must be seen as internally dynamic and complex, capable of gradual change. This characterization aligns with the recent

addition to the body of historical institutionalist literature by Mahoney and Thelen (2010) in which a theory of gradual institutional change is outlined.

While much of the literature on asylum policy and international protection does not refer at all to institutionalism, it is possible to see an alignment of theoretical perspectives behind much of the research. Seeing restrictive asylum policy as a response to mass influx assumes an institutional change due to exogenous shock, similarly when the response is to austerity. The argument that restrictive asylum policy trajectory is a result of the discourse and increased power of radical right parties is theoretically similar to a rational choice perspective that “search[es] for generalizable features of political behaviour rooted in the incentive structures that individuals face.” (Thelen 1999) The theoretical perspectives that inform these propositions have not been able to fully conceptualize the dynamics involved in or that may explain the restrictive asylum policy trajectories of industrialized countries. Because this research focusses on dynamics that influence policy trajectory and policy responses, a theoretical framework that is capable of framing change over time is necessary. Also, because this research focusses on the role and influence of institutions in policy response, a theoretical framework that is capable of framing institutional dynamics over time is necessary.

The theory of gradual institutional change is conceptually different than the treatment of institutions in much of the rational choice institutionalist literature which characterizes institutions as static entities that change discontinuously due to exogenous shocks (Weingast 2002). This theory is also different compared to earlier historical institutionalist studies concerned with the historically contextual

inception of institutions (Thelen 2004, Mahoney 2000, Stinchcombe 1987). While some studies examine the causes or mechanisms that maintain the equilibria of institutions (Pierson, 2004), a theory of gradual institutional change is concerned with historically contextual conditions that promote changes of the institution that might be characterized as adjustments. As such, an institution may be considered more akin to Heraclitus' river than a rigid structure, appearing static at a distance yet up close revealing itself to be more accurately an active flow of similarity.

2.1 A THEORY OF GRADUAL CHANGE AND THE NATION-STATE

The body of migration theory literature has been criticized for focussing too narrowly on nation-states in a globalized world and relying too heavily on policy analysis to contain the whole picture (Castles 2004). However, an alternative argument suggests that the nation-state remains an enduring institution and major, if not central, decision-maker regarding the movement of people around the globe where "it is the policies of potential receivers [receiving states] which determine whether movement can take place, and of what kind" (Meyer 2000). Problematising the 2004 article, Castles argues that:

Nation-states remain important and will do so for the foreseeable future. They are the location for policies on cross-border movements, citizenship, public order, social welfare, health services and so on. Nation-states retain considerable political significance and have important symbolic and cultural functions. But the autonomy of the national governments is being reduced, and it is no longer possible to ignore transnational factors in decision-making and planning. (2007, 361-2)

It is the reduction of autonomy and the consideration of other factors and actors that influence the nation-state that make a newer institutionalist theory such an appealing framework.

While institutionalist theories have conceptualized institutions as static and focus on equilibrium, and where change occurs as a punctuated equilibrium forced to change due to exogenous shocks (Mahoney and Thelen 2010), a shift in focus to the “gaps” or “soft spots” in institutions suggests that it is possible to conceptualize institutions as dynamic with both exogenous and, perhaps more importantly, endogenous causes of change. Mahoney and Thelen (2010) put forth a theory of *gradual institutional change* designed to explain incremental change with a power distributional view of institutions and to create a framework to understand “what properties of institutions permit change” (2010, 3). This framework differs from the theory that purports “strong” or “weak” states (Katzenstein 1978) wherein institutions are theorized as internally dynamic, “fraught with tensions because they inevitably raise resource considerations and invariably have distributional consequences” (Mahoney and Thelen 2010, 8). The source of endogenous change is theorized at the point of rule interpretation; that is, various actors may interpret the same rule in various ways and beyond that interpretation, implementation and enforcement open space for interpretation as well.

There are four ‘modes of change’ proposed in the framework: displacement, layering, drift, conversion. Each of which constitutes a type of or way that incremental change can occur in an institution; each involves analysis of the rules, actors and their interpretations of the rules, and institutional context. Further to

types of change, the theory also reconceptualizes compliance. In the theory of gradual institutional change, compliance becomes a variable rather than a given. In addition, compliance is seen as a dynamic variable that may require action to exist. By looking to the 'gaps' or 'soft spots' where interpretation of the rules and compliance become points of agency, this framework literally breathes life into institutions, creating a framework that has the potential to explain the point at which agency and structure intersect. In addition, the theory of gradual institutional change offers a framework of not only examining one institution, but also relationships between institutions, that is "the combined effects of institutions and processes rather than examining just one institution or process at a time" (Pierson and Skocpol 2002).

Such a potentially flexible theory needs equally analytical tools and challenging case studies to explore the limits of the framework. In an effort to employ the gradual institutional change theoretical framework and in response to the criticism that "most institutional analyses of immigration policy examine specific countries rather than employing comparative methodology" (Meyer 2000), this study examines the asylum policy systems of two case countries, Canada and Turkey, each at two different time intervals, 1988-1992 and 2001-2005, working to compare institutions across countries and institutional change over time. As such, this study is theory-driven and looks to test the 'modes of change' against four comparative cases. Asylum policy system, here, includes asylum policy, actors, policy implementation, and other major influential factors. In line with the suggestion by Pierson and Skocpol (2002) to examine institutional change by looking at how institutions

interact, this study evaluates a system that includes multiple institutions and interactions at the level of actors and procedures. As well, this study endeavours to apply the theoretical framework to a diverse case study 'to explore the limitations of the framework.'

2.1.1 Modes of Gradual Institutional Change

In order to better understand patterns of gradual institutional change, the theory in Mahoney and Thelen (2010) is developed on four modes of change. While some of these modes taken in an acute context might look similar to previous theories of institutional change, it is that the modes have the potential to explain change over long periods of time that sets the theory apart from previous theoretical frameworks. The four modes are conceptualized on the rules governing the institution, where the rules may represent the procedural or contextual imperatives of the institution.

Displacement occurs "when existing rules are replaced by new ones." (Mahoney and Thelen, 2010, 16) Thelen and Mahoney (2010) explains that while this is very similar to previously theorized abrupt change occurring due to exogenous shocks (16), this new theory suggests displacement can happen slowly over a long period of time. The slow manifestation of displacement may occur when new institutions begin to compete with, rather than supplementing, older institutions. Where the new institution gains support or is more suited to a current environment, that new institution will slowly grow displacing the old. An example of displacement can certainly be seen in the relationship between traditional and online media;

between, for example, traditional print newspapers and online news blogging or social media. While many of the long-standing news outlets in various countries have developed a strong online presence with online editions of their newspapers and profiles active on social media platforms, those outlets are also competing with independent bloggers and smaller outfits that can more cost effectively reach a wider audience. While at present it would hardly be possible to say that newer online media outfits have replaced, or fully displaced, the traditional outlets, the popularity of newer outlets and the competition they generate is certainly putting traditional media outlets on a trajectory of displacement.

Layering happens “when new rules are attached to existing ones, thereby changing the ways in which the original rules structure behaviour.” (Mahoney and Thelen, 2010, 16) The process of amending, revising or adding to the rules of an old institution can substantially change the structure and functioning of an institution. Where a small addition or amendment may not make significant change in itself, a series of small changes, and the change in function that may need to occur around them, can create a different trajectory for the institution over time. A present-day example of layering might be seen in websites as information interfaces for individuals accessing government services. While formal organizations, such as government ministries, police, banks and schools, retained individual information previously, the advent of online transactions has also created demand for new institutional protocols and greater consideration for and rule development of security measures around personal information. While the definition for layering appears to begin with the addition of rules, examples of layering may also begin

with opportunities for the institution to grow which would then require new layers of rules to be created. Layering is also concerned with institutional change that happens as a result of tensions or interactions between old and new rules.

Drift is what happens “when rules remain formally the same but their impact changes as a result of shifts in external conditions.” (Mahoney and Thelen, 2010, 17) When an institution continues to function as it did as if within the conditions of a historical context, while the institution itself may not have changed, its relationship to its context will have. It is explained that even actors’ lack of action may create drift where external conditions change.

Conversion occurs “when rules remain formally the same but are interpreted and enacted in new ways.” (Mahoney and Thelen, 2010, 17) Therefore, conversion is closely related to the level of agency given in the structure of the organization or taken by its actors. However, where drift might occur due to inaction, conversion occurs where any ambiguity in the rules or the institution itself allows for or requires greater interpretation and application of those rules by actors. The Singh decision from the introduction to this study might be an example of conversion. Where interpretation of the law by a formal court may be a more explicit example, while the theoretical framework should also be able to explain more implicit examples, the role of the judiciary to (re)interpret existing rule of law for novel or clarified application constitutes conversion in the purest sense; where any ambiguity of the rules allows for, or in this case is accepted practice of, greater interpretation and application of those rules by actors.

2.1.2 Characteristics of Context and Institution

In addition to how the mode of change can identify the type of change that occurs according to the implementation of rules, each of the four modes of change occur in relation to characteristics of the political context around the institution and characteristics of the institution itself. The differences in the context or institution “affect the likelihood of specific types of change.” (Mahoney and Thelen, 2010, 18)



Table 1. Contextual and Institutional Sources of Institutional Change

Contextual and Institutional Sources of Institutional Change

		Characteristics of the Targeted Institution	
		Low Level of Discretion in Interpretation/ Enforcement	High Level of Discretion in Interpretation/ Enforcement
Characteristics of the Political Context	Strong Veto Possibilities	Layering	Drift
	Weak Veto Possibilities	Displacement	Conversion

(Mahoney and Thelen, 2010, 19)

As depicted in the table above, each mode occurs in the analytical space between a question of veto power in the political context and a question of discretion by the

actors within the targeted institution. Veto possibility in the political context refers to powerful veto players, either institutionally or extrainstitutionally. Discretion as a characteristic of the institution refers to how much space for interpretation and application of the rules an internal actor may have. Therefore, where veto possibilities in the political context are high, institutional change may appear through layering or drift; and where veto possibilities are weak in the political context, institutional change may appear through displacement or conversion. Then, where there is a low level of discretion in interpretation or enforcement of the institutional rules, change may occur through layering or displacement; and where discretion in interpretation or enforcement of the rules is high, change may occur through drift or conversion. The level of discretion on the characteristics of institution axis here represents the part of the theory where compliance becomes a variable.

This component of the theory represented in the table from Mahoney and Thelen (2010) becomes more explanatory of agents of change, in particular agents who intend and want change. For the purpose of this study, however, intended and less intended change may be explained, where less intended change rests on change agents who promote change as a modest adaptation to a given situation. For example, according to Mahoney and Thelen, “where would be agents of change face political contexts myriad veto possibilities, it will be difficult for them to mobilize the resources and assemble a coalition that can displace the existing institutional rules.

2.1.3 Application of Theory

For the purpose of this study, the Mahoney and Thelen theory of gradual institutional change allows for examination of an asylum policy system as a set of institutions and the processes through which those institutions act in order to respond to refugee influx. Because it is a theory of gradual change, it allows for examination and explanation of responses to not only large scale and sudden changes to refugee migration, but also to continual circumstances and therefore what might be considered 'normal' operations in a given system.

2.2. CASE STUDY

This research utilizes a diverse case selection method where “[d]iverse cases are likely to be representative in the minimal sense of representing the full variation of the population” (Seawright and Gerring 2008). In addition, a diverse case study can be used for exploration or confirmation. In this respect, this study is interested in comparatively exploring institutional change in the asylum policy of Canada and Turkey as diverse cases.

2.2.1 Canada and Turkey: Diverse Cases

In order to be diverse cases, Canada and Turkey must show ‘in the minimal sense...the full variation of [a] population’ (Seawright and Gerring 2008).

Table 2. Canada and Turkey: Diverse Cases

	DIVERSE CASES		
Canada	-OECD -NATO -1951 Convention -Refugee resettlement	Highly Industrialized (WB)	-Geographically isolated from conflict producing forced migration -Increased asylum influx but not mass influx
Turkey	-OECD -NATO -1951 Convention -First Asylum – long term	High-Medium Industrialized (WB)	-Geographically proximal to conflict producing forced migration -Geographic Restriction on Convention - Experiences mass influx

Canada has been categorized as a country of immigration, reliant on influx of population to support economic and population growth. (Hawkins 1988) Turkey, with its geographic centrality, has experienced a diversity of migration, and maintains its status as a country of first asylum. (Icduygu and Kirisci 2009) Canada and Turkey vary in terms of many indicators. Where Canada is geographically distant from refugee producing countries, both geographically and in terms of direct transportation options and is a party to safe third-party agreements (Akibo-Betts 2006), Turkey shares land borders with many refugee producing and transit countries. Where Canada processes requests for asylum either through its land system or through the UNHCR and foreign missions, Turkey is expecting to and does process people arriving directly at the border. In addition, Canada processes such claims in light of being the country of resettlement while Turkey does not accept asylum seekers for resettlement from anywhere other than Europe, as is stipulated in the geographical restriction. Both Canada and Turkey have signed on to the 1951

Convention, however, Turkey is a signatory to the 1967 Protocol (Kirisici 1996) that effectively extended the protection of asylum beyond conflict in Europe and European nationals but maintains a geographical restriction. Still, Turkey has provided temporary protection for months, sometimes years, for people fleeing conflict in their home countries.

There are, however, many ways in which Canada and Turkey are arguably part of the same population. They are both parliamentary democracies, i.e. they are governed by a nationally elected body of representatives. Both countries are OECD members as well as members of NATO, and numerous other international and intergovernmental organizations. With respect to asylum in particular, Canada and Turkey both appear in the top 10 list of the UNHCR (2007-2011) having taken the greatest number of asylum seekers based on the measure of 1USD (PPP)/GDP per capita. Interestingly, Turkey ranks 4th after France, the United States and Germany, while Canada is 7th after the United Kingdom and Sweden. If Turkey is not a signatory of the 1967 Protocol and effectively not a resettlement country for the refugees coming from present day conflicts, then how is it that Turkey ranks 4th overall as taking the greatest number of refugees based on a measure of GDP per capita? And if Turkey is already so highly restrictive in that it is not a resettlement country, why is it following the trend of further and further restrictive asylum policies?

It has been suggested in the literature that industrialized countries have been on a long trend of greater restrictive asylum policies often as a response to the considerable increase in refugee migration of the 1980s, however, Hatton has

shown that refugee migration has not only decreased since the 1980s but also even more so since 2002 (Hatton 2011). Hatton also explains that more restrictive policies in the OECD countries have continued or increased even after 2002. In addition he finds that ‘the tightening of policy only explains about a third of the decline in applications over that period [2001-2006] – a more modest effect than governments might claim.’ He goes on to explain that ‘[t]hat effect came mainly through enhanced border controls and tougher processing procedures rather than through clamping down on the living conditions of asylum seekers.’ (p. 3)

Hatton’s report raises the question, if industrialized countries are continuing to implement more restrictive policies, and if the motivations for those restrictions can not be explained as dependent on or as a direct response to the sudden increase in refugee migration of the 1980s, then why do countries even in times of decreased refugee migration implement greater and greater restrictions?

2.2.2 Study Timeframe

Cross-border mobility in general increased toward the end of the 1980s and the beginning of the 1990s. By focusing on this period, the research accounts for the international context created by the fall of the Berlin Wall, the opening of Eastern European countries, beginnings of the Yugoslav Wars and the Gulf Wars among the set of factors to be considered as impacting asylum policy change from the international level. Scholars of asylum policy and data from the interviewees mark this period (1988–92) as a defining period for the study of refugee status determination processes in Turkey for several reasons. The dynamics of refugee

status determination policy change became stark with the mass influx from Iraq. In this period, Turkey's asylum policy responded to the international context while pursuing domestic preferences around maintaining the geographical limitation, ensuring national security concerns around who crosses its borders and promoting preferential policies for admitting those with ethnic Turkish identity. (Baklacioglu 2017, Aksel and Danis 2013, Frelick 1997) For Canada, 1988–92 was also a defining period in which domestic concerns focused on increasing immigration while countering what was seen as fraudulent or exploitative use of the asylum process. At the time, Canada was also receiving increasing numbers of asylum applications from people coming through the US. While 'immigration levels in the years 1986–90 rose sharply above the levels of the previous decade', (Knowles 2007, 238) a Supreme Court of Canada case decision created increased pressure on the capacity of Canada's refugee determination system.

A little over 10 years later, 2001-2005, international conflicts again produced increased forced migration and the international context included increased pressures via security concerns. In the years just before, asylum seeker numbers were decreasing in 1999 to 2001. (UNHCR Global Report 2001) However, those numbers increased due to new conflicts in Afghanistan (2002), Iraq (2003), Haiti (2002-2003). Additionally, security concerns had prompted many countries to increase border controls over conflicts and the global health concern of SARS (2003).

2.3 ADVIAN CLASSIFICATION - IMPACT FACTOR ANALYSIS

Because this study endeavours to understand gradual institutional change by measuring influence and impact among institutions, a flexible tool that could handle both qualitative and quantitative data and potentially multiple feedback loops became necessary. Process-tracing was methodologically looking for a linear relationship between factors that could be traced to an outcome and therefore would not be able to show multiple simultaneous relationships. Qualitative Comparative Analysis (QCA), using qualitative data, is useful for finding causal relationships but again, not for mapping complex and simultaneous relationships between factors. In order to more fully examine gradual institutional change in diverse cases, a more flexible tool was needed, especially one that could explain non-linear relationships amongst factors.

Impact Factor Analysis, and specifically the ADVIAN classification system, is an analytical tool that allows for the calculation of impact or influence exchange amongst factors in a given system. For the purposes of this study, Impact Factor Analysis, as a non-linear analysis tool, can accommodate the potentially large number of simultaneous influences amongst factors or institutions and processes within a system which may or may not actually be feedback loops. The ADVIAN classification system of Impact Factor Analysis has not yet been used to analyze policy change. Therefore, its use would constitute a contribution to the field methodologically. As such, there is sparse literature to form a literature review and explanations below are taken from two particular articles coauthored by Volker Linss and Andrea Fried.

Impact Factor Analysis is a tool that facilitates the creation of quantified relationships of impact based on data from qualitative sources. ADVIAN classification allows for the scoring and examination of impact, force of impact and relationships between and among factors and actors involved in a system; in this study that system is the asylum policy system. Additionally, because the tool produces calculated measures of impact, diverse cases can more usefully be compared with one another. Furthermore, similarly factored systems can be compared across time.

IFA is displayed in a table format where actors and factors are displayed and impact between factors is shown numerically based on 0-3 scale (0 = no impact; 1 = low impact; 2 = medium impact; 3 = high impact). In the table below, the right hand column shows the factors as active or scored as influencing while the top row shows the factors as passively scored where they are receiving affects.

Table 3. Impact Factor Analysis: ADVIAN Classification

CASE TITLE		PASSIVE (ACTED ON)			ACTIVE TOTALS	10
		Factor 1	Factor 2	Factor 3		
ACTIVE (ACTING)	Factor 1	X	1	1	2	
	Factor 2	2	X	3	5	
	Factor 3	2	1	X	3	
	PASSIVE TOTALS	4	2	4		
		10				

Impact analysis is a qualitative method primarily used in the study of organizational dynamics and systems analysis. It uses a matrix to display and calculate how identified factors impact one another in a given organization or system. For the purposes of this research, impact analysis will allow for the quantified comparison and ordering of the relationships and level of impact each factor has when considering the factors that impact asylum policy change. Impact analysis, unlike Fuzzy Set Analysis or Qualitative Comparative Analysis (QCA) is also able to show

primary and secondary level impact as well as how active or passive a factor is, that is, to what extent a factor acts on or is acted on by other factors in the matrix.¹

For any given matrix, the following calculations should be determinable:

- Most Active Element
- Most Reactive (Passive) Element
- Most Critical Element
- Most Buffering Element

Impact Factor Analysis also employs a type of quadrant calculation that easily depicts which elements are Active and Reactive as well as grouping those that are inert or “not very sensitive to changes of other elements in the system” and those that are critical or those that ‘strongly influence the system but are also strongly influenced, hence are not easily controllable. (Linss and Fried 2005, 112)

This type of analysis is also designed to identify primary and secondary levels of impact amongst factors; that is, If Factor 1 is seen to impact Factor 2 and Factor 3 is seen to impact Factor 1, then Factor 1 has a primary impact or direct impact on Factor 2; whereas Factor 3 is seen to have a secondary or indirect impact on Factor 2 via Factor 1. Therefore, the use of this method allows for a quantified and

¹ After a short correspondence with author Volker Linss, I decided to limit my use of ADVIAN classification to the primary level of analysis or ‘direct impact’. Linss explained that another researcher had utilized the ADVIAN classification in a publication and there had been calculation issues with the secondary level (indirect impact) of analysis due to an error in a mathematical derivation. Rather than abandoning the tool entirely, I wanted to pursue the potential of its usefulness with specific application to diverse case studies and policy systems.

schematic representation of qualitatively scored factors that influence asylum policy change.

