

AN EVER CLOSER UNION? IMMIGRATION AND ASYLUM POLICY IN ITALY AND
SPAIN: A TALE OF TWO EUROPEANIZATIONS

by

Carolyn Ferguson

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Supervisor: _____

Readers: _____

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ABSTRACT

The European Union expanded from its first conceptualization as an economic union hedging possible German expansion to encompass policy areas traditionally controlled by the state. One of these areas—immigration and asylum—is closely associated with ideas of state identity and citizenship, and is an area in which states have been unwilling to cede control. Two member states—Italy and Spain—have many similarities, one of which is significant issues in regard to large and undocumented migration but, despite that, took quite different policy directions vis-à-vis the EU’s proposed immigration and asylum norms. This research examines Italy and Spain using Knill and Lehmkuhl’s mechanisms of Europeanization during three policymaking timeframes in order to determine how and why these states have taken divergent paths. This thesis found that different mechanisms were used during different periods and that counterintuitive to expected findings, the weakest mechanism is dominant during the current era.

List of Abbreviations Used

AFSJ	Area of freedom, security and justice
CEAS	Common European Asylum System
CFSP	Common Foreign and Security Policy
EC	European Community
ECSC	European Coal and Steel Community
EEC	European Economic Community
EMN	European Migration Network
EMS	European Monetary System
EU	European Union
IOM	International Organization for Migration
JHA	Justice and Home Affairs
TCN	Third country national
PP	<i>Partido Popular</i> (People's Party)
PSOE	<i>Partido Socialista Obrero Español</i> (Spanish Socialist Workers' Party)
QMV	Qualified majority voting
SEA	Single European Act
TCN	Third country national
TEC	Treaty establishing the European Community
TEU	Treaty of the European Union (also known as the Maastricht Treaty)
TFEU	Treaty on the Functioning of the European Union
TREVI	Terrorisme, Radicalisme, Extrémisme et Violence Internationale
UNHCR	United Nations High Commissioner for Refugees

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1. Chapter One: Introduction

*The institutions and organs of the present Community cannot ensure that the process of integration will continue in an enlarged Community: on the contrary, there is reason to fear that the Community decision making procedures will deteriorate.*¹

The European Union (EU), now as an economic and political regional entity, has incrementally expanded—both horizontally to include political, not just economic issues, and vertically with increasingly integrated policies, sidestepping into those formerly of exclusive state control—to induce, and often compel, member states to cooperate in an increasing number of policy areas.² Originating as an economic agreement to hedge possible German expansion after World War II by way of the European Coal and Steel Community (ECSC) in 1952, its expanding reach includes areas as diverse as employment, human rights, and foreign affairs. However, not all of these common problems have been easy to reach agreement on; indeed, on asylum and in particular, immigration—subjects that are closely associated with state sovereignty—member states have shown themselves to be less than willing to surrender control. There has been intermittent movement, albeit very minimal at first, towards EU members adopting common policies—a concept known as *Europeanization*.

The concept of Europeanization emerged in the mid-1980s from the scholarly debate on integration and European policy-making. It takes different forms but generally refers to how European policies are adopted at the national level, the study of which has grown to focus on a range of policy areas which, researchers found, were not adopted in the same way. These features of Europeanization also characterize immigration and asylum policy.

¹ European Commission (1978) Communication sent to the Council on 20 April 1978. (General Considerations on the problems of enlargement, 1978 p. 15).

² During the negotiations for the Treaty of the European Union (also known as the Maastricht Treaty), there were separate and distinct intergovernmental conferences on the economic union as well as negotiations on the EU as a political union, primarily led by the Council.

As noted earlier the European Union has evolved from the ECSC to its present form encompassing a rarely imagined range of competencies, one of which is immigration and asylum. While previously a policy area only enjoyed by states, it was gradually subsumed by what came to be the EU through a number of treaties legalizing an expanding scope of policies. Its development has been propelled by a number of factors, not the least of which is ambition towards a single market. The 1986/7 Single European Act (SEA) promoted the realization of a single market by 1992, facilitated by the free movement of goods, services, persons and capital through a ‘frontier-free’ area, however its provisions were shown to be unsatisfactory. Indeed, the breaking down of internal borders required a shared external border with common visa, immigration and asylum policies agreed to by each of the member states—a number which has grown to include twenty-seven. Immigration and asylum policy formation has slowly but progressively been included into the EU policymaking framework through three of the treaties—Maastricht (1992/3), Amsterdam (1997/9) and Lisbon (2007/9). This series of treaties increasingly integrated deeper and wider policies from the economic foundations with unquestionably political and—to a certain extent—normative aspects. From the legal framework provided by those treaties various initiatives have formed to move the policy area forward by articulating common goals and standards. These include the concept of an ‘area of freedom, security and justice’ as well as development of the 2008 European Pact on Migration and Asylum, focusing on organizing legal migration based on priorities; controlling illegal migration, more effective border controls; to construct a ‘Europe of asylum’; and creating comprehensive partnerships with sending and transit countries (European Pact, 2008).³ The Pact is the most recent attempt to fashion immigration and asylum policies by transferring these European norms to state levels—or Europeanization.