Although this method does not have a limit regarding how many factors (elements) may be considered within the matrix, example studies do not appear to go beyond 10. As well, discussing the method with other scholars who are also endeavouring to use it, they also recommend limiting a matrix to around 10 elements.

2.3.1 Factors Utilized in this Study

Factors such as *asylum law* and *refugee determination system* have been operationalized on publicly available information that outlines, delineates nationally and internationally designated and described institutions. Other factors, developed based on the literature, are discussed here further.

Asylum systems will necessarily require consideration of an international context in any systems analysis because asylum is an international movement into a domestic context. For industrialized countries, the laws and guidelines of asylum are designated first at the international level through the 1951 Convention on the Status of Refugees and the subsequent Protocol. Operationalization of the International Context in this research, includes “the international refugee regime and the sending countries...[where] the international context influences the host governments for practical and normative reasons.” (Jacobsen 1996, 662) The international context does not immediately include the presence of international NGOs working at the community level unless those organizations present a considerable influence at the domestic political or financial level. For example, an

NGO operating independently in a single community which does not exert enough influence to alter domestic policy preferences of decision-makers is not calculated as a variable within the operationalization of international context. Where such NGOs represent influence at a domestic decision-making level, those NGOs would be included in the international context calculations.

Local Absorption Capacity is operationalized based on UNHCR reports and arguments in Jacobsen's 1996 article where capacity is defined "as the extent to which the community is willing and able to absorb an influx of refugees." (666) Jacobsen's "willingness" combines with the resource capacity based UNHCR designation of number of asylum seekers over the domestic population divided by GDP. This research did not include independent calculations of a country's resource-based capacity and instead methodologically coded textual content relevant to each factor.

Table 4. Impact Factors in the Asylum System

<i>FACTORS IN THE ASYLUM SYSTEM</i>	
<i>Asylum Law</i>	Includes national laws governing definitions, processes, rights of and responsibilities towards asylum seekers as well as whether or not a country is signatory to the 1951 Convention and 1967 Protocol and how those international standards are translated into national law
<i>Refugee determination system</i>	Includes whatever system, organizations, persons, guidelines and protocols are employed to make determinations on the legal and administrative status of asylum seekers
<i>Domestic policy preferences of decision-makers</i>	Includes immigration and asylum policies and policy responses as well as policies relating to or influencing asylum policy; in addition, domestic policy preferences may include issues or interests that arise that affect asylum policy or its implementation
<i>International context</i>	Includes events and relationships among nation-states and international organizations with respect to asylum or issues that affect asylum
<i>Historical experience</i>	Includes a country's past profile for taking refugees (international expectations) moderated by whether or not past refugees have been assisted or integrated successfully – whether or not a country will see more refugees as manageable or an unmanageable burden; this also includes the social and political conception of 'refugee' and understanding of 'how to treat' a refugee (for example in need of hospitality and safety or as a potential threat to local society)
<i>Local capacity</i>	Includes both willingness of local community to absorb refugees and a country's economic capacity overall (# of refugee applicants/GDP per capita – housing, support programs, services provided, etc.)

Therefore, this study considers the function and interaction of an asylum policy system which can include multiple institutions and the interactions amongst them. This system is operationalized and measured based on how six main factors in asylum policy implementation influence one another. Analysis of the system is based on the calculated outcomes from the ADVIAN classification and how they can be interpreted through the theoretical tools from Mahoney and Thelen (2010),

specifically, the modes of change which include displacement, layering, drift and conversion.

2.4 Research Protocol: Content Analysis data for Impact Analysis

After case selection, I conducted this research according to the following protocols:

- 1) Identify institutional documentation representative of operationalized factors.

For example, the *refugee determination system* factor included any institutions formally involved in determining refugee status or status related to accessing determination procedures. In the Canadian cases, this included the Immigration and Refugee Board as well as the Ministry responsible for Immigration matters. In the Turkish cases, this included the Turkish National Police through which individuals registered to obtain legal permission to be in Turkey, and then the UNHCR through which individuals applied for international protection. Annual reports from such organization comprised part of the primary documents for this research.

In addition to organizational reports, official legal texts such as Canada's 1976 Immigration Act and the 2002 Immigration and Refugee Protection Act (IRPA) as well as Turkey's 1934 Settlement Law (No. 2510), 1950 Passport Law (no. 5682), 1985 Sojourn and Movement of Aliens in Turkey (no. 5683), among others. Further, relevant parliamentary documentation such as special committee transcripts and elite and expert interviews served to deepen understanding of historical case specific foci of institutions and test coding reliability.

2) Code identified documentation.

Content analysis of documents involved applying guidelines from the codebook (Appendix C) to identify any phrases in a given text that expressed relationships between factors operationalized as case and timeframe specific variables.

3) Calculate factor scores for ADVIAN matrix.

Each institution and each law represented a single perspective or score. In order to account for differences in influences across years, each annual report represented a score for each factor. For example, UNHCR annual reports were scored for all 6 factors in each of the given years for a timeframe. Then all factors scored were averaged across the years of the timeframe. Averages resulting in decimals, such as 2.7, remained as decimals until the final calculations described below. This resulted in each institution being represented by a single score for each factor in a given timeframe. Where laws remained consistent during a timeframe, without reinterpretation or amendment, scores for *asylum law* represented a consistent influence. Content of interviews received individual scores, equivalent to institutional reports for two reasons. First, individuals interviewed were key administrators, experts, and influencers for organizations relevant to the two timeframes in each country. Second, holding such positions, information from interviewees was utilized to reinforce, refute and increase reliability of data from institutional reports and parliamentary documentation. Finally, scores from all inputs were averaged to achieve a single active score for each factor in a timeframe. Where scores were decimals, scores were rounded to the nearest number to align

with the ADVIAN method. As such, 2.5 was rounded to 3, whereas 1.4 was rounded to 1.

4) Analyze factor score matrices.

Analysis of ADVIAN classification matrices was done in two parts. First, identification of highest active and passive factors as well as critical factors, as described in the explanation for ADVIAN classification above, set the frame for discussion of the cases and timeframes. Second, examination of the factors and their scored identifications recontextualized with respect to primary documents, interviews and the literature created the basis for explanations and implications for each case and timeframe.

2.5 FOUR RESEARCH PROPOSITIONS

Based on this theoretical framework, this study examines the follow propositions comparatively in the Canadian and Turkish systems between the early 1990s and the early 2000s:

P1: Industrialized countries have been on a trajectory of further and further restrictive asylum policies as a response to the large influx of refugees from the 1980s.

P2: Industrialized countries have been on a trajectory of further and further restrictive asylum policies as a response to times of austerity.

P3: Industrialized countries have been on a trajectory of further and further restrictive asylum policies as a response to domestic population fatigue to immigration.

P4: Industrialized countries have been on a trajectory of further and further restrictive asylum policies due to institutionalized patterns of further restriction.

2.6 LIMITATIONS OF THESE METHODS

Examining the trajectories of two country's asylum policy trends based on institutional interactions in two time periods requires a very specific research design that delimits what can be included in the data and therefore what must be excluded. Questions of institutional interaction can include a multitude of variables and require analysis of vast amounts of data. In order to explore the role and impact of institutions in a manageable way, I designed this research with very specific limits.

2.6.1 Impact Factor Analysis and Designating Six Factors

Impact factor analysis relies first on the researcher to justify the which variables can be represented within a generalized factor. Because a factor represents a category of variables, other methodologies have utilized statistical analysis of variables to determine the limits of a category. This research, as it rests on content analysis of documents and interviews, does not rely on statistical analysis. Delineation of factors was based on factors identified in the literature and developed through

emergent coding I used to develop the codebook (see Appendix A). This research, therefore, is limited by the conceptualization of the number of factors and the possible variables representable by each.

2.6.2 Diverse Case Study Design

As a diverse case study, this research does not necessarily have the capacity to reinforce findings from countries that would be considered most different from Canada or Turkey. This research seeks specifically to examine institutional influence in asylum policy systems in industrialized countries. Therefore, this study does not follow from research on less industrialized countries, the effects of border policies, or the experiences of refugees. This research also does not directly engage with the effects of institutionalization, although I do have a short comment about the connections to that research in the conclusion.

CHAPTER 3

THE CANADIAN ASYLUM SYSTEM

Canada's asylum policy has a problem. Canada is cherry-picking the "best" refugees from offshore offices and UNHCR files, or so was said by well-known lawyer and President of Canadian Association of Refugee Lawyers (CARL), Lorne Waldman, at a keynote speech in Montreal, Canada in 2014.² Waldman went on to suggest that Canada was choosing refugees who were the best educated and the most suitable for Canada's economic and social immigration needs. This kind of choosing is a problem in that although it may look legitimate in light of Canada's immigration policy, which is planned according to Canada's need to bolster population and targeted to economic growth according to employment sector analysis, Canada's asylum policy and how the country determines acceptance of a refugee should be governed purely by Canada's asylum law which stipulates only the need for an asylum seeker's credible claim for asylum. Waldman's critique pointed directly to

² "Coherence and Incoherence in Migration Management and Integration: Policies, Practices and Perspectives," Canada Association for Refugee and Forced Migration Studies, 7-9 May 2014, University of Montreal, Montreal, Canada.

the problem if asylum policy being overshadowed by or strongly influenced by immigration policy. His critique also raises further questions about how, with such a developed and institutionalized asylum policy system, Canada could be subject to such a comment.

According to an analysis of Canada's immigration policy, Jeffrey G. Reitz (2014) explains that "[it] has evolved in relation to three main goals: nation-building and expansion of the economy and population; the needs of the contemporary labor market; and the long-term integration of immigrants."³ These goals, while deemed important for the success of a nation and the population that comprises it, are not components of either the international legal Convention to which Canada is a signatory, namely, the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol, and therefore, is not technically involved in Canada's decisions regarding the acceptance of refugees.

3.1 OVERVIEW OF THE ASYLUM SYSTEM – LAWS, REGULATIONS and INSTITUTIONS

To talk about the Canadian asylum system, one must consider the components that make up that system. In this case, the components refer to asylum law, both international and domestic, related regulations, such as border control and refugee support programs, and the institutions involved in the governance and decision-making around asylum issues. This section explains generally the laws, related

³ Reitz, Jeffrey G. (2014) "Canada: New Initiatives and Approaches to Immigration and Nation Building," in *Controlling Immigration: A Global Perspective*, Hollifield, James F., Philip L. Martin and Pia M. Orrenius (eds.), Stanford University Press: Stanford, p. 89.

regulations and institutions that constitute the Canadian asylum system. Later sections will analyze in more detail how these components worked together in both timeframes (1998-1992 and 2001-2005).

Canada is a signatory to the 1951 Geneva Convention and as such all domestic laws on asylum comply with the Convention as international law. In the domestic context, matters of asylum have been governed by two legal documents: the Immigration Act (1976) and the Immigration and Refugee Protection Act (2002). The 1976 Act was replaced by IRPA in 2002. Beyond these two acts, Canada also refers to a body of legal precedence or case law that developed from instances where asylum seekers appealed decisions about their asylum claims through the Federal Court, the Federal Court of Appeals and the Supreme Court of Canada.

A person can be recognized as a refugee in Canada through a process that begins through either the inland system or resettlement. The inland system refers to the system within Canadian territory that assesses spontaneous arrivals. Resettlement consists most often of a relationship with the UNHCR wherein Canada admits into its borders a number of already recognized refugees who have been previously assessed by the UNHCR. While spontaneous arrivals to the inland system remain asylum seekers until their claims have been decided on, refugees for resettlement become immediate permanent residents. Permanent residence is given to spontaneous arrivals once their claims are positively recognized or accepted.

All matters of migration in and through Canada fall under the purview of the Ministry concerned with immigration. Over the years, immigration has been

combined with other ministerial folios, most often, citizenship or employment. Therefore, for example, in the early 1990s, the Ministry of Labour, Employment and Immigration governed matters of migration, whereas, in the early 2000s it was the Ministry of Citizenship and Immigration. Canada, however, also created an independent quasi-judicial tribunal in 1989 called the Immigration and Refugee Board of Canada (IRB) charged with assessing asylum claims from the inland system, or spontaneous arrivals. While the UNHCR maintains an office in Canada, it is only peripherally involved in the inland system as an official observer and cooperates in particular on matters of resettlement. The last component of the Canadian asylum system is border control, which changed in many ways between the early 90s and early 2000s and then further after that. Particular to this analysis, it is important to note that the role of the border officer has been to recognize and assess that a person has arrived at the inland system with an asylum claim. Since 1989, and somewhat before, the Canadian border officer's task has not included any evaluation of an asylum claim, however, the task did require recognizing claimants who were inadmissible (Immigration Act s. 19; IPRA ss. 33-37) according to Canadian immigration law.

Because the largest part of the Canadian asylum system resides within the process of assessment through the IRB, it is worth a few words to explain that process. When a person arrives with an asylum claim at the Canadian border and is found admissible, they are directed to go to the nearest IRB office in person. Offices are located in most major Canadian cities: Vancouver, Calgary, Ottawa, Toronto, Montreal. The asylum seeker has 3 days to report to an office to present their claim

to the Refugee Protection Division (RPD) previously called the Committee for Refugee Determination Division (CRDD). It was with the creation of the IRB that Canada was able to implement the 1985 Supreme Court decision, also known as the Singh decision (Singh v. Minister of Employment and Immigration, [1985] 1 S.C.R. 177, <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/39/index.do>). This decision ruled that the Canadian Charter of Rights and Freedoms applied not only to Canadians but to anyone on Canadian soil. The Singh decision stipulated that all asylum seekers at some point within their claims process had the right to an oral hearing. The process follows the format of an administrative tribunal differing from other adversarial processes in that the IRB Member(s) adjudicating the case shoulder the burden of understanding and assisting the claimant by providing any necessary information (Interviewee #5). If the claim is refused, the claimant has the right to request a judicial review of the decision through the Federal Court (<http://www.irb-cisr.gc.ca/Eng/BoaCom/references/procedures/Pages/index.aspx>). If a claim is rejected and upheld through a court decision, the claimant is supposed to be removed from Canada provided that return to the claimant's country of origin does not constitute breaking the principle of non-refoulment.

While an explanation of the components of the Canadian asylum system may provide a tableau, the dynamism of the system exists in how the components function together. This, in turn requires a historically contextual analysis of six factors (Jacobsen 1996, Hatton 2010) that influence the shape and functioning of the asylum system and the implementation of asylum policy: domestic application of asylum law, the national determination system, the international context,

national historical experience of asylum seekers and refugees, local absorption capacity and domestic politics.

3.2 THE CANADIAN ASYLUM SYSTEM AND ITS CONTEXT (1988-1992)

By the end of 1992 the Immigration and Refugee Board of Canada had been active for four full years. Canada's immigration policy was the responsibility of the Ministry for Employment and Immigration overseen by the then Minister of Employment and Immigration, Bernard Valcourt. The Conservative leader, Brian Mulroney, was in his 8th year as Prime Minister, leading a second majority government for the Progressive Conservative party and the most pressing issue was domestic unity with an upcoming national referendum on the Charlottetown Accord and the question of Quebec's separation from Canada. The Gulf War had officially lasted 5.5 months ending on 17 January 1991 and refugee influx that had begun in the first Gulf War were sustained and perpetuated by continuing conflict.

Canada's asylum policy system was in the midst of change with the IRB settling into its newly minted institutional role as a tribunal. Therefore, a key institution in Canada's asylum system was still adjusting to the actual task for which it was designed. While future focussed in its conception, the IRB was also tasked with clearing the backlog of claims that had accumulated. According to IRB Annual Reports, the "year 1989 offered great challenges...[and] the year 1990 can be characterized as one of change as the IRB faced an annual caseload double that

originally anticipated.”⁴ An analysis by Cynthia Harding published in 1994 based on data from 1991 and earlier stated that

the Canadian refugee system displays both an absence of convergent values and a lack of clarity concerning legitimate stakeholders. The ambivalence of government and NGO stakeholders reflects their attempts to wrestle with conflicting values and legitimate stakeholders. For the government, it concerns the dilemma between humanitarianism and sovereignty; for the NGOs, it concerns the struggle between the old paternalism and the new approach in which refugees are equal partners.⁵

Hardy concluded that such lack of convergence and ambivalence could result in positive outcomes for a system as stakeholders would be forced to confer more with one another about goals and responsibilities; whereas heavily institutionalized systems existed once stakeholder power was consolidated leaving little room for new players or attitudes to enter the system.⁶

Immigration and asylum matters were then governed by Canada’s Immigration Act from 1976. According to Boyd and Taylor (1991) “since 1986 [until 1990] the federal government had a policy of moderate controlled growth in immigration.”⁷ Bond and Taylor also claimed that “Canada’s policy toward refugee claimants indirectly affects immigration.”⁸ They were referring to the Supreme Court decision that gave right to an oral hearing for any claimants. They suggested that economic migrants were

⁴ Immigration and Refugee Board Annual Report For the Year Ending December 31, 1990.

⁵ Hardy, Cynthia (1994) “Underorganized Interorganizational Domains: The Case of Refugee Systems,” *The Journal of Applied Behavioural Science* 30(3), p. 289.

⁶ Hardy, p. 292.

⁷ Boyd, Monica and Chris Taylor (1990) “Canada,” in *Handbook on International Immigration*, Serow, William J. et al. (eds.), Greenwood Press: New York, p. 37.

⁸ Boyd and Taylor, p. 39.

coming under refugee claims to take advantage of the oral hearing and that “this step was a significant contribution to the total landings, and indicates how policy and procedures for the protection of refugees can contribute indirectly to total immigration levels.”⁹ While this analysis was an analysis at the time of the inception of the IRB and was published prior to evidence of an increase in total landings, it is indicative of the perspective on the relationship between asylum policy and immigration policy. And while the claim of increased landings could not be measured at the time, the total number of refugee claimants newly entitled to an oral hearing could be quantified, 85,000,¹⁰ and was to become the workload and responsibility of the IRB.

In the following subsections the six factors constituting the asylum policy system and their impact on each other are explored. The factors are given an Impact Factor Analysis score as per the ADVIAN classification method¹¹ (0-3; 0=no impact – 3=high impact) according to how each factor is shown to have influence or impact on all other factors. Therefore, the following paragraphs contain language such as “influence” or “high-low impact” but do not yet contain qualitative scores (0-3) where a preliminary estimate is possible.

⁹ Boyd and Taylor, p. 39.

¹⁰ “Backlog Clearance Report: A Special Report to Parliament,” Evidence from the Parliamentary Committee on Immigration, 1989.

¹¹ Linss and Fried 2010, p.111.

3.2.1 Scoring the Factors: Canada (1988-1992)

The Canadian asylum system can be considered as a set of six factors that interact with and influence each other. As discussed in Chapter 2, by analyzing the impact of these factors on each other using a method called the ADVIAN classification system, a tableau can be created that shows which factors have the greatest impact on the system (active impact) and which factors receive the most impact or are the most influenced (passive impact). This information is useful in understanding, specifically, non-linear relationships amongst multiple factors, but also more generally, as predictive data. For example, once factor impact is calculated for the system, the set of graphed points can be altered by calculations and specific suggestions can be made regarding which factors might be changed and to what extent to alter the constellation on the graph and thereby the functioning of the actual working system.

The factors, again, are the domestic application of asylum law, the national determination system, the international context, national historical experience of asylum seekers and refugees, local absorption capacity and domestic politics. In order to score these factors, the burden of scientific rigor falls first to a detailed and supported conceptualization. Because Impact Factor Analysis using the ADVIAN classification system is a qualitative but numeric method, a full explanation of factor conceptualization is necessary for the reader to comprehend the scored results.

For each of the Canadian cases analyzed below, the factors are constant in order to be comparable; however, the variables connected to or constituting the factors

change. For example, *historical experience* is, by definition, the same factor but practically incorporates variables from the different time frames. *Asylum law*, as well, must necessarily change in composition as the body of law grows and adapts with further court decisions. Therefore, the following explanation is for the factor conceptualizations specific to the 1988-1992 case in Canada.

Asylum law is conceptualized as the legal documents and decisions that govern decisions made in Canada regarding the rights, status of and treatment of asylum seekers and refugees. For this earlier timeframe, this includes the international Convention on the status of refugees, 1951 and the corresponding 1967 Protocol as Canada was already then a signatory to both. *Asylum law* also includes Canada's 1976 Immigration Act which interprets at the national level the Convention and Protocol as well as governing other kinds of immigration and border regulations. Finally, *asylum law* also includes court decisions and the national, federal and Supreme Court levels on cases pertaining to asylum seekers and refugees within Canada.

The *determination system*, across all 4 cases, Canada and Turkey, refers generally to whatever formal or informal system was in place to make decisions regarding the movement or permissions of asylum seekers or refugees within the national boundaries. In this timeframe, the *determination system* refers primarily to the newly established Immigration and Refugee Board. The determination system also includes the initial screening process that occurs at the Canadian border where a spontaneous arrival asylum seeker makes their claim. In addition, the process through which the Ministry makes decisions regarding which offshore refugees to

accept must also be considered in relation to the determination system as those refugees are included in the annual number and characterization of refugee acceptance.

The *international context*, is conceptualized with specific respect to those variables that have impact on the national asylum system at the time of the particular case in that

The extralegal crossing of people from one country to another usually affects international relations between...governments, thereby drawing the attention of other governments in the region. International organizations also become involved, both with the refugees and in relations between the concerned governments.¹²

For this timeframe, the international context includes Canada's relationship with the UNHCR because the international organization had already established an active office in Canada. The organization's role is largely observational and advisory in which it "observe[s] Canadian asylum practices and policies in order to promote the highest standards of protection for refugees and asylum-seekers...and help coordinate resettlement opportunities in Canada."¹³ The more observational role of the UNHCR had already begun with the creation of the IRB as stated in its 1990 Annual Report: "The Office of the United Nations High Commissioner for Refugees (UNHCR) has also decided to reduce its level of involvement in the Canadian process." (p. 11) Finally, the *international context* also includes the case country's relationship to the refugee sending country and any international relationships or

¹² Jacobsen, Karen (1996) "Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes," *International Migration Review* 30(3), p. 662.

¹³ UNHCR Canada website: <http://www.unhcr.ca/what-we-do/unhcr-canada/>

events that might influence refugee influx to the case country. For example, commentary in the IRB report explains that “Canada's attractiveness...may be expected to increase should Western European countries begin seriously to restrict access by people from Eastern Europe.”¹⁴

The national *historical experience* of asylum seekers and refugees refers to previous refugee influx and with what ease or difficulty the country was able to respond to that influx. Experience here is specifically that of the government or official organizations because public responses are considered part of the next factor, local absorption capacity, explained below.

Local absorption capacity refers to a definition developed by Jacobsen (1996) and “the extent to which the community is willing and able to absorb and influx of refugees...[where] structural ability is determined by such variables as economic capacity and international assistance...[and] willingness is influenced by beliefs and attitudes about refugees by the community’s historical experience with (and as) refugees, by the perceived permanence of refugees.” (p. 666). Therefore, local absorption capacity may include any governmental or social assistance, local resource levels where asylum seekers and refugees are waiting or settled, and the attitudes of local people to asylum seekers and refugees.

Finally, *domestic politics* refers to any case specific political issues that competed with or put pressure on asylum policy. For example, in the 1988-1992 timeframe, Quebec, the predominantly French-speaking province of Canada, was preparing for

¹⁴ Immigration and Refugee Board Annual Report (1990), p. 14.

a referendum on separation. Therefore, domestic politics may be seen to have had significant effect on any decision about or policy responses to immigration and asylum immigration in particular either directly or indirectly. For example, direct effect might be seen as immigration being used by either Quebec or the federal government as a leverage issue in political discussions. Indirect effect might be the sidelining of immigration as an issue and political decisions delayed in favour of focussing more on separation issues.

Table 5, below, contains the first level or the *direct* impact of each factor on the others in the system. The scores are a composite value obtained from textual content analysis from fieldwork data. This study employs fieldwork data from primary documents, elite interviews and participant observation. Elite interviews were conducted in Montreal and Ottawa between 7-27 May 2014 with individuals who were or had been in decision-making roles within the following organizations: Immigration and Refugee Board of Canada (IRB), United Nations High Commissioner for Refugees (UNHCR), the Canadian Association of Refugee Lawyers (CARL) and the Private Sponsorship Program. All interviewees held positions of responsibility during the case timeframes. Interviews lasted a minimum of 30 minutes. For ethics purposes, all interviewees remain anonymous and will be referred to by interview number.

Primary documentation data was collected from the following sources: Immigration and Refugee Board Annual Reports, Ministry of Immigration Annual Reports to Parliament, Canadian case law on asylum, and Evidence (transcripts) from the Parliamentary Standing Committee on Immigration. Documents for this timeframe

were accessed in hard copy at the National Library and Archives. Documents for the later timeframe were accessed electronically through the National Library or the Parliamentary Library. Canadian case law in particular was accessed through the archives of the Federal Court, Federal Court of Appeals or the Supreme Court of Canada.

Participant observation consisted of live presentations given by long-time professionals active within Canada's asylum system at the Canadian Association for Refugee and Forced Migration Studies (CARFMS) conference in Montreal, Canada, 8-9 May 2014.

In the table, the factors appear on both axes as the impact of factors in a system must be considered as non-linear. Therefore, each factor may have both an active direct effect on other factors and may be affected directly thereby appearing passive. Then, each factor's active and passive impacts are totalled and considered in relation to the total active and passive score for the system. These totals express the roles of each factor's impact on the system as a whole. For example, if a factor scores higher than all other factors in both its active and passive scores, that factor is considered the *critical* factor in the system.¹⁵ The crucial factor is considered to have so much impact that if it were significantly altered or removed from the system, the system would cease to be recognizable as it was when it contained the critical factor. Other factors that may score very low in both active and passive impact are considered to have such insignificant effect that they could be removed

¹⁵ Fried, Andrea and Linss, Volker (2005) "Towards an advanced impact analysis of intangible resources in organisations," Lehrstuhlpapiere, Professur für Innovationsforschung und Nachhaltiges Ressourcenmanagement, No. 2/2005.

from the system without much change to the system as a whole. The factors that may be surprising are those who score very low on the active axis and very high on the passive axis. In a system, a highly passive element receives considerable impact and therefore also maintains a very strategic role in the system. Change or removal of a very high scoring passive factor would also significantly change the system.

Table 5. Impact Factor Analysis in 1988-1992 Canadian Asylum System

1988-1992 CANADA		PASSIVE						ACTIVE TOTALS	
		Asylum law	Determination system	Historical experience	International context	Local capacity	Domestic policy preferences		
ACTIVE	Asylum law	X	3	0	0	2	2	7	30
	Determination system	2	X	0	1	1	1	5	
	Historical experience	0	3	X	0	1	2	6	
	International context	1	2	0	X	0	1	4	
	Local capacity	0	0	0	0	X	1	1	
	Domestic policy preferences	2	3	0	1	1	X	7	
PASSIVE TOTALS		5	11	0	2	5	7		
		30							

3.2.2 The Refugee Determination System and Historical Experience

The Backlog

In the 1991 Canadian asylum system, historical experience was strongly influencing the shape and functioning of the determination system, that is, the newly opened Immigration and Refugee Board (IRB). Indeed, the inception of the IRB was a direct result of the 1985 Supreme Court ruling, the Singh decision, that all asylum claimants had a right to an oral hearing. This ruling effectively produced an enormous backlog of claims yet to go through an oral hearing. In 1991, the IRB was only 2 years old and had been charged with what was arguably the central focus of the Canadian asylum system, getting rid of the *backlog*.

The backlog was “a legacy of the previous system [before the IRB]...in the form of a backlog of at least 85,000 claims involving over 100,000 people, all of whom had made refugee claims before January 1989.” (Blackburn 1989) In addition, the estimations of the work hours needed at the IRB to clear the backlog and the actuality were quite different. The 1990 IRB Annual Report explained that “the IRB faced an annual caseload double that originally anticipated when the Board was first established [just two years previous].” According to Immigration and Employment Canada’s Annual Report 1990-91, there were 36,208 asylum claims made to Canada’s inland system in 1990, whereas 1989 claims numbered 20,268. All of these claims were being addressed through the IRB. These numbers did not include the backlog which was simultaneously being addressed through a special Backlog Subdivision (IRB Annual Report 1990).

The backlog and the near doubling of claims in just one year represented significant pressure on the Canadian asylum system. Greater financial resources were made available to the IRB mid year in 1990 and 55 more Members (individuals who assessed claims) were appointed (IRB Annual Report 1990). Timely processing plans also created pressure on the determination system as seen in one of the main objectives in the annual report of Employment at Immigration Canada where it states that EIC aims “to respond in a timely manner to applications for immigration or refugee status.” (p. 2). In addition, “the Minister stated that the clearance [of the backlog] would be completed within two years,” (Blackburn 1989) therefore constituting extra political pressure on the adjudication process. In the 1990 IRB Annual report, it is stated that “[t]he most important issue currently affecting the (CRDD) Division is its ability to determine claims for refugee status in an expeditious and fair manner given the large number of claimants that continue to enter the country.” (p. 19)

In efforts to better manage the large caseload in both the new claims division, the CRDD, and the Backlog division, the two-stage adjudication process was changed significantly to expedite as many cases as possible. Initially the IRB process included an initial hearing to assess the credibility of the claim. That hearing would include “a two-member panel consisting of a Canada Immigration Adjudicator and a CRDD Member [to] consider the eligibility of the refugee claimant...[and the claim’s] credible basis.”¹⁶ Once eligibility has been established, only one of the two panelists must see a credible basis for the claim to go through to the second hearing. The

¹⁶ Immigration and Refugee Board Annual Report (1990), p. 16.

second panelist does not necessarily have to see the credible basis, as long as they do not see a credible basis for rejecting the claim. Also, if the Case Presenting Officer (CPO) who comes from Immigration Canada and is not a Member of the IRB “can concede a credible basis for the claim,” (p. 16) the panel must refer the claim to a full hearing, that is, the second hearing. The full (second) hearing is also comprised of a two member panel, both only from the CRDD. In order to reject the claim, both panelists must agree. To be accepted, only one panelist need agree that the claim fits the definition of Convention refugee. In 1990, the Simplified Inquiry Process was established in an effort to “handle the large caseload.” (p. 17) This process made the initial hearing “in effect a paper screening” of the credibility of a claim at which the claimant does not need to appear in person (p. 17). In addition, any claim sent to the full hearing level through the SIP could be adjudicated by one member and not a panel of two. Such processing was available to claimants “from those countries with a significant number of claimants as well as a high acceptance rate.” (p. 18).

In terms of a measure of influence, therefore, Canada’s historical experience of asylum seekers and refugees represented an incredible pressure on the capacity of the determination system, so much so, that history, in the form of the backlog, was determining the then present day shape of the IRB in terms of divisions and subdivisions, as well as type and amount of resources in terms of work hours and number of IRB Members appointed. Methodologically then, the historical experience constituted by the backlog, and its reflection as a similar pattern of new claims increasing beyond institutionally planned capacity, can be seen as having a

high impact (score 3) on the determination system in terms of its shape, dedicated resources, both financial and human work hours, and work speed.

3.2.3 The Refugee Determination System and Domestic Politics: An Independent Tribunal?

In the Canadian case timeframes, the IRB, as a system component, is described officially as a quasi-judicial independent tribunal. That is, it is, in particular, independent of the government in terms of adjudicating asylum claims (Interviewee #5). For all intents and purposes, that is the case, however, there are many secondary routes through which politics influences the functioning of the IRB. First, the Members are appointed by the Minister of Immigration. In the mid-1990s, there was some question as to whether the appointments were based on merit, as they were advertised to be, or whether they were a result of political favours or nepotism (Interviewee #5). In the Evidence of a meeting of the Parliamentary Subcommittee on Immigration, IRB Members being reappointed were directly asked how they applied for their position, who they applied to and how they learned about the position in the first place. At various points in the meeting, Mr, Nunez, MP from Bourassa asks the Witnesses, who are each Members of the IRB, questions such as “How were you appointed initially?” and “How were you appointed last time?” More pointedly he asks, “In 1989, who proposed or recommended your application?”

(http://www.parl.gc.ca/content/hoc/archives/committee/352/cits/evidence/10_96-04-23/cits10_blk-e.html). The concern in the case of appointment and reappointment is that Members are indeed chosen based on capability and

experience. Long after the 90s, however, concern about political intervention to the IRB continues. In a public rebuttal to an opinion piece in the media, the IRB Chairperson, Brian Goodman responds to comments that Members' appointments are "selected as much for their political connections as for their credentials" (Kohler 2009):

The Government appoints IRB members from a list of candidates qualified by a Selection Advisory Board. Candidates undergo a transparent merit-based selection process which includes screening for suitability, a written test, an interview and reference checks. The IRB Chairperson recommends only those candidates who successfully complete this process. (Goodman 2009)

In addition to the appointment process, the structure of the IRB contains both independent appointed members (Chairperson, Executive Board Members and the regular Members (case officers and adjudicators)) and governmental employees, such that the foundational support system of the IRB, administrative staff including the Executive Director are employees of the federal government. While this division may not directly influence the Members in their decision-making, the governmental employees are directly influenced by government changes, funding etc. Therefore, while case adjudication may be seen as functioning independent of politics, the structure of the organization itself is under the direct influence of political dynamism.

According to the IRB, the pacing of the its caseload, in the 1991 case, was dictated by the Ministry in that “the legislation placed with Immigration Canada the management of the first-level determination process, making it difficult for the CRDD to control the pace and number of claims brought before it... [in that] “the CRDD is dependent upon Immigration Canada Case Presenting Officers and adjudicators who are responsible for scheduling claims, bringing cases forward to the panel and determining whether or not the Minister’s representative will concede or contest each case.” (p. 20)

Therefore, while the IRB was designed to be a tribunal independent of politics, as a government funded organization, it could not escape political and governmental influence through caseload presentation, and then secondary level political influence through the employee structure, with inquiry into the level of political influence through less than transparent Member appointments. Therefore, *domestic politics*, as represented by Ministry involvement in the presenting of caseloads, inquiry into Member appointments, and direct federal funding of the organization and its employees can be scored as having a medium (score 2) impact on the *determination system*. Because the adjudication of claims is a highly structured, evidence-based decision-making process, it can be argued that there is still a level at which adjudication can be independent from political influences.

3.2.4 Asylum Law and Domestic Politics: Rejected does not mean “bogus” or does it?

From 1989 through to the present day, the words “bogus claims” or “bogus refugees” and “queue jumpers” has been used in the media and in official reports to refer somehow to asylum seekers in Canada. Where “bogus” would usually mean fake, it is difficult to justify the terminology by any official procedural or legal definition. Indeed, an asylum seeker’s claim to needing protection is to be adjudicated and the claim will either be accepted or rejected. Alex Neve, a former Member of the IRB writes in a recent opinion piece in response to Canada’s Immigration Minister, Chris Alexander, using the term “bogus refugee claimant,”

How can the Minister possibly be labelling any refugee claimant as bogus before their claim has been evaluated? It may very well be accepted. It may in fact be exceptionally strong and compelling. He does not know... his definition of bogus includes refugee claimants coming from countries that the government has decided are “safe” countries of origin and therefore not to be taken seriously even before they have had a hearing.”

[\(http://www.slaw.ca/2014/03/21/the-bogus-rhetoric-about-bogus-refugees/\)](http://www.slaw.ca/2014/03/21/the-bogus-rhetoric-about-bogus-refugees/)

Neve highlights the same type of misnomer that occurs with the term “illegal immigrant;” a person’s entry can be illegal but the person is not illegal and therefore, the term is misleading and inaccurate. In the same way, an asylum seeker is entitled by international law and by virtue of Canada being a signatory to the Convention to make a claim. That claim will either be accepted or rejected. And

should a claim be rejected, that still does not make it a bogus claim (Interviewee #1).

Perhaps counterintuitively, however, the idea of bogus asylum claims also arises in the wording of the 1990 IRB Annual Report regarding the Backlog Clearance program. The report asserts that, "It will be difficult for the backlog clearance program to complete the task of dealing with all the pre-1989 claims by the original deadline...[and that this may] send abroad a signal that Canada is not serious about bogus claims for refugee status." (p. 12). One Interviewee also explained that at the time, Canada was concerned that there were a number of economic migrants entering Canada based on making asylum claims rather than other appropriate immigration categories. The concern that other types of migrants were potentially entering the country by making claims for asylum was certainly a perspective that appeared in publication at the time of the case.

Therefore, there is a disconnect or a mismatch between rhetoric used by political elites and legal definition and process. While it would be difficult to argue that political rhetoric captured by the media has any direct influence on the shape or details of asylum law, there is a secondary level influence on the application of the law. "IRB Members are people; they watch the news; they can be influenced by the words used." (Interviewee #5) That is, any person, including those appointed to adjudicate claims, can be influenced by exposure to political rhetoric.

In addition to the term bogus, the term "queue-jumper" has also appeared in the media. In a Maclean's magazine article from 2009

(<http://www.macleans.ca/news/canada/a-crackdown-on-queue-jumpers>), author Nicholas Kohler examines how the then Immigration Minister, Jason Kenney, is using the term “queue-jumper” to mean migrants who come to Canada and make an asylum claim and gain access to be in Canada faster than migrants who request to come under other types of immigration permission such as work visas, study visas and applications for full citizenship. The reasoning and logic of this terminology is connected to the conceptualization of migrants from the previous Immigration Act (1976) and has a deeper historical basis. Hathaway (1988) explains that

Canadian refugee law is firmly rooted in traditional immigration policy that is designed to promote domestic economic objectives...Domestic economic considerations are key and obligations to political and strategic alliances are of influence. (678-9)

This perspective is that refugee migration is also to be considered with respect to Canada’s economic interests was reiterated by long-time Canadian lawyer, Lorne Waldman, founding member of the Canadian Association for Refugee Lawyers (CARL) in a keynote address when he explained Canada has a long history of preferring economically advantageous migrants and has shown it even in choosing refugees; when Asians were expelled from Uganda in 1972, Canada was first on the scene and chose those individuals with the highest qualifications. Waldman emphasized the difference between the economic logic of migrant selection

(including refugees) and humanitarian rhetoric. The history of Canada's asylum policy documented by the Canada Council for Refugees states, "[a]t first the government insisted that the applicants meet the usual immigration criteria, but later requirements were somewhat relaxed" suggesting similarly that Canada's perspective was not on humanitarian assistance (<https://ccrweb.ca/en/brief-history-canadas-responses-refugees>).

The logic of the conceptual connection between migrants economically advantageous to Canada and queue-jumping asylum seekers can be seen in the combination of Parliamentary portfolios. Employment (or Manpower) and Immigration were combined into one ministry between Oct 1966 and June 1994. A paper on the history of Canada's Immigration policy published by Citizenship and Immigration Canada explains that

The Liberals also instituted an important structural change: the establishment of the Department of Manpower and Immigration. It owed its creation largely to the government's concern about the shortage of skilled workers and a conviction that manpower development programs could play an important part in training workers required by Canada's expanding economy. The Pearson government believed that the dearth of skilled workers could be solved by an increase in the flow of skilled workers to Canada and by the adoption of manpower development programs offering specialized training. One department, it was believed, should deal with both issues.

(<http://www.cic.gc.ca/english/resources/publications/legacy/chap-6.asp>)

Canada signed the 1951 Convention and 1967 Protocol belatedly on 4 June 1969 (Canadian Council for Refugees, <https://ccrweb.ca/canadarefugeeshistory4.htm>).

The Council reports that prior to 1969 Canada's then Ministry of Citizenship and Immigration was opposed to signing the Convention; however, Canada was still admitting refugees based on other domestically designed qualifications. Still, it remains that for almost 30 years, 3 years into which Canada became a Convention signatory, Canada's immigration governance was directly tied to concerns of national employment.

3.2.5 The International Context

While the factor International Context necessarily includes matters such as Canada's relationship to the refugee producing country and Canada's foreign policy etc., International Context also very specifically includes the role of the UNHCR in relation to Canada's asylum system. The UNHCR maintains a type of observer status with respect to the Canadian asylum system. UNHCR representatives can be present at the Canadian border to observe that border officers are performing their duties according to regulations in the Act. UNHCR representatives can also be present in claims hearing at the IRB. However, the largest part of the work and the greatest point of connection and influence for the UNHCR in Canada is through the resettlement programs.

UNHCR presents dossiers of refugees and effectively the Canadian Minister of Immigration decides which individuals will be accepted in to Canada and which will not. Canada has had a resettlement program since 1978, however, it was in 2002 with the enactment of IPRA that Canada's rhetorical and effective practical focus shifted to "protection rather than ability to successfully establish" (Country Chapters – UNHCR Resettlement Handbook, Canada, 3). Prior to IPRA, Canada assessed refugees based on their potential ability to successfully establish, that is, to integrate and become economically independent; but "the idea of successful establishment was incredibly problematic" (Interviewee #3).

The process of resettlement to Canada is planned with respect to targets because all resettlement refugees enter Canada with sponsorship. They arrive either under the auspices of the Government-Assisted Refugee Program (GAR) or through Private Sponsorship programs as a Privately Sponsored Refugee (PSR). The annual "targets" planned and published by the Minister of Immigration refer to those refugees accepted under GAR. This is, effectively, a means for government budgeting because those under GAR are provided a travel loan, for airfare etc. to arrive to Canada, as well as monthly financial support through the Resettlement Assistance Program (RAP). While the refugee is required to pay back the travel loan, they are not required to pay back the monthly financial support; however, the RAP rate is not high enough [to afford appropriate housing], but the government can not give higher assistance to refugees than they do to native Canadians on welfare or social assistance (Interviewee #3).

3.3 1988-1992 CANADA CONCLUSIONS

While the Canadian determination system, the IRB, is viewed as one of the most advanced of its kind around the world, and while other countries have asked for information and assistance with plans to emulate Canada in their own determination systems, critics of the system exist even within the institution itself. Much of the criticism points to the discrepancy between the rhetoric around the design of the institution and its daily functioning. Perhaps counterintuitively, the IRB, while at the centre of the policy system, is a more passive factor than the other 5; it receives more influence than it exerts. It abides by asylum law but the Members deciding on cases have no ability to directly influence that law. Indirectly, should an IRB decision regarding a claim be taken into the formal judicial system where a potentially influential decision might be made affecting the body of asylum law, then retroactively and perhaps reactively, the IRB decision may be seen as having influenced the claim in becoming the basis for an influential judicial decision; however, such influence is far removed at best. The IRB does not choose its own cases; cases are presented by the Ministry through a Case Presenting Officer. The IRB, while it can petition the government, through the Treasury Board, for resources, it has no ability or permission to raise its own funding and thereby change its operational capacity. Indeed, the rhetoric, the idea that the IRB is an independent tribunal, must be considered with respect to only the central task of making decisions regarding immigration claims, and specifically asylum claims. In this way, Members of the IRB do have significant influence on the asylum seekers whose claims are under consideration; however, beyond these decisions, the IRB

seems to be structurally contained such that it can influence very little else in the asylum policy system that surrounds it.

What is easy to see, however, when considering impact both passively and actively within the early Canada case, is that highly passive factors are also critical components of the system in they hold a very specific place in the functioning of the system. Of course, even without calculations, it is possible to understand that any significant change to the shape or functioning of the determination system would radically change the functioning of the system itself. This was precisely what occurred at the beginning of the early Canada case with the creation of the IRB and the Backlog Clearance program; the nature of the determination system was fundamentally changed so as to change the functioning, indeed poorly functioning, system that had produced 85,000 backlogged claims.

The international context has a medium level influence on the early Canada case until the political dynamics between Canada and the US are taken into consideration. While IRB reports suggest that the restrictive or relaxed policies of European countries might influence refugee movement into Canada, because Canada shares a land border with the US, it is largely US policies that affect spontaneous arrivals to Canada. This becomes even more evident in the 2003 Canada case when both countries change border regulations and begin introducing safe-third country legislation.

Overall, it is domestic politics and asylum law that have the largest influence in the system, although that influence only appears when it is in contention with

something, such as competing domestic issues or an asylum claim that requires a further interpretation of existing law.

3.4 THE CANADIAN ASYLUM SYSTEM AND ITS CONTEXT (2001-2005)

Internationally, in the beginning of the new millennium, a number of conditions had created additional asylum influx and concerns about it. At the end of the 1990s, displacement and forced migration persisted from the conflicts in the Balkans and spurred long debate about the safety of return. (Black and Gent 2006) The attack on the World Trade Center towers in the US had prompted the US military campaigns into Afghanistan (2002) and Iraq (2003); both conflicts produced mass forced migration that persisted for years:

Afghan and Iraqi refugees account for almost half of all refugees under UNHCR's responsibility worldwide. One out of four refugees in the world is from Afghanistan (2.8 million) and Afghans are located in 69 different asylum countries. Iraqis are the second largest refugee group, with 1.9 million having sought refuge mainly in neighbouring countries. (UNHCR 2008, 2)

At first glance, while conditions for the Canada case (2001-2005) somewhat support the literature on why industrialized countries have been moving towards more restrictive asylum policy, that first glance is deceptively simple and consequently erroneous. In 2001, Canada experienced its highest ever number of annual asylum

applications at 45,100 amid increased North American security concerns after 9/11. If the policy trend has been ever more restriction due to radical right politics and securitization of migration, then why did Canada, in 2002, expand the legal criteria for who and how a person can qualify for asylum and then increase the budget of the IRB to better process the increase in claims? While the early 2000s included the increased focus on border security and public safety, and while Canada experienced increased pressure from higher numbers of inland asylum applications, the distributional power balance among institutions involved in the Canadian asylum system presented a greater combined impact on asylum policy than pressure from the international context. As a result, mass influx and security concerns did not have enough influence to cause greater restriction in Canada's asylum policy and responses to asylum claims.

In the early 2000s, two events created high impact in the Canada case. First, the attack on the World Trade Center in New York sparked a focus on security on the North American continent that prompted legal and institutional changes, much of which have persisted for more than 15 years. Second, independent of the increased security focus, Canada had rewritten its central law governing immigration replacing the 1976 Immigration Act with the 2002 Immigration and Refugee Protection Act (IRPA). While much of the Act included content from the 1976 Immigration Act, changes signaled efforts to expedite claims adjudication and increase human welfare while also focussing on high-skilled labour immigration and independent immigration that could bolster the Canadian economy (CIC 2002). IRPA expanded the grounds on which refugees could be accepted into Canada by including same

sex and common law spouses as sponsors, reduced claims adjudication to single IRB members to increase the speed of claims adjudication, increased detention reviews, and added a pre-removal risk assessment for unsuccessful claimants as an increased effort towards non-refoulement.

These changes to the administrative processes were being implemented within a more general immigration preference for the highly skilled and highly educated. IRPA instigated a shift in focus in Canadian immigration from the priority of “family class” in the 1980s to the “economic” and “independent” classes of immigrants who were assessed on transferable skills and level of education. (Anderson 2008) While the change in focus did not formally change the rules with which refugee claims were assessed, the change meant an overall shift in political and administrative focus from family as a priority in immigration to employability.

Additionally, Canada and the US had negotiated and signed a third-country agreement in December 2002 that stipulated that asylum seekers were only entitled to claim asylum in the first of the two countries they had entered. Claimants making a claim in Canada or the US having traveled through the other country would be returned to the first country they had entered. The STCA would not take effect until December 2004, however.

3.4.1 Scoring the Six Factors

For the early 2000s case of Canada, the *domestic policy preferences of decision-makers* (13) and the *refugee determination system* (13) present as the critical factors, the factors with the highest combined impact scores. The *international*

context (8) has the highest active impact followed closely by the *domestic policy preferences of decision-makers* (7). The international context scores high based on the level of influence of the security focus after 9/11 as noted in annual reports from CIC,¹⁷ the IRB¹⁸ and discussion in meetings of the Canadian Parliamentary Committee on Immigration.¹⁹ Additionally, the increase in forced migration and high number of asylum claims registered in Canada in the early 2000s is included in the calculation for the international context.

The highest active factors represent the case and timeframe specific highest influencing variables. In the 2001-2005 Canada case, the international context is manifest as the security concerns motivated in North America by perspectives developed after the attacks on the World Trade Center in the US.

The refugee determination system, asylum law and domestic policy preferences form a close triangle of factors that function in close relationship. Asylum law bestows decision-making power on the refugee determination system through the planning and consent of domestic policy decision-makers acting in designated positions such as minister. Asylum law also constrains both domestic policy preferences of decision-makers as well as the decision-making power of those working in the refugee determination system institutions. Security concerns, in this timeframe concerns around the mobility of terrorists emerging from the attack on

¹⁷ See CIC Annual Reports 2002-2004.

¹⁸ See IRB Annual Reports 2002-2005.

¹⁹ See Evidence from meetings of the Canadian Parliamentary Standing Committee on Citizenship and Immigration, especially in 2003 around discussions on Bill C-18 and security concerns around new citizens who may have withheld information that would have prevented them being granted refugee status. See <http://www.ourcommons.ca/Committees/en/CIMM?parl=37&session=2>

the World Trade Center, were brought into the Canadian asylum policy system via domestic policy preferences of decision-makers and then institutionalized through Canadian border services and the IRB. In the 2001-2002 Annual Report, security concerns are sighted as additional to focus on implementation of IRPA:

In addition, the terrorist attacks on the United States on September 11 heightened concerns for public safety, resulting in greater scrutiny of Canada's immigration and refugee system and demands for assurances of the integrity of the refugee determination process.

This increased security pressure is consistently reported second after administrative changes and efforts required to implement IRPA, did not merit extra staff hours and is referenced as creating 'greater scrutiny' and the public need for 'assurances'. Therefore, the security concerns emerging from the influence of the international context do not score as high as the changes resulting from the implementation of IRPA. The international context is influential, but marginally less so than structural and legal changes in the domestic context.

By contrast, when referring to the implementation of IRPA, the report explains:

These new challenges and expectations placed exceptional demands on the IRB, its decision-makers and employees who responded in an equally exceptional manner. While implementing measures to respond to these demands, the IRB undertook a revamping of its operations across the organization to prepare for the implementation of the new Act. This involved creating new rules of practice for all

three divisions of the IRB, building a new knowledge base among decision-makers and employees, developing extensive training materials, and strengthening communications efforts to ensure that employees, government partners and stakeholders were equipped to deal with the new legislation. (IRB Annual Report 2001-2002)

Language such as 'exceptional demands,' 'revamping,' 'new rules,' 'new knowledge base,' and 'extensive training' all suggest significantly high influence from the domestic legal change as compared to the 'greater scrutiny' and 'demands for assurance' around the increased security concerns. The Immigration Minister's message that prefaces the Annual Report from CIC reflects a similar tone or suggestion of level of influence regarding the increased security concerns as moderate and important but not the central and only concern of Canadian immigration issues:

At the same time, the war in Iraq, security alerts and continuing incidents of international terrorism highlight the importance of maintaining public confidence in the management of access to Canada. (CIC Annual Report 2002-2003)

As the critical factors, domestic policy preferences of decision-makers and the refugee determination system both have the highest influence in the system and, therefore, are the factors that also promise the greatest change in the system if they are modified. The critical difference between their equivalent scores lies in that the score for the refugee determination system comes almost entirely from the

passive side of the calculations. Repeatedly in IRB Annual Reports, emphasis is placed on the IRB's lack of control over how and when cases are referred:

An important aspect of the Board's planning environment is that it has virtually no control over the forces affecting the numbers of cases it receives. Further, while its tribunals are independent, the work of the Board is carried out nevertheless within the broader context of government legislation and policy. (IRB Annual Report 2003-04)

To formally publish in more than one annual report language that claims a whole institution has 'virtually no control' is to claim a very high outside influence.

Therefore, the high passive score appears because Canada's IRB, while an independent tribunal, is still independent within a context of numerous constraints.

Whereas, domestic policy preferences of decision-makers includes the actions of the Office of the Minister for Immigration and the CIC.

While *asylum law* in Canada may seem to merit a higher score because of the implementation of IRPA, in terms of influence, the new Act had influence over Canada's system but neither the international context nor the local context significantly. The change in law did not alter significantly the numbers of asylum seekers making claims, being accepted or rejected. Additionally, because the numbers of asylum seekers did not change significantly for the Canadian context, it would be a challenge to suggest that changes to the Canadian system affected any

great changes to the international context. Therefore, asylum law shows as exerting a high level of influence on only certain factors yielding an overall lower score.

Table 6. Impact Factor Analysis in 2001-2005 Canadian Asylum System

2001-2005 CANADA		PASSIVE						ACTIVE TOTALS	28
		Asylum Law	Refugee Determination system	Historical experience	International context	Local capacity	Domestic Policy Preferences		
ACTIVE	Asylum Law	X	2	0	0	0	2	4	
	Refugee Determination system	2	X	0	0	0	1	3	
	Historical experience	2	1	X	0	1	0	4	
	International context	2	3	0	X	0	3	8	
	Local capacity	0	2	0	0	X	0	2	
	Domestic Policy Preferences	0	3	0	2	2	X	7	
PASSIVE TOTALS		6	11	0	2	3	6		
		28							

3.4.2 Institutional Effects: Shifting Responsibilities and Power Distribution

The early 2000s Canada case depicts a power distributional model of change in which the trajectory of change initiated and developed through domestic institutions proved to have greater influence and impact than the exogenous shocks from the international context through the increased security concerns and increased numbers of asylum seekers. The distribution of power and decision-making present in the Canadian institutions involved in responding to asylum influx can be characterized as complex. While each institution or decision-making authority may present a low or moderate level of influence, interactions of the institutions combined creates higher impact. Additionally, the source of an authority's power to make decisions, while neither an active nor passive calculation of impact, contributes to the resilience of that authority's power as well as the complexity of the network of institutions with which that authority interacts.

When IRPA, an Act having developed and passed through the institutionalized parliamentary process, came into force, it maintained a significant amount of content from the 1976 Immigration Act which included a number of small changes and two significant ones that affected Canada's asylum policy directly. First, Canada officially recognized same sex and common law partners as legitimate sponsors for asylum seekers looking to apply for Canadian landed immigrant status under the family class. Second, review of applications for asylum had to include consideration for whether the applicant would be at risk of being tortured under the Convention on Torture should their applications be rejected. In such cases, applicants could be granted asylum on humanitarian grounds.

The power of Canada's asylum policy responses and decisions made regarding asylum claims were therefore based on the guidelines written out in IRPA and reinforceable through the judicial system. In preparation for the implementation of IRPA, the purview of certain types of decisions were shifted from CIC to the IRB. Specifically, evaluating who qualified as a same sex or common law partner and the risk of an asylum applicant being returned to a situation of torture.

Asylum claims made to Canada's inland system were reviewed first by CIC to determine that the applicant was eligible to make a claim and then referred to the IRB for adjudication; asylum seekers could not apply directly to the IRB independently. Later, starting in 2004, the CBSA would also determine eligibility for asylum seekers making claims at land borders to Canada. As such, the CBSA would also refer cases to the IRB. (IRB Annual Report 2004) The IRB had authority to make decisions on asylum applications whether first instance or through an appeal under the IRB's Appeal Board. The IRB did not have authority to enforce decisions its Members made. It also did not have authority to deport applicants whose claims were rejected. Nor did the IRB have any power with regards to the process towards citizenship that was triggered by positive decisions on claims.

The distribution of power and decision-making between CIC and the IRB, and in 2004 the addition of the Canadian Border Services Agency (CBSA) reveals a small network of institutions with specialized but interdependent responsibilities such that the interests and roles of each institution can create tension with the others while simultaneously making the combined domestic institutional impact on Canadian asylum policy greater than international influence. CIC, in its "mission to

ensure that the movement of people into Canada and their membership in Canadian society contribute to Canada's social and economic development while protecting the health, safety and security of Canadians,"²⁰ took an active decision-making role in Canada's asylum policy response as well as all other immigration concerns. This included (pro)actively participating in international meetings and other fora due to "the distinction between the international and domestic environments has become blurred. Trends and events in other countries are intricately linked to the achievement of our domestic objectives, while actions taken in Canada immediately affect other countries around the globe."²¹ The extent to which actions taken in Canada immediately affect other countries may be a question of scale compared to the actions of larger, wealthier or more populous countries. However, within the domestic context, CIC was a type of gatekeeper for the asylum claims referred to the IRB.

The IRB has, since its implementation in 1989, been touted an independent tribunal. With respect to the formal decision-making on claims, this is the case. However, critique of the lack of independence arising from once-removed governmental influence outlined in the previous case looks different when examined through a power distributional lens. Through such a lens, the IRB becomes an independent yet highly constrained authority. It is given power to make decisions on asylum claims. Within that action, it is independent so long as the Members adjudicating make

²⁰ CIC Departmental Performance Report 2001-2002, Section I: Operating Context.

²¹ Ibid.

their decisions within the guidelines of IRPA. Beyond such decisions, the IRB has been vested with no other power.

In annual reports between 2001 and 2005, CIC and the IRB consistently cite the implementation of IRPA and the new increased security focus as challenges to the productivity and efficiency for each organization. Language around the effects of the implementation of IRPA appears more often than issues regarding the increased climate of security suggesting that the domestic focus of making functional the new Act factored as more influential for not only the Refugee Determination System but also partially in the domestic policy preferences of decision-makers.

3.5 CANADA 2001-2005 CONCLUSIONS

Conclusions from this later Canadian timeframe show, first, that domestic dynamics, if dispersed among a number of institutions, can have a greater impact than even high influence from the international context. While Canada received its highest number of inland asylum claims in 2001 and security concerns after 9/11 created increased international negotiations between Canada and the US regarding border security which eventually led the safe third country agreement implemented in 2004, influence from the international context was not as great as domestic influence resulting from the lead up and implementation of IRPA. Because IRPA contained much of the law as it was written in the 1976 Immigration Act, the implementation of IRPA can be understood in terms of *layering* in Mahoney and Thelen's (2010) gradual institutional change which effectively reinforced previous rules within institutions involved in Canada's asylum policy system. Then, IRPA

expanded the rules to include consideration of the Convention on Torture when evaluating asylum claims. IRPA also added same sex partners and common law spouses as potential refugee sponsors. These additional rules required an increase in skills and duties of IRB Members in order to be implemented. Therefore, the total influence and impact experienced domestically scored greater than the high score for the international context.

Second, with regard to the literature that searches for single factor explanations to policy trajectory, the later Canadian timeframe shows that based on a power distributional model a network of institutions can have more influence than a single factor. In this case, the administrative reorganizing of institutions under a change of law had more impact than the increased asylum migration that resulted in the highest number of annual inland asylum claims Canada has had.

Third, the high impact resulting from changes in domestic law shows exactly how Castles' (2004) importance of the nation-state can rank in relation to transnational forces. While the focus on security in the literature situates state control in bordering processes and security evaluations, impact factor analysis shows that increased domestic institutional dynamics reinforces the endogenous influences of the state on its own asylum system; the state focusses on its internal policy processes. This increased domestic dynamism raises questions about the influences involved in changes at the international level such as the recent Global Compact on Refugees and how states translate international instruments into domestic ones. I will discuss this further in Chapter 5 along with comparing the Canada's asylum policy systems in the two timeframes.

CHAPTER 4

THE TURKISH ASYLUM SYSTEM

Until 1994, asylum matters in Turkey were governed by components of a number of different national laws: Law 2510 (Law on Settlement), Law 5682 (Citizenship Law), Law 5683 (Passport Law), Law 5687 (Law on the Soujourn and Movements of Aliens). In addition, while Turkey became, and still is, a signatory to the 1951 Convention and the 1967 Protocol, Turkey has maintained the geographical restriction that determines Convention Refugees as those emerging from conflict within Europe. As a consequence, Turkey has developed an active working relationship with the UNHCR which is responsible for determinations on asylum applications made by people coming from beyond Europe; asylum seekers who, upon receiving a favourable determination, must be relocated to a third country for resettlement. The 1994 Regulation made clear the decision-making process, responsibilities and procedures regarding the authority of the Turkish state and the role of the UNHCR, and other assisting NGOs, regarding asylum seekers and refugees in Turkey. While the Turkish Republic's asylum policies were effectively

more restrictive than those of the earlier Ottoman Empire,²² “a policy based on pragmatism and flexibility was allowed to evolve during the 1980s”²³ when Turkey began to experience mass influxes of people fleeing conflict in neighbouring countries. (Kirisci 2001, 76) While the 1994 Regulation was “a direct outcome of the dramatic changes in the nature and size of movements of people into Turkey during the preceding 10 years,” (Kirisci 2001, 78) implementation of the Regulation revealed further need for modification and clarification, and the Regulation was revised in 1999. Within this dialectical development of policy, impacted by the tension between the geographical restriction clause and the numbers of asylum seekers entering Turkey from non-European countries, consideration of the Turkish asylum system must include understanding the role of the UNHCR as a fundamental, yet still foreign player.

4.1 OVERVIEW OF THE TURKISH ASYLUM SYSTEM – LAWS, REGULATIONS and INSTITUTIONS

The Turkish asylum system has responded historically to the influx of asylum seekers on an as needed basis. Until the 1980s, asylum in Turkey was either granted to people in small numbers or as an act of repatriation of “Turks” after the fall of the Ottoman Empire.²⁴ Therefore, the lack of a specific asylum policy may not have been at issue; that is, having issues of migration and citizenship covered under various laws may have been adequate for the nature of migration. In the late 1980s,

²² Latif, Dilek (2002) “Refugee Policy of the Turkish Republic,” *The Turkish Yearbook*, 33, p. 7.

²³ Kirisci, Kemal (2001) “UNHCR and Turkey: Cooperating for Improved Implementation of the 1951 Convention relating to the Status of Refugees,” *International Journal of Refugee Law*, 13(?), p.76.

²⁴ Latif 2002

however, Turkey began to experience large influxes of people through its eastern and southeastern borders “as increasing numbers of asylum seekers began to arrive from Iran and Iraq, as well as other developing nations...a mass influx of almost half a million mostly Kurdish refugees from Iraq in 1988 and 1991, as well as mass influxes of Albanians, Bosnian Muslims, Pomaks (Bulgarian-speaking Muslims) and Turks in 1989, 1992-1995, and 1999.” (Kirisci 2004, 6) These movements effectively tested the “system” revealing the need for further policy development and different practical responses. While Turkey had been a signatory to the 1951 Convention and the 1967 Protocol, the Convention stipulates for individual asylum seekers while Turkey was dealing with mass influxes. In addition, the process for asylum in Turkey pivoted on the geographic restriction Turkey had maintained when signing the 1967 Protocol.

In the 1951 Convention, a refugee was stipulated to be someone fleeing conflict in Europe as a result of events before 1951.²⁵ When Turkey signed the 1967 Protocol which effectively expanded the definition of a Convention refugee to go beyond the historical European concept, “Turkey agreed to lift the time limit [prior to 1951], but chose to continue to maintain the geographical limitation [someone coming from Europe].” (Kirisci 2004, 74) While “it is difficult to discover exactly the reasons for supporting the limitation...officials have frequently mentioned Turkey’s proximity to regions that experience large refugee movements.” (Kirisci 2004, 74) All this meant that Turkey offered asylum during the Cold War to those fleeing conflict in Eastern Europe and the Soviet Union. “Though Turkey has been willing to extend asylum to

²⁵ Convention relating to the Status of Refugees (1951 Convention), Article 1B(1)(a)

a broad range of people, it has restricted full refugee status only to people who qualify as potential immigrants.” (Kirisçi 2000, 3) Whereas those coming from areas of the Middle East in the 1980s and afterwards, were not considered “Convention Refugees” by the Turkish state, this distinction created space and the need for the specific role of the UNHCR in Turkey.

All this considered, the asylum process went as follows. An asylum seeker was to register with the local police within 5 days of entering Turkey. It was necessary that they register with the police closest to their point of entry to the country. If the asylum seeker was someone considered a “Convention Refugee” according to Turkey’s geographical restriction, the Turkish government would assess the claim. If the person came from beyond the geographical restriction, that person had to then go to the UNHCR to make an application for asylum. If their application was recognized and they were granted international protection and refugee status, that person had to be resettled in a third country. According to Kirisci, “consistently, with the Law on Settlement (2510), Turkey generally granted refuge on the understanding that recognized refugees would eventually be resettled in third countries...[and] a very small number were allowed to integrate and take up Turkish citizenship, often as a result of marriage to Turkish nationals”²⁶ whereas “asylum seekers and refugees other than those covered by the provisions of Law 2510 have rarely and exceptionally been allowed to stay permanently in Turkey, let alone take Turkish citizenship.”²⁷

²⁶ Kirisci (2004), p. 75.

²⁷ Kirisci 2000, p. 6.

Effectively, this means that Turkey, although being a signatory to the Convention and Protocol, primarily grants permanent asylum and citizenship to people classified as repatriated “Turks”.²⁸

While this may seem like an argument that Turkey is not a country of asylum, Turkey still grants temporary protection to in situations of mass influx and for years as can be seen with the 3.5 million Syrians under protection in Turkey, (UNHCR 2018).

In the case of [non-Convention]²⁹ asylum-seekers, Turkey developed a working arrangement with the UNHCR, where Turkish officials were prepared to allow these people to remain in Turkey temporarily while the UNHCR processed their applications. This was done under the implicit understanding that the UNHCR would resettle successful applicants in third countries, and that Turkey would be able to deport the others. However, more often than not, the rejected cases either disappeared and became illegal immigrants in Turkey or tried to make their way to Europe by illegal means.³⁰

²⁸ “It was particularly Muslims fleeing the Balkans, the Caucasus and Turkistan (roughly a geographical area corresponding to Central Asia) who were received and settled as immigrants.” Kirisci 2000.

²⁹ Asylum seekers who fall outside the geographical restriction and are effectively non-Convention asylum seekers according to the 1951 Convention definition of having come from conflict in Europe.

³⁰ Kirisci (2000), p.12

As is understandable, the differentiated process of asylum based on the geographical restriction has required cooperation and coordination between the Turkish state and the UNHCR. It is through this need for cooperation and coordination that the need for and the development of the 1994 Regulation came to be; “It was [also] the increasing number of illegal aliens and the growing conviction that this system was being abused that led to the adoption of the 1994 Asylum Regulation.” (Kirisci 2000, 12)

While the specifics of the context for the Regulation is explained through the timeline of the cases below, it is sufficed to say that the Regulation was needed to clarify roles and responsibilities between the Turkish state and the UNHCR.

4.2 THE 1988-1992 TURKISH ASYLUM SYSTEM AND ITS CONTEXT

By the late 1980s, Turkey had already experienced two mass influxes of asylum seekers. Iranians fled into Turkey as a result of the Iranian Revolution in 1979 and Iraqis entered en mass into Turkey from the Iran-Iraq war in 1988. In 1989, Turkey had an influx of around 450,000 Iraqis. By the onset of the first Gulf War in August 1990, Turkey had already had multiple experiences with mass influx of people that legally would not be considered for resettlement. The 1988 mass influx of Iraqi Kurds had been intertwined with questions of security and domestic politics as those questions connected to the Turkish conflict with the PKK. (Kirisci 2000; Kaynak 1992) In fact, a portion of Turkey’s south eastern region was under state of

emergency (Olağanüstü Hâl Bölge Valiliği- OHAL) rule formulated as a means to deal with the Turkish-Kurdish conflict. (Kayaoglu 2014)

After Turgut Ozal's leadership through the Motherland Party (ANAP) between 1983 and 1989, domestic politics had become less stable. From October 1989 to November 1991, three different people from the Motherland Party filled the role of Prime Minister, Ali Bozer (Acting Prime Minister 31 October-9 November 1989), Yildirim Akbulut (9 November 1989 – 23 June 1991), and Mesut Yilmaz (23 June – 20 November 1991). There may have been seen to be some stability as Turgut Ozal became the President after his tenure as Prime Minister (1989-1993); however, the powers of the President were limited.

International organizations had a presence in Turkey by 1991 with the UNHCR having had a presence in Turkey since 1960.³¹ While there had been many NGOs active in Turkey and some with some established history, beside the UNHCR, the ICMC appears to hold a trusted role:

the International Catholic Migration Committee (ICMC)...has had a very long relationship with the Turkish government, mostly through the UNHCR and during the Cold War years, in resettling refugees out of Turkey. To this day the ICMC remains the only refugee related non-governmental organization in Turkey that enjoys some official status, and continues to play a

³¹ UNHCR in Turkey (2010), p. 5

central role in resettlement and in providing social assistance to asylum seekers and refugees in Turkey.³²

As previously mentioned, because Turkey chose to maintain the geographical limitation on the definition of a Convention refugee, the relationship between the state and refugee supporting NGOs become an integral part of the Turkish asylum system

As in the previous chapter, in the following subsections the six factors constituting the asylum policy system and their impact on each other are explored. The factors are given an Impact Factor Analysis score as per the ADVIAN classification method³³ (0-3; 0=no impact – 3=high impact) according to how each factor is shown to have influence or impact on all other factors. Therefore, the following paragraphs contain language such as “influence” or “high-low impact” that correspond to the scoring in Table 6.

4.2.1 Scoring the Factors: Turkey (1988-1992)

As previously considered for the Canadian asylum system cases, the Turkish asylum system can be viewed as a set of six factors that influence and interact with each other. As discussed in Chapter 2, by analyzing the impact of these factors on each

³² Kirisci (2001), p. 91.

³³ Linss and Fried (2010), p.

other using a method called the ADVIAN classification system, a tableau can be created that shows which factors have the greatest impact on the system (active impact) and which factors receive the most impact or are the most influenced (passive impact). Again, this is very useful in understanding, specifically, non-linear relationships amongst multiple factors, and lends itself to some predictive modelling. In this way, graphed data points can be manipulated to represent possible slight changes in factors and the consequent results on the entire system.

The factors in these case analyses, again, are the domestic application of asylum law, the national determination system, the international context, national historical experience of asylum seekers and refugees, local absorption capacity, and domestic politics. Also, again, for each of the cases examined, the factors are considered constants, that is, international context for the 1991 case is comparable to international context for the 2003 case; however, the variables connected to or constituting the factors can change. This allows for a comparison of factor influence at a different time (t) with the understanding that composition of the factor has to have changed.

Asylum Law is conceptualized as the legal documents and decisions that govern decisions made in Turkey regarding the rights, status of and treatment of asylum seekers and refugees. For the 1991 Turkish case, this includes the 1951 Convention and the 1967 Protocol with the above explained geographical restriction. Asylum law here also includes the relevant portions of Law 2510 (Law on Settlement), Law 5682 (Citizenship Law), Law 5683 (Passport Law), Law 5687 (Law on the Soujourn

and Movements of Aliens). For the Turkish 2003 case, all the above documents are applicable as well as the 1994 Regulation and its 1999 revision.

The *determination system* is constituted by a few different organizations both national and international. The Turkish National Police function as the first point of contact and responsibility for foreigners who must register and declare their desire to claim asylum, at which point a first assessment was made. For asylum seekers who qualify under the geographical restriction, the Interior Ministry was ultimately responsible for assessing the claim for asylum. For the bulk of asylum seekers entering Turkey, those who came from beyond the geographical restriction, the UNHCR was the next point of contact, where the next level of asylum claims were to be made and where matters of resettlement beyond Turkey were to be organized should the asylum application be granted. Should asylum applications have been rejected, then it was again the responsibility of the National Police to ensure that unsuccessful applicants exited the country.

Because the UNHCR had an active office in Ankara, the *international context* factor was both geographically outside Turkey and administratively within the Turkish borders. For the 1991 case, the international context very obviously must include the refugee producing conflict in Iraq. Also, however, it is important to consider the dynamics in the international community regarding the conflict as part of the case context. For example, UN Security Council Resolution 688, regarding Operation “Provide Comfort”, was an international agreement to set up a zone of safe haven.

Historical experience for the 1991 Turkish case is constituted by migration preceding 1991, but also more specifically the highly influential mass influxes resulting from the Iranian Revolution (1979), the Iran-Iraq War (1988) and the first Gulf War (1990-91).

Turkey adopted a policy which enabled Iranians to enter the country without a visa, and they were permitted to stay in the country temporarily. There are no official statistics, but a member of the Turkish parliament put the total number of Iranians that benefited from this arrangement between 1980 and 1991 at 1.5 million.³⁴

This was the beginning of a number of mass influxes coming across Turkey's eastern and southeaster border regions where population migration emerging from conflicts were considered in light of previous mass influx and difficulties experienced as a consequence. In addition to the influx of Iranians and the Iraqi Kurd influx from 1988 (460,000), between August 1990 and January 1991, almost 63,000 people representing 65 different nationalities seeking refuge from the first Gulf War crossed into Turkey.³⁵

Domestic Politics is constituted by national political dynamics based on the agenda of the ruling political party, relevant domestic issues, and in particular in Turkey, how international issues play out within Turkish national borders. For example, conflicts in Iran and Iraq brought asylum migration inside Turkish national

³⁴ Kirisci (2000), p. 11.

³⁵ Kaynak p. 27

boundaries. While still an international issue, mass influxes also created dynamics within the Turkish state and for the local Turkish peoples, thereby making the consequences of the influx a distinctly domestic issue in certain ways.

Local Absorption Capacity connects directly with the reason influx become a domestic political issue in Turkey; that is, the ability and experiences of local populations with influx of asylum seekers depends on resources and local attitudes in the areas hosting asylum seekers and refugees. As well, the responses of local populations become part of the dynamics of domestic politics.

Table 7. Impact Factor Analysis in 1988-1992 Turkish Asylum System

1988-1992 TURKEY		PASSIVE						ACTIVE SUMS	
		Asylum law	Determination system	Historical experience	International context	Local capacity	Domestic policy preferences		
ACTIVE	Asylum law	X	3	0	1	1	1	6	44
	Determination system	1	X	0	1	2	2	6	
	Historical experience	1	2	X	2	2	3	10	
	International context	2	3	0	X	1	3	9	
	Local capacity	1	2	0	1	X	1	5	
	Domestic policy preferences	2	3	0	2	1	X	8	
PASSIVE SUMS		7	13	0	7	7	10		
		44							

According to calculations seen in Table 7, the factor most influenced (passive impact) was the *determination system*, while the factor with the most influence (active impact) was *historical experience*, followed closely by the *international context* and then *domestic policy preferences of decision-makers*. Domestic policy preferences of decision-makers, however, is evaluated here as receiving slightly more influence than it influenced. This means that, as a factor, it is the one of the

most dynamic of the 1988-1992 Turkish asylum system; that is, it can be seen to influence the entire system both actively and passively in comparison to other factors. While it might seem that the most important factors are those that have the highest active scores, the factor with the highest active and passive score is the factor that has the most potential to influence the entire system should anything about that factor change.

Analytically, impact factor analysis allows for consideration of the system both as it is and predictively as it could be. For this case specifically, if we consider the determination system, as the most influenced or most impacted factor in the system, while passive, any changes to it should yield very significant changes to the entire system. This will be the case as will be discussed with the 2003 Turkish asylum system. With the implementation of the 1994 Regulation and further amendments in 1999, a change to the determination system proves to have great impact on the overall system including how the actors and organizations, both domestic and international, interact with each other.

Domestic policy preferences of decision-makers, perhaps not surprisingly, exerts a high level of influence over the asylum system in this case. This can be seen to confirm other descriptive literature that outlines a lack of institutionalized or formal structure in Turkey's determination system.³⁶ However, it is the international context and historical experience that exert higher levels of influence over this early timeframe system than domestic policy preferences of decision-makers. While

³⁶ "Until the introduction of the 1994 Regulation on asylum, Turkish national law had no provisions governing the status of asylum seekers and refugees coming from outside Europe." Kirisci (1996), p. 297.

some of the literature and information from elite interviews focus on early Republican immigration policy and nation-building, as parts of the determination system and application of asylum law, having impact on decision-making and procedures in the 1991 Turkish asylum system, using the ADVIAN method and direct comparison of other factors shows that no less than 3 other factors have individually more impact. The more specific dynamics amongst factors are discussed in the sub-sections following.

4.2.2 Domestic Policy Preferences of Decision-makers and the Determination System: Mass Influx

In 1989, the Turkish migration policy that had focussed largely on immigration of people of “Turkish descent” began dealing with mass influxes of people who were neither “Turks” nor 1951 Convention refugees. While “Turkish Law [had] not [been] very quick to respond to developments because policy was a framework to support the immigration of people of “Turkish descent” to Turkey under the Act on Settlement 1934,”³⁷ conflict beyond Turkey’s eastern borders brought Iranians, Iraqis and people of various other nationalities en mass to and across Turkey’s border. Before the creation of the 1994 Regulation, Turkish Law and migration policy was primarily concerned with provision of support for migrants who were eligible to become citizens as well as those Turkish citizens going abroad and maintaining familial and financial connections back in Turkey:

³⁷ Interviewee #4

In terms of public policy, if an issue is considered to be a high priority issue, then policy reacts to respond to that issue. So, up until 1990, apart from the Act on Settlement, issues relating to foreigners and refugees were not considered to be of high priority in the governmental circles. The governmental policy was more focussed on those Turkish nationals immigrating to other countries, especially to Europe to earn their living and send their money back and so on....The population movements that were of concern to the government were mainly because of the legacy of the Ottoman Empire...³⁸

Terminology under Turkish law made a distinction between citizens and non-citizens (*yabancı*) where the term *göçmen* indicated a person migrating, which could include someone of “Turkish descent” who had been accepted to immigrate.³⁹ There was no legal or technical term or policy for persons not of “Turkish descent” and seeking asylum. This focus on migrants who under the Law on Settlement were eligible to become citizens effectively meant that Turkey had no formal infrastructure for dealing with the mass influxes of the 80s and 90s. In this way, domestic politics and the focus on migration as a means to build national populations had a very high influence on the shape and provisions of the determination system.

³⁸ Interviewee #4

³⁹ Interviewee #4.

In 1988 and 1991, Turkey experienced two mass influxes

when more than 51,000 and then 460,000 mostly Kurds sought refuge in Turkey. It was with some hesitation and reluctance that the Turkish government admitted these refugees. At the time government officials were reluctant to refer to them as Kurds or 'refugees'. This coincided with a period when the activities of the PKK were on the rise and the state continued its policy of denial of the existence of a separate Kurdish identity in Turkey.

Furthermore, there was also a concern that if the term 'refugee' was used this could entail obligations for Turkey under the 1951 Convention. Instead terms such as 'peshmergas' and 'temporary guests' were employed. (Kirisci 2000, 12)

Domestic political concerns and national identity definitions that did not include minority ethnicities influenced the terminologies used to describe populations seeking asylum conditions in Turkey in the late 80s and early 90s. Since Turkish law then consisted of multiple sections of various national laws and the Convention and Protocol with geographical restriction, choice of terminology also effectively created options for how to consider the mass influxes; that is, domestic politics influenced application of law which then influenced the determination of support.

4.2.3 International Context and the Refugee Determination System

The Turkish refugee determination system for the early timeframe case pivots on the geographical restriction. Because Turkey legally accepts only refugees from Europe, other organizations became an integral part of the functioning of the asylum process in Turkey as a means to assess and support asylum seekers coming from areas beyond Europe. In this way, part of the ‘international context’ actually occurs within the border of the Turkish state. This also shows how the international context has a high (score of 3) impact on the determination system, because the international context, embodied in the UNHCR and other NGOs, is effectively a part of the extended asylum system. Indeed, “until the introduction of the 1994 Regulation on Asylum, Turkish national law had no provisions governing the status of asylum seekers and refugees coming from outside Europe.” (Kirisci 1996, 297)

Coordination between the Turkish state and the UNHCR, however, was not always smooth and who had responsibility over what was not always clear. Problems occurred with asylum seekers going directly to apply with the UNHCR without first registering with the Turkish National Police.⁴⁰ In particular, problems occurred with refugees who had been “recognized as *bona fide* refugees or ‘people of concern’ to the UNHCR, who had either entered the country illegally or had failed to register with the Turkish police.” (Kirisci 1996, 298) Kirisci goes on to explain that “[o]n many occasions, Turkish officials refused to allow them [refugees for resettlement in third countries] to leave the country when they did not have passports with valid

⁴⁰ Interviewee #3.

entry stamps into Turkey.”(Klirisci 1996, 298) It was often the complexity of good communication between the UNHCR, the Turkish National Police and asylum seekers that created much of the difficulty.⁴¹

4.2.4 Historical Experience

Historical experience has influence on the 1988-1992 asylum policy system because Turkey had previously experienced mass influx from Iran. Then at the beginning of the 1988-1992 timeframe, there is an influx from Iraq. By 1991, previous experience of influx is relatively recent and becomes part of asylum policy considerations:

“There were clearly [security] concerns about a situation similar to the one resulting from the 1988 influx. However, there were also many members of Parliament arguing that these refugees were kins of Kurds in Turkey and that it was essential to come to their help.” (Klirisci 2000, 13)

Despite security concerns, however, Turkey provided protection for 450,000 Iraqis in 1991.

4.3 TURKEY 1988-1992 CONCLUSIONS

The 1988-1992 Turkish asylum system case is characterized by tensions and conflict amongst its factors. Asylum law is practically lacking for dealing with the mass influxes into Turkey. The actors and organizations that comprise the system function on an ad hoc basis and experience struggles with effective communication

⁴¹ Interviewee #3.

and differ on understandings and interpretations of 'the rules'. In addition, conflicts in surrounding geographical areas begin producing larger refugee flows than previously experienced by Turkey. This creates a scenario of great pressure on the Turkish asylum system. Mahoney and Thelen, when describing institutions explain that "institutional change often occurs precisely when problems of rule interpretation and enforcement open up space for actors to implement existing rules in new ways." (2010, 4) The early timeframe Turkish asylum system case from a different perspective might actually be understood as a historical migration policy that began having to contend with large asylum influx. Where previous influx and assessments of those influxes had been adequately serviced by Turkish law up until the 1980s, it was the shift in migration that challenged both the existing law and determination mechanisms; therefore, experiences of Iranian and Iraqi Kurdish refugee influx as recent historical experience and then the role of the UNHCR in assessing applications of asylum seekers coming from beyond the geographical restriction became highly influential factors on Turkey's asylum law and domestic politics. The amount of time that was required before there was a change in Turkey's determination system, as seen in the creation of the 1994 Regulation, can be seen as a function of domestic politics, in particular that migration issues needed to become a matter of high priority before changes would be made to policy.⁴²

⁴² Interviewee #4.

4.4 THE 2001-2005 TURKISH ASYLUM SYSTEM AND ITS CONTEXT

Asylum policy in Turkey in the early 2000s stemmed from the same laws as 1988-1992 with the addition of the 1994 Regulation and its 1999 amendment. However, asylum law and policy in Turkey were also in the midst of significant revision under Turkey's EU Accession process. While asylum influx was not a central concern for the state in 2001, by the end of 2002, it had become a concern again with Turkey anticipating potential mass influx from Iraq. (UNHCR Global Trends Turkey 2002). Additionally, the required time for asylum seekers to register with the Turkish National Police, amended from 5 days⁴³ to 10 days⁴⁴ in the 1999 Amendment, was still proving a point of contention between the UNHCR and Turkey; claimants recognized as refugees by the UNHCR having been unable to register in time with the National Police were sometimes not able to secure an exit visa and were returned instead of being resettled. For Turkey, the concern was that an international organization was making asylum claims assessments for individuals who had not registered and therefore had no legal status within Turkey. To have

⁴³ From the 1994 Regulation, Paragraph 4 read: "Türkiye'ye yasal yollardan gelenler bulundukları yer valiliklerine, yasal olmayan yollardan gelenler ise giriş yaptıkları yer valiliklerine en geç beş gün içerisinde müracaat ederler." (Those entering Turkey legally may register at the nearest governor's office; those entering without legal status must apply at the latest within five days to the governor's office nearest to where they crossed the border. (author's translation))

⁴⁴ From the 1999 Amendment to the 1994 Regulation, Paragraph 4 was amended to read: "Türkiye'ye yasal yollardan gelenler bulundukları yer valiliklerine, yasal olmayan yollardan gelenler ise giriş yaptıkları yer valiliklerine en geç 10 gün içerisinde müracaat ederler." (Those entering Turkey legally may register at the nearest governor's office; those entering without legal status must apply at the latest within 10 days to the governor's office nearest to where they crossed the border. (author's translation))

individuals entering and exiting Turkey without national legal status became a concern about sovereignty and domestic border control.

The UNHCR concluded that the institutional ability to prevent the return of people who qualify for international protection was partially due to UNHCR training delivered to officials in the General Directorate for Security and the Interior Ministry:

Partly as a result, collaboration with the government improved and nearly all emergency interventions by UNHCR to prevent the deportation of asylum-seekers were successful. (UNHCR Global Report Turkey 2001)

However, other documents also show that the issue of foreigners' lack of registration was of even broader concern for Turkey. The issue of registration even merited inclusion into Turkey's 5-year development plan 2001-2005:

637. Ülkemize yurt dışından gelen göçmen, sığınmacı ve kaçak işçilere ilişkin yeterli bir kayıt sisteminin oluşturulamamış olması sebebiyle, söz konusu kişilerin demografik ve sosyoekonomik özelliklerinin tespiti ve takibi mümkün olamamaktadır.

(Due to the lack of an effective registration system, determination and monitoring of demographic and socio-economic information for foreign migrants, asylum seekers and foreigners working without legal work permits has not been possible.)

645. Ülkemize yurt dışından gelen göçmen, sığınmacı ve kaçak işçilerin demografik ve sosyoekonomik özelliklerinin tespiti ve takibine imkan verecek etkin bir kayıt sistemi geliştirilecektir.

(645. An effective facilitation for the registration system for foreign migrants, asylum seekers and foreigners working without legal permits and their demographic and socio-economic details will be developed.)

This shows that for Turkey, the focus on the need for foreigners to be legally registered when or shortly after entering the country was based on not only security and border control or sovereignty issues, but also on economic development planning issues. It is important to note here again that like in the 1988-92 timeframe, foreigners legally registered in Turkey were given temporary residence permits.

Here we see the beginning of competing rule structures behind similar concerns between Turkey and the UNHCR; Turkey's concerns around registration of foreigners involved sovereignty, security, labour market and development concerns as well as international protection. For the UNHCR, concerns focussed on international protection and the implementation of international protection standards. As such, the UNHCR did assert some influence as part of the international context, however, domestic policy preferences of decision-makers in Turkey also maintained a high influence.

In addition to the above mentioned domestic policy preferences, scoring of the 2001-2005 Turkey case includes concerns about forced migration from Iraq beginning in 2003. Historical experience of the 1991 mass influx began to influence policy makers even in 2002 before the US invasion of Iraq:

Before the war in Iraq, Turkey made extensive preparations for a possible mass influx of refugees. An inter-ministerial crisis management centre was established under the Prime Ministry and provisional shelters for refugees were set up before the Iraqi border. Even though some individuals crossed the Iraqi-Turkish border during the war to look for refuge in Turkey, the expected mass flux did not take place.⁴⁵

Domestic decision-makers did not want another mass influx and were developing policy to prevent it.⁴⁶ From a theoretical perspective, this case might be taken as representative of industrialized countries increasing restriction as a reaction to mass influx, but that explanation is too simplistic, too monocausal, to capture what happened at the institutional level. It also would not explain why Turkey persisted in the revisions of the national asylum policy to harmonize with the EU and accept a document that included language on lifting the geographical restriction.⁴⁷ The

⁴⁵ 2003 *Regular Report on Turkey's progress towards accession*, Chapter 24, para. 14. Available at https://www.ab.gov.tr/regular-progress-reports_46224_en.html.

⁴⁶ UNHCR Global Trends Turkey 2002, p.421; Filkins, "Threat and Responses," New York Times, Nov. 23, 2002.

⁴⁷ See Turkey's National Action Plan on Migration and Asylum (2002-2005), section 4.13, available at <http://www.madde14.org/images/0/03/Uepeng.pdf>.

prospect of formally lifting the geographical restriction represents a move from a restrictive policy to a more liberal policy.

From an institutional power distribution perspective, revision of Turkish asylum policy was a national endeavour being constantly negotiated by international processes through the EU and the UNHCR. The EU influenced revising of Turkey's asylum policy through the accession process as seen in the 'Turkish National Action Plan for the Adoption of the EU acquis in the Field of Asylum and Migration',⁴⁸ and the UNHCR operated in Turkey to make determinations on asylum claims from and support and advocate for Convention refugees who were not offered resettlement in Turkey due to the geographical restriction.⁴⁹

Similar to the 1988-992 case, the institutional dynamics in the 2001-2005 case were complex with some competing interests between national laws and priorities and international laws and priorities. Therefore, decision-making in institutions would differ accordingly; for the UNHCR, the mandate was governed by the 1951 Convention and 1967 Protocol as well as UNHCR Protection Guidelines,⁵⁰ for Turkey, while a signatory to the Convention, the national implementation of the Convention included the geographical restriction.

⁴⁸ Turkish National Action Plan for the Adoption of the EU acquis in the Field of Asylum and Migration 2002-2005, available at <http://www.madde14.org/images/0/03/Uepeng.pdf>

⁴⁹ UNHCR Global Trends Turkey 2001, available at <https://www.unhcr.org/publications/fundraising/3dafdd036/unhcr-global-report-2001-turkey.html>

⁵⁰ See *No. 21: Update to the International Protection Response to Asylum-Seekers From Iraq*, UNHCR, 1 March 2004 (only available on Refworld CD-Rom); UN High Commissioner for Refugees (UNHCR), UNHCR Advisory Regarding the Return of Iraqis, 12 September 2005, available at: <https://www.refworld.org/docid/432a89d54.html> [accessed 26 November 2018].

Because the largely cooperating institutions share a context, from a gradual institutional change theory perspective, each institution's rules and interpretations of those rules becomes part of the context of the other institutions, and therefore something to negotiate. In situations where all institutions were, hypothetically, under the same set of national or international rules, then analysis would yield discussion on how decision-makers interpreted the rules; however, in the 2001-2005 Turkish case, while the EU Accession process was precisely a process to align sets of rules and interpretations of them, collaborating institutions were still working with different sets of rules within the same context. This inevitably led to different interpretations of priorities in that same context. As a result, when Turkey was facing the potential for another mass influx from conflict in Iraq in 2003, responses from Turkey, the UNHCR and the EU were based on different interpretations of different sets of rules.

4.4.1 Scoring the Factors: Turkey (2001-2005)

Between 2001-2005 for Turkey, the *international context* scored the highest active impact on the system (8) followed immediately by *domestic policy preferences of decision-makers* (7). The *refugee determination system* scored the highest passive or reactive factor (9). The highest scoring critical factor, with the highest combined active and passive score was the international context (13) followed immediately by both the *refugee determination system* and *domestic policy preferences of decision-makers* (each 12).

The international context scored high in this case because of the presence of the UNHCR within Turkey, the active EU Accession process and, through it, the drafting

of Turkey's National Asylum Action Plan, and domestic concerns regarding the asylum migration producing conflict in Iraq beginning in 2003. The international context also scored high passively becoming the critical factor because it received impact through interactions between Turkish national institutions and the UNHCR as well as the impact of Turkey's geographical restriction on the Convention.

It is important to note that in both the early and later timeframe for Turkey, while the international context scores high, the specific variables through which the international context is operationalized changes. Therefore, the factor should not be reflexively considered a consistently high influence and must be understood through the timeframe specifics. That is, the earlier case includes Turkey's response to mass influx and the role of the UNHCR, whereas the later case includes the significant influence from the EU through the Accession process and negotiations around Turkey's asylum and international protection policies. Another timeframe, especially one that included a set of high influencing domestic concerns might render a very different impact matrix. Additionally, asylum and international protection policies are, by nature, a response to the international context and therefore evaluation of the international context must result in some score.

Therefore, the factors whose timeframe operationalizations remain very similar across time, for example, response to mass influx, and who then receive similar scores may be understood to be consistent influences. One example of consistent operationalization between the late 1980s and mid-2000s would be Turkey's refugee determination system; the role of the UNHCR and the Turkish National Police continued similarly throughout these two decades even with the introduction

of regulations and amendments, particularly because of Turkey's geographic restriction on the Convention.

The refugee determination system receives impact from asylum law in the form of the geographical restriction which determines who will apply for international protection through the UNHCR. Additionally, the 10-day registration requirement, as defined in the 1999 Amendment to the 1994 Regulation influences the process through which asylum seekers with successful claims become eligible for resettlement.

The overall score for the later Turkish case, at 26, appears lower than might be expected because the first two years within the case were characterized by consistently lower scores than the last 3. By calculating an overall score for the 5 years, while 2003 and 2004 had consistently higher scoring factors, the years with less dynamism among factors brought the overall score for the 5-year period down. This is significant in terms of understanding interactions among institutions over a period of years rather than considering a dynamic year as characterizing half a decade.

Table 8. Impact Factor Analysis in 2001-2005 Turkish Asylum System

2001-2005 TURKEY		PASSIVE						ACTIVE TOTALS	
		Asylum law	Determination system	Historical experience	International context	Local capacity	Domestic policy preferences		
ACTIVE	Asylum law	X	3	0	2	0	0	5	26
	Determination system	1	X	0	1	0	1	3	
	Historical experience	1	0	X	0	0	1	2	
	International context	1	3	0	X	1	3	8	
	Local capacity	0	1	0	0	X	0	1	
	Domestic policy preferences	2	2	0	2	1	X	7	
PASSIVE TOTALS		5	9	0	5	2	5		
		26							

4.4.2 Institutional Interactions: Constant international negotiations

While other cases of industrialized countries of resettlement have institutional dynamics that involve a number of domestic institutions negotiating distribution of power, the Turkish case is one of national and international organizations negotiating. Understanding the difference between these two scenarios is key to understanding Turkish asylum policy responses in the early 2000s, in particular

understanding the role of EU Accession and the centrality of Turkey's migration and asylum policy to accession.

In the 2003 National Action Plan,⁵¹ Section 24.1, harmonization of Turkey's asylum policy with the EU acquis is cited as a priority for accession:

In the 2003 Accession Partnership, harmonization with the EU acquis in the area of asylum was listed as a priority. Under the medium-term priorities of this heading, developing accommodation facilities and social support mechanisms for refugees and asylum seekers and enhancing administrative and technical capacities have been envisaged. Under this heading, following the entry into force of the Draft Law on Asylum, the work on harmonization with the EU acquis will continue and administrative measures will be further developed.

The National Action Plan included institutional changes (24.1.2) that were planned over 3 years (2003-2005 inclusive). The Accession process and the focus on revising the asylum policy continued through forced migration consequences of the conflict in Iraq. The national-international institutional negotiation process that was progress towards EU Accession means that Turkish asylum policy changes were influenced through institutional relationships. Therefore, Turkey's asylum policy trajectory cannot be explained as merely response to mass influx, austerity, or local population fatigue.

⁵¹ For all sections of the 2003 National Action Plan, see https://www.ab.gov.tr/196_en.html.

The presence and role of the UNHCR in Turkey also represents a constant international negotiation which increases the complexity of the later Turkish timeframe. While Turkey welcomes and works with the UNHCR, in the 2001-2005 timeframe, refugees waited in Turkey due to delays in resettlement; third countries hesitated to accept Iraqi refugees due to increased security concerns. (UNHCR 2004) In this respect, Turkey managed the presence of an international organization as well as the people it was mandated to support.

4.5 TURKEY 2001-2005 CONCLUSIONS

The power distribution among institutions involved in the Turkish asylum policy system between 2001-2005 reveals a multi-level field of negotiations. While Turkey had provided temporary protection to people arriving as mass influx, instances of refugees recognized by the UNHCR being returned to their country of origin because they had failed to register with the National Police and therefore could not obtain an exit visa, can be interpreted as national institutions reinforcing the supremacy of national laws. In such cases, refugees become subject to the consequences of institutions interacting without a common set of rules or guidelines. The institutions compete for power rather than reinforcing a shared set of rules as would two domestic institutions governed by the same national law. Therefore, the institutional relationship that might be characterized in collaborative times as *conversion*, in which the rules are the same for both institutions, but decision-makers interpret them differently, is more aptly characterized as a power

play in which institutions must put first the mandate from the rules that govern them. The risk in this situation is that institutions may begin to interact in more adversarial patterns if asserting power becomes a greater priority than the original shared goal of the institutions, in this case, providing protection to asylum seekers and refugees.

Turkey's EU Accession process can certainly be described as planned gradual institutional change. The chapter by chapter harmonization process resembles something between Mahoney and Thelen's *displacement* and *layering*. Existing rules are sometimes replaced by new ones and in other cases, new rules are added to those that already exist.

A point of negotiation that would change the Turkish asylum policy system dramatically would be to lift the geographical restriction which would effectively transform Turkey into a country of resettlement for asylum seekers from any country. Lifting the geographical limitation, as part of EU Accession, was included in the National Action Plan (4.13). Critically, the language covering the lifting of the limitation includes conditions on burden-sharing with the other EU countries.

Section 4.13 begins:

Lifting the geographical limitation is an issue which should be resolved without giving harm to the economical, social and cultural conditions of Turkey, since Turkey had been a country very widely affected by the mass population movements, which took a rise in 1980s, and which changed the world's conjuncture.

This concern regarding mass influx is reflected again in two conditions for lifting the geographical limitation. The first is that

Necessary amendments to the legislation and infrastructure should be made in order to prevent the direct influx of refugees to Turkey during the accession phase

The second is the explicit wording that EU countries will help through burden-sharing. The language in the 2002-2005 National Action Plan shows that while the EU is negotiating for Turkey to further liberalize its asylum policy, the EU is also focussed on how to prevent and minimize the very real possibility of subsequent occurrences of mass influx to Turkey.

CHAPTER 5

DYNAMISM AND BALANCE: COMPARATIVE ASYLUM SYSTEMS ANALYSIS

The purpose of a diverse case study is to examine cases that represent a full variation within a set. (Seawright and Gerring 2008) Evaluating the impact of factors in the asylum policy systems for Canada and Turkey is designed to yield potential hypotheses about a set of possible case countries that experience incoming asylum migration and have the following set of characteristics: industrialized, asylum seeker and refugee hosting, middle to high income, members to a set of international organizations among which are the OECD, NATO, WTO, G20, UNHCR, and IOM. Canada and Turkey, as diverse cases from this set, represent ‘a full variation’ or cases with the above outlined similarities and while also enough differences to represent full variation.

Neither the Canada nor Turkey cases’ impact factor calculations suggested support for the propositions that industrialized countries remain on trajectories of restriction as response to mass influx or austerity, nor from local population fatigue to influx of migrants. The high impact scores for the refugee determination system

in both country's cases and in both timelines, 1988-1992 and 2001-2005, suggests that analysis of asylum policy trajectory must include examination of the role of institutions. Findings from all four cases also show that very different effects emerge where institutional dynamics transpire among domestic institutions as compared to a mix of domestic and international organizations. Among domestic institutions, questions of rule interpretation and decision-making authority are governed by one set of shared rules or laws, whereas questions of rule interpretation and decision-making authority among a mix of national and international institutions can raise contention between differing sets of rules and corresponding mandates. Where debate among domestic institutions is shown to create a greater combined domestic influence on a country's asylum system, debate between national and international institutions is shown to undermine assertion of national laws.

5.1 CANADA OVER TWO DECADES: AN INCREASINGLY COMPLEX DOMESTIC POLICY LANDSCAPE

In both decades the Canada case is an example in which domestic regulations and the implementation of them have greater impact than the international context despite instances of numbers of inland claims exceeding the planned capacity of the refugee determination system and the increased security concerns of the early 2000s. Evaluation of impacting factors does not support arguments in the literature that the trajectory of asylum policies of industrialized countries is explained by

response to mass influx, austerity or local population fatigue and the rise of a radical right. Scoring of the six factors reveals that the greatest impact on the Canadian asylum policy system occurs in instances of changes to laws or interpretations that necessitate changes to institutional procedures. The extended effects of this impact increased the complexity of Canada's domestic institutional landscape and increased debate about domestic laws that governed the asylum claims process. The increased complexity and debate resulted in greater influence and impact among domestic institutions than that coming from the international context, even in a time of increased international impact as it was in the early 2000s.

Between the early 1990s and the mid 2000s, Canada's asylum policy changed, first in the late 1980s, through *layering* where new rules were attached to existing ones changing the way the original rules structured procedures for asylum claims. In the early 2000s, a second change occurred through *displacement*, where existing rules were replaced by others. In both instances, changes in rules were accompanied by changes to institutions and distribution of power through delegation of decision-making authority. However, the changes were consistent in trajectory. The 1985 Singh Decision and IRPA both addressed issues that would afford increased human rights to claimants through their asylum claims process. As well, institutional changes in 1989 and 2002 focussed on more specialized tasks assigned to specific institutions. This increased the complexity of Canada's institutional asylum policy landscape. The increased complexity, however, was not in contention with the 1951 Convention. Consequently, impact on the Canadian asylum system did not arise

from international organizations or advocacy from the UNHCR.⁵² Impact arising from the international context arose from negotiations with other countries, such as the US, over border security concerns which produced the safe-third country agreement. Other impact arose from the number of inland claims compared to the capacity of the IRB in any given year. In 2001, the year with the highest number of inland asylum claims in either case, the IRB reported a one-time increase in budget granted to manage the increased numbers of claims. (IRB Annual Report 2001) In the previous case, when the concern centred around the backlog of asylum claims generated by the Singh Decision, while reduction of the backlog took longer than expected, (IRB Annual Report 1992) the IRB was a new institution still developing its capacities. As a new institution, the first estimates of staff hours needed to reduce the backlog were too low to complete the work. (IRB Annual Report 1990)

The earlier case presents as more dynamic with an overall higher total ADVIAN score. This is, in part, due to the creation of a new institution tasked with a significant task, the face-to face hearing for each asylum claimant. The later case appears to have an equivalent set of influences among factors due to the combined pressure of implementing IRPA in the same years as increased inland asylum claims and security concerns after 9/11. The later case, however, has an overall slightly lower impact score for the system due to the age of the institutions involved and consequent capacity.⁵³

⁵² Interviewee #5

⁵³ The Annual IRB report begins with a message from the Minister who praises the IRB Members for managing the increased workload and expectations.

5.2 TURKEY OVER TWO DECADES: INTERNATIONALLY PERMEATED SOVEREIGNTY

In both Turkish cases, the international context exists within Turkey through international organizations and asylum seeker influx. Both cases are also characterized by Turkey's security concerns. However, where in the earlier case Turkey manages unexpected mass influx, in the second case, anticipated mass influx similar to the earlier case does not occur. Turkey's 1988-1992 asylum policy response is spontaneous and tailored for the situation. Rather than becoming a country that could support the literature by becoming more restrictive after mass influx, with the 1994 Regulation, Turkey clarified roles between domestic institutions and the UNHCR regarding the necessity for asylum seekers to register with the Turkish National Police to comply with national law and border policies. Then, between 1994 and 2005, Turkey proceeded to incrementally liberalize its asylum policy by extending registration time from 5 days to 10 days⁵⁴ and then later to "a reasonable amount of time".⁵⁵ Beginning in 2002, through the National Action Plan, Turkey committed to procedures, including lifting the geographical restriction on the 1951 Convention,⁵⁶ which begin to align Turkish asylum policy with the EU acquis as part of EU Accession negotiations. This was also a commitment to increased liberalization including lifting the geographical limitation.

⁵⁴ Part of the 1999 Amendment to the 1994 Regulation.

⁵⁵ Part of the 2006 Amendment to the 1994 Regulation.

⁵⁶ See Turkey's National Action Plan 2002-2005, section 4.13.

Negotiating the asylum policy liberalization in Turkey has involved international organizations. In the 1988-1992 and 2001-2005 cases, the UNHCR processed claims for international protection and advocated for asylum seekers. In the 2001-2005 case, the European Union negotiated with Turkey regarding the harmonization of asylum policy. In the late 1980s, Turkish laws governing migration and the movement of foreigners in Turkey were devised to consolidate the Turkish population and facilitate the return of anyone of Turkish ethnic background. The mass influx and the need for administrative institutions to manage support services create a dramatic contextual change in which Turkey's nation-building focussed migration laws lack some dimensions for clear decision-making. According to Mahoney and Thelen, Turkey's asylum policy went through *drift* where the rules remained the same, but the context changed presenting as a shift in external conditions, (Mahoney and Thelen 2010) thereby dislocating the rules from their logical applications and expected potential effects.

Beyond the drift caused by mass influx in the earlier Turkish case, a type of *layering* also happens where new rules are attached to existing ones changing the ways the original rules structure behaviour; however, in the Turkish cases, the layering emerges as a result of different sets of rules being applied to the same context. In particular, where Turkey manages its border policy which determines legal entry and exiting based on national laws, the UNHCR manages asylum claims based on international law. There have been many instances wherein the focus and intent of these two sets of laws come into contention, such as the problem of asylum claims

being recognized by the UNHCR yet refugees unable to obtain exit visas from Turkey after failing to register on time with the National Police.

Decision-makers from two institutions debating rule interpretation in the context of a shared set of rules can help to consolidate the rules, while different institutions with different sets of rules operating in the same context has the potential to undermine the efficacy of at least one of the institutions. In the Turkish context, interpretation of two sets of rules created a situation in which the government reinforced national law when refusing to issue exit visas for those technically ineligible after failing to register with the National Police as required. The layering involvement of sets of international rules through international organizations figures partly in the score of the impact of the international context.

5.3 COMPARATIVE TRAJECTORIES

By examining the influence and impact of institutions in the asylum policies systems of Canada and Turkey, we would expect to find some evidence to support the literature showing clearly how mass influx, austerity, local population fatigue and the rise of extreme right politics were responsible for a continued trajectory of restrictiveness in asylum policy. Neither case in neither timeframe supports those propositions. Canada moves from increasing rights to asylum seekers and refugees with the 1985 Singh Decision to further human rights for asylum seekers and refugees by including adding the Convention on Torture as part of refugee determination. This increased liberalization occurs within a context argued to

prompt increased restriction: high asylum claims and a high security context.

Turkey, similarly, is concerned with security and mass influx in the early timeframe and still provides refuge and temporary protection to the 450,000 Iraqis that arrive rapidly in 1991. Then, through the EU Accession process, Turkey includes the conditional lifting of the geographical restriction in the even of EU Accession and burden-sharing. Both countries increasingly appear to liberalize policies between the early 1990s and the early 2000s. This move towards more liberal policies is not easily explained by previous literature.

When looking at both 1988-1992 cases, Canada and Turkey were responding to high-pressure situations that stressed the functionality of the domestic asylum system. Turkey was responding to the large numbers of Iraqi asylum seekers, who started entering Turkey in 1988 and continued along a punctuated time line through to 1991 and thereafter. Canada was still trying to manage a newly functioning IRB, developed in response to the requirement of individual hearings for each asylum seeker as decided by the Supreme Court of Canada in the Singh Decision and the large number of backlogged claims that the decision created.

The institutional difference between the two chronologically parallel cases is that Canada opted to further institutionalize to address the high number of asylum claims in the late 80s and early 90s. It would not be until the early 90s and with the advocacy and role of the UNHCR that Turkey would look to further institutionalization in the 1994 Regulation to help clarify the process for asylum seekers.

A further difference between the two earlier cases is in the action taken with regard to immigration law. In the Turkish case, the large number of Iraqi asylum seekers did not seem to motivate any change in asylum regulations; however, near the same time, the Bulgarian Turks fleeing persecution in Bulgaria merited an amendment, Law No. 3583, to the Law on Settlement, No. 2510, that both reinforced the spirit of the Settlement Law while only slightly amending it; the Bulgarian Turks were permitted to immigrate based on their Turkish ethnicity. In the Canadian context, the Singh Decision has forced the Supreme Court to reconsider who was afforded a hearing according to the Canadian Constitution. The question rested on who was availed of the right, citizens or all people on Canadian soil? The Court decided the Constitution referred to all people regardless of citizenship. While both countries' law was amended, or reinterpreted from experiences with spontaneous arrivals, Turkey's reinterpretation reinforced the focussed and ethnic character of the law, while Canada's interpretation expanded the application to all people on Canadian soil. Both reinterpretations, however, occurred via developed institutional processes on longstanding legal documents at points where rule interpretation is expected as has a protocol.

If you compare directly the ADVIAN tables for the Canada and Turkey 1991 cases, the immediate difference leaps out in the totals. While the Canadian table totals 30, the Turkish table totals 44. This is effectively because there are more and higher scores for impact in the Turkish case than in the Canadian case. In the Turkish case, more influence was being exerted among factors.

Table 9. Comparative Impact Factor Scores: Canada and Turkey

1988-1992							
CANADA				TURKEY			
	active	passive	totals		active	passive	totals
AL	7	5	12	AL	6	7	13
DS	5	11	16	DS	6	13	19
HE	6	0	6	HE	10	0	10
IC	4	2	6	IC	9	7	16
LC	1	5	6	LC	5	7	12
DM	7	7	14	DM	8	10	18
totals	30	30		totals	44	44	

2001-2005							
CANADA				TURKEY			
	active	passive	totals		active	passive	totals
AL	4	6	10	AL	5	5	10
DS	3	11	14	DS	3	9	12
HE	4	0	4	HE	2	0	2
IC	8	2	10	IC	8	5	13
LC	2	3	5	LC	1	2	3
DM	7	6	13	DM	7	5	12
totals	28	28		totals	26	26	

AL – asylum law; DS – determination system; HE – historical experience; IC – international context; LC – local capacity; DM – domestic policy preferences of decision-makers

In the early 2000s, both the Canadian and Turkish asylum systems are in the midst of negotiating international agreements or processes with neighbouring countries. This is reflective of the increase in border policy and refugee management mechanisms such as safe third country agreements, readmission agreements, and burden-sharing agreements. However, the influence from the international context scored higher in the Turkish case than the Canadian case. This is partially because the changes in asylum law in Canada were primarily based on the domestic parliamentary process that brought IRPA into force as an Act. Whereas in Turkey,

harmonization of the asylum policy still existed largely 'on paper' and had not yet been implemented.



CHAPTER 6

CONCLUSIONS

Comparative analysis of asylum policies systems and the influence of institutional interactions facilitates a shift in research focus from interests to rules. Where asylum law influences institutions designed to implement asylum policy, designation of decision-making and resource allocation influences the response capacity of the institutions in an asylum policy system. This research finds that the capacity of institutions, particularly institutions designated to manage refugee determination, can mediate the trajectory of a country's asylum policy in two distinct ways. First, where networked institutions operate under the same set of rules, whether they are designated by national or international laws, dynamics among those institutions tend to reinforce, consolidate or deepen the existing set of rules. In this situation, as we have seen in changes to immigration law between the 1976 Immigration Act and the 2002 Immigration and Refugee Protection Act in the Canada case, the networked focus on a single set of rules can exert more influence on the system than other contextual factors such as incoming asylum migration and security concerns. Therefore, a set of institutions reinforcing the same set of rules

has the potential to prioritize implementation of those rules over other contextual factors.

Second, where networked institutions operate under disparate sets of rules or rule systems that overlap but maintain different priorities, dynamics among those institutions have great potential to undermine the particularities of each institution's mandate; where rules are aligned, collaboration can be reinforcing, however, where rules differ institutions are likely to interfere with one another. This interference translates into institutions channeling resources into preservation of rules in service of maintaining distribution of power. Channeling institutional resources into rule preservation has the potential to eventually work counter to the contextual responsiveness of the institution; an institution designed to respond to asylum claims can *drift* by focussing only on the rules and not on changes in asylum migration. This type of drift could explain one way in which asylum policy trajectory might persist despite other contextual changes such as trends in asylum migration and international guidelines.

As a diverse case study, the findings from this research should be applicable to countries that fit in the set of industrialized countries that are asylum seeker and refugee receiving, middle to high income, and members of a set of international organizations which include G20, NATO, OECD, UNHCR and IOM.

Previous research on industrialized countries has suggested monocausal explanations for asylum policy trajectory. The first 3 propositions developed from the literature on asylum policy and refugee studies have monocausal explanations

for the continued restrictive trajectory of asylum policies in industrialized countries. These propositions do not include consideration for institutional dynamics or institutional focus on rule implementation.

P1: Industrialized countries have been on a trajectory of further and further restrictive asylum policies as a response to the large influx of refugees from the 1980s.

For P1 to be supported by this research, I would have expected to find language in institutional reports that outlined how mass influx overwhelmed the capacities of institutions involved in asylum policy response. Instead, Canada created the IRB to provide increased services to asylum seekers, the in-person hearing, in accordance with the Canadian Constitution. Turkey also created an institution to manage the administration of services of the mass influx of Iraqi asylum seekers in 1991. Both countries increased their institutional capacities to provide an increased response.

P2: Industrialized countries have been on a trajectory of further and further restrictive asylum policies as a response to times of austerity.

While neither of the timeframes for the analyzed cases occurred during a financial crisis, neither do we see any language in the documents or interviews that suggests that either Turkey or Canada altered its asylum policy due to austerity. In the data on the later Canada case, in the IRB Annual Report (2004), there is a note that the province of British Columbia had reduced funding for legal services for asylum seekers. In response, the IRB

committed to providing the funding for those legal services. For P2 to be supported by the data, I would expect significant discussion on the cost of asylum policy implementation and support for asylum seekers. In Turkey, the UNHCR reports do note that due to budget decreases, training activities and community outreach had to be reduced during a particular year. These financial details were not enough to affect the ADVIAN classification scores and do not represent enough of a response to austerity to suggest strong influence over the trajectory of asylum policy.

P3: Industrialized countries have been on a trajectory of further and further restrictive asylum policies as a response to domestic population fatigue to immigration.

In order to see support for P3, the data should have included significant language on challenges experienced by local populations regarding, for example, housing capacity, spaces in public schools, medical services access challenges, unpleasant and even controversial social and cultural encounters. A Canadian lawyer interviewed about the Canadian case dismissed the idea of local population fatigue saying that “Canada has tremendous capacity.”⁵⁷ In the early Turkish timeframe, the report edited by Kaynak (1992) did discuss land use and environmental issues resulting from the mass influx.⁵⁸ Therefore, data showed that for a specific geographical area and period of time, land use issues created some local population fatigue. On its own, however, this

⁵⁷ Interviewee #1.

⁵⁸ See Kaynak 1992, Chapter 3, pp.38-51.

fatigue did not represent enough influence to score high in the ADVIAN classification and therefore does not support P3.

Connected to local population fatigue is the argument that the rise of the Radical Right politically has influenced asylum policy trajectory towards further restriction. In the Turkish case, the geographical restriction was already a type of restrictive asylum policy and Turkey then moved incrementally towards more liberal policies, including beginning formal discussions on removing the geographical restriction as part of the EU Accession process. Therefore, if there is a statistical connection between the political right and increased asylum policy restrictions, it is not representative of all industrialized countries. Additionally, restrictive policies can be seen in the absence of a radical right party, as is the case of Turkey in the 1990s.

So, without strong support for propositions 1 through 3, this research proposed that institutionalized patterns of restriction are responsible for restrictive asylum trajectories. Neither the Canada nor the Turkey cases showed patterns of restriction. They did, however, show that networked institutions focussed on implementing the same rules had a greater influence than other factors even when those other factors scored as the highest active factor in the asylum system for a given timeframe. Therefore, the proposition that

P4: Industrialized countries have been on a trajectory of further and further restrictive asylum policies due to institutionalized patterns of further restriction

should be modified to read

Industrialized countries will maintain a given policy trajectory provided that a critical mass of power distribution within in institutions is governed by a set of rules that support that policy trajectory.

This proposition holds true for the Canadian and Turkish cases in both timeframes including in instances of what might be considered relatively large external shocks from which both countries diverted resources and provided some flexible response. The data from this research shows that the increased pressures from the international context were not greater than the influence of institutional processes already begun, and the influence among institutions is a pivotal factor in the asylum policy system.

Beyond the propositions, this research makes a significant contribution to research on policy systems through a novel research design. By using the ADVIAN classification and an impact matrix, dynamics and levels of influence among institutions collectively responsible for implementing policy becomes examinable and understandable. Impact factor calculations for the cases of Canada and Turkey show which institutions and conditions have the greatest non-linear impact on asylum policy and international protection implementation.

This analysis reflected through the gradual institutional change theoretical framework shows how institutional interactions in distributional power structures can reinforce or undermine policy structures and therefore policy trajectories. Beyond this study, further research should examine subsequent timeframes for Canada and Turkey as diverse cases to test whether or not institutional dynamics remain a central influence in asylum policy responses, particularly where the capacities of institutions may constitute pivotal influences. Additionally, further research should include other cases of industrialized countries with respect to the six-factor matrix. This will allow for greater examination of the set of industrialized countries as well as the six factors.

Further research into why industrialized countries may restrict or become more selective in asylum policy responses will provide greater understanding for the study of effective burden-sharing and greater argument for industrialized state responsibility in alleviating suffering for people experiencing forced migration as well as provide structural information for states or international organizations looking to modify asylum and international protection policies.

REFERENCES

Canada Council for Refugees (2009) "Brief History of Canada's Responses to Refugees." Retrieved from <https://ccrweb.ca/en/brief-history-canadas-responses-refugees>

Country Chapters: UNHCR Resettlement Handbook, Canada (2013). Retrieved from <http://www.unhcr.org/3c5e55594.html>

Employment and Immigration Canada, Annual Report, 1990-1991 Ottawa, Canada.

Employment and Immigration Canada, Annual Report, 1991-1992.

Immigration Act. (1976). Retrieved from

http://www.asylumlaw.org/docs/canada/canada85_immigration_act.pdf

Immigration and Refugee Board of Canada, Annual Report, 1990.

Immigration and Refugee Board of Canada, Annual Report, 1991.

Immigration and Refugee Board of Canada, Annual Report, 1992.

Immigration and Refugee Protection Act (2002). Retrieved from <http://laws-lois.justice.gc.ca/eng/acts/I-2.5/>

Regulation No. 1994/6169 on the Procedures and Principles related to Possible Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum From Another Country (Türkiyeye iltica eden

veya başka bir ülkeye iltica etmek üzere Türkiyeden ikamet izni talep eden münferit yabancılar ile topluca sığınma amacıyla sınırlarımıza gelen yabancılarla ve olabilecek nüfus hareketlerine uygulanacak usul ve esaslar hakkında yönetmelik 94/6169)

Akibo-Betts, Sonia. (2006). 'The Canada-US Safe Third Country Agreement:

Reinforcing Refugee Protection or Putting Refugees at Risk?' *Journal of the Institute of Justice and International Studies* 6, 1-14.

Anderson, C. G. (2008). *Restricting Rights, Losing Control: Immigrants, Refugees, Asylum Seekers, and the Regulation of Canada's Border, 1867-1988*. ProQuest.

Bennett, Andrew. (2010). 'Process Tracing and Causal Inference' In *Rethinking Social Inquiry: Diverse Tools, Shared Standards* (2nd Ed.), Henry Brady and David Collier (eds.) Plymouth: Rowman and Littlefield Publishers Inc. 207-220.

Bennett, Andrew and Jeffrey T. Checkel. (2012). 'Process Tracing: From Philosophical Roots to Best Practices,' *Simons Papers in Security and Development*, No. 21/2012, School for International Studies, Simon Fraser University, Vancouver, June 2012, 1-48. Available at <http://www.sfu.ca/content/dam/sfu/internationalstudies/documents/swp/WP21.pdf>

- Bennett, Andrew and Colin Elman. (2006). 'Qualitative Research: Recent Developments in Case Study Methods,' *Annual Review of Political Science* 9, 455-476.
- Black, Richard. (2001). 'Fifty Years of Refugee Studies: From Theory to Policy,' *International Migration Review, Special Issue: UNHCR at 50: Past, Present and Future of Refugee Assistance*, 35(1), 57-78.
- Black, Richard and Saskia Gent. (2006). "Sustainable Return in Post-Conflict Contexts," *International Migration* 44(3), 15-38.
- Blackburn, Jean-Pierre. (1989). "The Refugee Claimant Backlog Clearance," The Second Report of the Standing Committee on Labour, Employment and Immigration, 34th Parliament of Canada.
- Bigo, Didier. (2002). 'Security and Immigration: Toward a Critique of the Governmentality of Unease,' *Alternatives* 27, 63-92.
- Boyd, Monica and Chris Taylor. (1990). "Canada," in *Handbook on International Migration*, William J. Serow et al. (eds.), New York: Greenwood Press, 37-49.
- Castles, Stephen. (2007). "21st Century Migration as a Challenge to Sociology," *Journal of Ethnic and Migration Studies* 33(3), 351-71.
- Castles, Stephen. (2004). "The Factors that Make and Unmake Migration Policies," *International Migration Review* 38(3), 852-884.

Castles, Stephen and Sean Loughna. (2003). 'Trends in Asylum Migration to Industrialized Countries: 1990-2001,' WIDER Discussion Papers//World Institute for Development Economics (UNU-WIDER), No. 2003/31, available at <http://hdl.handle.net/10419/52954>

Chatelard, Geraldine. (2009). "What Visibility Conceals: Re-embedding Refugee Migration from Iraq," in *Dispossession and Displacement: Forced Migration in the Middle East and Africa (Conference Proceedings)*, Dawn Chatty (ed.), London: British Academy.

Crepeau, Francois and Delphine Nakache. (2008). "Critical Spaces in the Canadian Refugee Determination System: 1989-2002," *International Journal of Refugee Law* 20, pp. 50-122.

Crepeau, Francois and Michael Barutciski. (1994). "Refugee Rights in Canada and the 1951 Geneva Convention," *Journal of Refugee Studies* 7(2/3), 239-248.

Czaika, Mathias. (2009). "The Political Economy of Refugee Migration," Discussion Paper Series//University of Freiburg, Department of Economic Policy, No. 7. Retrieved from <http://hdl.handle.net/10419/47899>

Davies, Sarah E. (2008). "Redundant or Essential? How Politics Shaped the Outcome of the 1967 Protocol," *International Journal of Refugee Law* 19, 703-728.

Dirks, Gerald E. (1977). *Canada's Refugee Policy: Indifference or Opportunism?* Montreal: McGill-Queen's University Press.

Eckstein, Harry. (2000). "Case Study and Theory in Political Science," In *Case Study Method*, Roger Gomm et al. (Eds.), London: Sage Publications Ltd., 119-164.

----- (1975). "Case Studies and Theory in Political Science," In *Handbook of Political Science*, F.I. Greenstein and N.W. Polsby (Eds.), Reading, Mass.: Addison-Wesley, 94-137.

Einarsen, Terje. (1995). "Mass Flight: The Case for International Asylum," *International Journal of Refugee Law* 7(4), 551-578.

Frelick, Bill. (1997). "Barriers to Protection: Turkey's Asylum Regulations," *International Journal of Refugee Law*, 9(1), pp. 8-34.

Fried, Andrea and Volker Linss. (2005). "Towards an advanced impact analysis of intangible resources in organisations," Lehrstuhlpapiere // Professur für Innovationsforschung und Nachhaltiges Ressourcenmanagement, No. 2.
Retrieved from <http://nbnresolving.de/urn:nbn:de:swb:ch1-200501203>

Gerring, John. (2007). "Is There a Crucial-Case Method?" *Comparative Political Studies* 40(3), 231-253.

----- (2004). "What is a Case Study and What is it Good For?" *The American Political Science Review* 98(2), 341-354.

George, Alexander L. and Andrew Bennett. (2005). *Case Studies and Theory Development in the Social Sciences*, Cambridge, MA.: MIT Press.

Gill, Nick. (2010). "New State-theoretic approaches to Asylum and Refugee Geographies," *Progress in Human Geography* 34(5), 626-45.

Goodman, Brian P. (2009). "Letter to the Editor of Maclean's Regarding 'Crackdown on Queue-Jumpers,'" Immigration and Refugee Board Canada website, available at <http://www.irb-cisr.gc.ca/Eng/NewsNouv/NewNou/2009/Pages/mcleans090803.aspx>

Grubel, Herbert. (2009). *The Effects of Mass Immigration on Canadian Living Standards and Society*, Vancouver: Fraser Institute.

Guild, Elisabeth. (2006). "The Europeanisation of Europe's Asylum Policy," *International Journal of Refugee Law* 18(3/4) 630-651.

----- (2009). *Security and Migration in the 21st Century*, Cambridge: Polity Press.

Hardy, Cynthia. (1994). "Underorganized Interorganizational Domains: The Case of Refugee Systems," *Journal of Applied Behavioural Science* 30(3), 278-96.

Hathaway, James. (1988). "Selective Concern: An Overview of Refugee Law in Canada," *McGill Law Journal*, 33, 677-715.

Hatton, Timothy. (2009). "The Rise and Fall of Asylum: What Happened and Why?" *The Economic Journal* 119 (February), F183-F213.

----- (2011). *Seeking Asylum: Trends and Policies in the OECD*, London: Centre for Economic Policy Research.

- Hurley, Mary C. (1996). "Principles, Practices, Fragile Promises: Judicial Review of Refugee Determination Decisions Before the Federal Court of Canada," *McGill Law Journal*, 41, 317-386.
- Icduygu, Ahmet. (2004). "Demographic Mobility and Turkey: Migration Experiences and Government Response," *Mediterranean Quarterly*, 15(4), pp. 88-99.
- Icduygu, Ahmet and E. Fuat Keyman. (2000). "Globalization, Security, and Migration: The Case of Turkey," *Global Governance* 6, 383-398.
- Ihlamur-Oner, Suna Gulfer. (2013). "Turkey's Refugee Regime Stretched to the Limit? The Case of Iraqi and Syrian Refugee Flows," *Perceptions*, 18(3), pp. 191-228.
- Jacobsen, Karen. (1996). "Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes," *International Migration Review* 30(3), 655-678.
- Karasapan, Omer. (1989). "Gulf War Refugees in Turkey," *Middle East Report*, No. 156, *Iran's Revolution Turns Ten*, pp. 33-35.
- Kaya, Ibrahim. (2009). "The Iraqi Refugee Crisis and Turkey: A Legal Outlook," *CARIM Analytic and Synthetic Notes*; 2009/20. Retrieved from <http://cadmus.eui.eu/handle/1814/11298>.
- Kayaoglu, Aysegul. (2014). "Socioeconomic impact of conflict: state of emergency ruling in Turkey," *Defense and Peace Economics*, ahead of print, pp. 1-20.

Kirisci, Kemal. (2015). *Justice and Home Affairs Issues in Turkish-EU Relations: Assessing Turkish Asylum and Immigration Policy and Practice*. Retrieved from http://tese.org.tr/wp-content/uploads/2015/11/Justice_And_Home_Affairs_Issues_In_Turkish_EU_Relations.pdf.

Katzenstein, Peter J. (ed.) (1977). *Between Power and Plenty: Foreign Economic Policies of Advanced Industrial States*, Madison, Wisconsin: University of Wisconsin Press.

Kaynak, Muhtesem (ed.) (1992). *The Iraqi Asylum Seekers and Türkiye (1988-1991)*, Tanmak Publications: Ankara.

Kirchheimer, Otto. (1959). "Asylum," *The American Political Science Review* 53(4), 985-1016.

Kirisci, Kemal. (2004). "Reconciling Refugee Protection with Combatting Irregular Migration: Turkey and the EU," *Perceptions* (Summer), 5-20.

Kirisci, Kemal. (2003). "The Question of Asylum and Illegal Migration in EU-Turkish Relations,"

----- (2001). "UNHCR and Turkey: Cooperating for Improved Implementation of the 1951 Convention relating to the Status of Refugees," *International Journal of Refugee Law* 13, 71-97.

- Kirişçi, Kemal. (2000). "Disaggregating Turkish Citizenship and Immigration Practices," *Middle Eastern Studies*, 36(3), pp. 1-22.
- (1996). "Is Turkey Lifting the Geographical Limitation? – The November 1994 Regulation on Asylum in Turkey," *International Journal of Refugee Law* 8, 293-318.
- Kohler, Nicholas. (2009). "A Crackdown on Queue-Jumpers: Will the Tories Make Bogus Refugee Claims an Election Issue?" *Macleans Magazine*. Retrieved from <http://www.macleans.ca/news/canada/a-crackdown-on-queue-jumpers/>
- Mannaert, C. (2003). "Irregular migration and asylum in Turkey," United Nations High Commissioner for Refugees (UNHCR).
- Mahoney, James. (2000). "Path Dependence in Historical Sociology." *Theory and Society* 29, 507–548.
- Mahoney, James and Kathleen Thelen. (2010). *Explaining Institutional Change: Ambiguity, Agency and Power*, Cambridge: Cambridge University Press.
- Neve, Alex. (2014). "The Bogus Rhetoric About Bogus Refugees," *Slaw: Canada's Online Legal Magazine*. Retrieved from <http://www.slaw.ca/2014/03/21/the-bogus-rhetoric-about-bogus-refugees/>
- Norris, Pippa. (2005). *The Rise of the Radical Right: Voters and Parties in the Electoral Market*, Cambridge: Cambridge University Press.

- Parla, Ayse. (2003). "Marking Time Along the Bulgarian-Turkish Border," *Ethnography*, 4(4), 561–575. <https://doi.org/10.1177/146613810344004>.
- Pierson, Paul. (2004). *Politics in Time: History, Institutions, and Social Analysis*. Princeton: Princeton University Press.
- Pierson, Paul, and Theda Skocpol. (2002). "Historical Institutionalism in Contemporary Political Science," In *Political Science: State of the Discipline*, (ed.) Ira Katznelson and Helen V. Milner, 693–721, New York: W.W. Norton.
- Plaut, Gunther. (1985). "Refugee Determination in Canada: Proposals for a New System," A report to the Honourable Flora MacDonald, Minister of Employment and Immigration, Ottawa: Minister of Supply and Services Canada.
- Price, Matthew E. (2009). *Rethinking Asylum: History, Purpose and Limits*, Cambridge: Cambridge University Press.
- Protecting Canada's Immigration System Act, SC 2012. Retrieved from <http://www.parl.ca/LegisInfo/BillDetails.aspx?billId=5383493&Language=E&Mode=1>
- Reitz, Jeffrey G. (2014). "Canada: New Initiatives and Approaches to Immigration and Nation Building," in *Controlling Immigration: A Global Perspective*, 3rd ed., James F. Hollifield et al. (eds.), Stanford University Press: Stanford, California, pp.88-116.

Scarpa, Simone and Carl-Ulrik Schierpa. (2018). "Who Undermines the Welfare State? Austerity-Dogmatism and the U-Turn in Swedish Asylum Policy," *Social Inclusion*, 6 (1), 199–207.

Schuster, Liza. (2000). 'A Comparative Analysis of the Asylum Policy of Seven European Governments,' *Journal of Refugee Studies* 13(1), 118-132.

Seawright, Jason and John Gerring. (2008). "Case Selection Techniques in Case Study Research: A Menu of Qualitative and Quantitative Options," *Political Research Quarterly* 61(2), 294-308.

Singh v. Ministry of Employment and Immigration. (1985). 1 Supreme Court Record, 177. Retrieved from <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/39/index.do>

Stewart, Jenny. (2006). "Value Conflict and Policy Change," *Review of Policy Research* 23(1), 183-195.

Stinchcombe, Arthur L. (1987). *Constructing Social Theories*. Chicago: University of Chicago Press.

Suter, B. (2013). Asylum and Migration Policy in Turkey: An Overview of Developments in the Field 1990–2013 (13), Mim Working Paper Series. Retrieved from <https://www.mah.se/upload/Forskningscentrum/MIM/Publications/WPS%2013.3%20Brigitte%20Suter%20final.pdf>.

Thelen, Kathleen. (2004). 'How Institutions Evolve,' In *Comparative Historical Analysis in the Social Sciences*, James Mahoney and Dietrich Reuschemeyer (Eds.), Cambridge: Cambridge University Press, 208-240.

Thelen, Kathleen. (1999). "Historical Institutionalism in Comparative Politics," *Annual Review of Political Science* 2, 369-404.

Thielemann, Eiko. (2001). "The 'Soft' Europeanisation of Migration Policy: European Integration and Domestic Policy Change," Paper prepared for the ECSA-A Seventh Biennial International Conference, 31 May – 2 June 2001. Retrieved from <http://personal.lse.ac.uk/thielema/Papers-PDF/JEMS.pdf>

UNHCR Global Trends 2011. Retrieved from <http://www.unhcr.org/4fd6f87f9.pdf>

UNHCR Global Trends 2010. Retrieved from <http://www.unhcr.org/gr10/index.html#/home>

UNHCR Global Report 2005. Retrieved from <http://www.unhcr.org/4a0c04f96.html>

UNHCR Global Report 2004. Retrieved from <http://www.unhcr.org/4a0c13d76.html>

UNHCR Global Report 2003. Retrieved from <http://www.unhcr.org/4a0c1f686.html>

UNHCR Global Report 2002. Retrieved from <http://www.unhcr.org/4a0c24cf6.html>

Van Hear, Nicholas. (2010). "Theories of Migration and Social Change," *Journal of Ethnic and Migration Studies* 36(10), 1531-36.

Waldman, Lorne. (2014). Keynote Address, *Coherence and Incoherence in Migration Management and Integration: Policies, Practices and Perspectives*, 7th Annual Conference of the Canadian Association for Refugee and Forced Migration Studies (CARFMS), University of Montreal, Montreal, Canada.

Weingast, Barry R. (2002). "Rational-Choice Institutionalism." In *Political Science: State of the Discipline*, ed. Ira Katznelson and Helen V. Milner, 660–692. New York: W.W. Norton.



APPENDIX A: List of Analyzed and Referenced Laws and Court decisions by country
(chronological order)

CANADA

- (1969) 1951 UN Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees
- (1976) Canada Immigration Act
- (1985) Singh Decision (Supreme Court of Canada Decision)
- (1985) 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)
- (2002) Immigration and Refugee Protection Act

TURKEY

- (1934) Kanun No. 2510, İskân Kanunu, T.C. Resmi Gazete No. 2733
(Law 2510, Settlement Law, Official Gazette No. 2733)
- (1950) Kanun No. 5862, Pasaport Kanunu, T.C. Resmi Gazete No. 7564
(Law 5862, Passport Law, Official Gazette No. 7564)
- (1950) Kanun No. 5683, Yabancıların Türkiye'de İkamet ve Seyahatleri Hakkında Kanunun, T.C. Resmi Gazete No. 7564
(Law 5683, Law on the Sojourn and Movement of Aliens in Turkey, Official Gazette No. 7564)
- (1994) Karar Sayısı No. 94/6169, Türkiye'ye İltica Eden veya Başka Bir Ülkeye İltica Etmek Üzere Türkiyeden İkamet İzni Talep Eden Münferit Yabancılar ile Topluca Sığınma Amacıyla Sınırlarımıza Gelen Yabancılar ve Olabilecek Nüfus Hareketlerine Uygulanacak Usul ve Esaslar Hakkında Yönetmelik, T.C. Resmi Gazete No. 22127

(Regulation No. 94/6169, Procedures and Principles related to Possible Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum from Another Country, Official Gazette No. 22127)

(1999) Karar Sayısı No. 98/12243, Türkiyeye İltica Eden veya Başka Bir Ülkeye İltica Etmek Üzere Türkiyeden İkamet İzni Talep Eden Münferit Yabancılar ile Topluca Sığınma Amacıyla Sınırlarımıza Gelen Yabancılar ve Olabilecek Nüfus Hareketlerine Uygulanacak Usul ve Esaslar Hakkında Yönetmelike Değişiklik Yapılmasına Dair Yönetmelik, T.C. Resmi Gazete No. 23582

(Amendment No. 98/12243 (Amendment to Regulation No. 94/6169), Amendment to the Procedures and Principles related to Possible Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum from Another Country, Official Gazette No. 23582)

APPENDIX B: List of Other Primary Documents Analyzed

2001 Regular Report on Turkey's Progress towards Accession.

2002 Regular Report on Turkey's Progress towards Accession.

2003 Regular Report on Turkey's Progress towards Accession.

2004 Regular Report on Turkey's Progress towards Accession.

2005 Regular Report on Turkey's Progress towards Accession.

Citizenship and Immigration Canada, Performance Report, 2004-2005.

Citizenship and Immigration Canada, Performance Report, 2003-2004.

Citizenship and Immigration Canada, Performance Report, 2002-2003.

Citizenship and Immigration Canada, Performance Report, 2001-2002.

Employment and Immigration Canada, Annual Report, 1990-91.

Employment and Immigration Canada, Annual Report, 1991-92.

Immigration and Refugee Board of Canada, Departmental Performance Report,
2004-2005.

Immigration and Refugee Board of Canada, Departmental Performance Report,
2003-2004.

Immigration and Refugee Board of Canada, Departmental Performance Report,
2002-2003.

Immigration and Refugee Board of Canada, Departmental Performance Report,
2001-2002.

Immigration and Refugee Board of Canada, Annual Report, 1992.

Immigration and Refugee Board of Canada, Annual Report, 1991.

Immigration and Refugee Board of Canada, Annual Report, 1990.

Turkish National Action Plan for The Adoption of The EU Acquis in The Field of
Asylum and Migration 2002-2005

UNHCR Global Report Turkey 2005

UNHCR Global Report Turkey 2004

UNHCR Global Report Turkey 2003

UNHCR Global Report Turkey 2002

UNHCR Global Report Turkey 2001

Uzun Vadeli Strateji ve Sekizinci Beş Yillik Kalkinma Plani 2001-2005, 2000. (Turkey's
8th Five-Year Development Plan 2001-2005, 2000.)

Appendix C: List of Elite and Expert Interviews

1. Interviewee #1, Expert Immigration Lawyer and Academic, Montreal, Canada, May 2014.
2. Interviewee #2, High-level Administrator, International Organization, Ottawa, Canada, May 2014.
3. Interviewee #3, Senior Officer, International Organization, Ottawa, Canada, May 2014.
4. Interviewee #4, High-level Administrator, Administrative Tribunal, Ottawa, Canada, May 2014.
5. Interviewee #5, Expert Migration Lawyer and Academic, Ankara, Turkey, July 2014.
6. Interviewee #6, High-level bureaucrat and Academic, Ankara, Turkey, July 2014.

CODEBOOK

INTRODUCTION

This codebook contains explanations and examples for the coding of case specific primary textual sources (elite interview transcripts, parliamentary committee evidence, organizational annual reports, special reports).

The coding system is designed to be used with the ADVIAN Classification system, a tool developed to represent information used as a type of Impact Analysis. This impact analysis allows for a non-linear systems perspective where a set of factors is considered and the impact of each factor on all the others is calculated to allow for analysis of the system as a whole and the impact of each factor as a part of that system.

The scoring system is as follows:

0 = no impact

1 = low impact

2 = medium impact

3 = high impact

CODING

To understand how factors are represented and scored, examples have been taken directly from case sources. Scoring was developed through an emergent textual analysis process wherein references to case relevant factors were collected from multiple sources and considered in terms of language used.

Because the ADVIAN Classification method is a qualitative method, the burden of coding is on the strength of the justification for scoring; therefore, a number of examples were considered in developing a standard for each score.

SCORING STANDARDS/EXPLANATION

0 = no impact

- Where quantitative measures equal 0
- Where interviewee or textual reference asserts that there is no influence or impact

Example:

Interviewer: Do you think in Canada there is anything like that where we have issues of local absorption capacity?

Interviewee: No, not at all because we are such a huge country. I mean, the way the Canadian public sees refugees is that they don't.

- Where the direction of time does not allow for influence, that is, a present decision can not influence a past action

Example: The factor 'historical experience' receives 0 impact from other factors because a present action cannot cause or influence experience already historical. While there are theories that might contest a uni-directional arrow of time, this study maintains that time and the consequent causal arrow proceed in one direction

1 = low impact

- Where interviewee, speaker or report language assert a mild or low impact

Example: "our role here is not operational. It's monitoring and observance, not that we are a mechanism, a crucial functioning of the system. The system goes on its own. It doesn't need [our institutional] input in that respect."

- Where reference to a factor is present but peripheral and that factor gets little attention in text

Example: "I was told it's in direct response to their frustration over that particular case. But that's just what I was told; I may or may not be correct on that."

2 = medium impact

- Where interviewee, speaker or report language asserts a medium impact

Example:

Interviewer: Was it actually the efforts of the UNHCR that extended it to 10 days?

Interviewee: Well, I don't know if we can take the full credit of that. For sure we have advocated for that.

- Where impact is contested but evenly, that is, different perspectives understand impact differently, but both have legitimate claim to their different understandings – below example could be 'Local Absorption Capacity' impact or 'Domestic Policy Preferences of Decision-makers' impact re: local governance issues

Example: each Canadian Immigration Region has its own strategies re how best to support refugees, i.e. some may be sent to Northern Alberta because there are work opportunities (in the oil patch) but no affordable housing, or vice versa, where there is affordable housing, there are no work opportunities.

- Where total impact is explained as equally shared between factors

Example: "And so, all these things together probably contributed to the extension of the time limit."

3 = high impact

- Where interviewee, speaker or report language assert a high impact

Example: "Everybody agreed that these claimants were not refugees...and that the system was being abused."

Example: "Maybe by the fact that the two systems were so interlinked they were really, in a sense, in support one to the other."

- Where direct causation or very high correlation is asserted in terms of impact of one factor on another

Example: "this caused the system, basically, to collapse"