³ Although the EU has no immigration policy.

Italy and Spain provide an excellent opportunity from which to examine how states with very similar circumstances interpret, process and apply policies which developed from the same point in time and experienced many of the same immigration issues. Two of the EU's southernmost member states, they both emerged from fascist governments to join the EU. Italy was one of the EC's six founding members along with Germany, France and the Benelux countries (Belgium, the Netherlands and Luxembourg). Spain instead joined more than thirty years later but through the EU's formative years had struggled through an extended period of fascism. In fact, not only do the states share a relatively recent dictatorship, but are both located in the Mediterranean region, an area commonly referred to as the 'soft underbelly of Europe' in regard to irregular migration. They both experienced significant immigration numbers and issues when migration flows changed and increased substantially from the 1970s to the present day and have also developed their immigration and asylum policies at the same time as the EU expanded into the policy area. Although many other EU states also experience significant immigration problems—particularly those that form EU's the external border—many of them already had an immigration policy framework in place. What made the two member states chosen for the case study especially interesting is that previous to these changes neither state had organic immigration and asylum laws of which to speak.⁴ This, in addition to the many similarities between the states, makes the fact that they have adopted Europe's recommendations in different ways puzzling, thus they provide an excellent perspective from which to examine Europeanization.

In exploring the Europeanization of immigration and asylum policies as adopted by Italy and Spain it appeared that Europeanization manifested itself differently in the various policy choices adopted by the two countries. This begs the question 'how and under what circumstances has this

⁴ Organic laws are considered the foundational laws of a country. For instance, a state's constitution is organic as are other foundational framework bodies of legislation in its various policy areas.

taken place?’ In the absence of organic policies of their own, how have each of the states adopted European standards while forming policies that address their domestic circumstances? Finally, what can we conclude from the different options adopted by the two states?

The objectives of this thesis are to examine how Europeanization occurs in immigration and asylum—an area in which states are so reluctant to cede control—and the way in which it occurs; more specifically the form it takes in this particular policy area, one so closely linked to ideas of state sovereignty. How and why does the transfer of European values take place here, and what does that teach us about the characteristics and limits of Europeanization?

This leads to another question—why is this important? The motivations for this research include an interest in alternatives to state-led agendas such as the European Union presents. Indeed, in the realist tradition of political science the mantra is how in the absence of an overarching authority states act in their own best interest rather than with an eye to the common good. While this is in no way a suggestion that member states act in any other fashion, they are nevertheless in many cases legally-bound and in others influenced by policy objectives set by actors with a normative picture in mind. This is important for a number of reasons. First, it has applications for future development of other economic/political unions, particularly in regions of a volatile nature such as the African continent. In fact, the EU has played a significant role in the development of the African Union as evidenced by its parallel design and scope. Secondly, it contributes to the study of policy making and its influences and more specifically, the transfer of values within a political system. Thirdly, in regard to the study of immigration policy in particular, it is hoped that the study of the transfer of European norms into immigration and asylum policies—both successes and failures—set by the EU with its generally normative perspective, will contribute to

the development of better and perhaps innovative policy options. With this in mind, this thesis explores the Europeanization of EU norms as integrated into member policy frameworks.

1.1 Accounting for Europeanization: Integration and Beyond

Europeanization, as a concept, grew out of theorization on European integration. It has a relatively young history and has developed alongside the deepening and widening of the Union itself. Early research on integration included the so-called grand theories as advanced by Haas (1958) and later Moravcsik (1998). Theorists examined integration using a bottom up approach, studying how national actions affected and formed the European Union. The Single European Act re-invigorated the development of the single market and with it a plethora of regulations and directives emerged, prompting scholars to examine how these new standards and norms interacted with domestic political systems. This evolved into approaches looking at integration from a top-down perspective, researching how EU membership affected member states' policies. The transfer of values between Europe and member states began to be identified by scholars as Europeanization. Academics also began to note how states were not affected the similarly by the same policies, thus suggestions advanced by incorporating questions of policy 'fit' emerged. Theorizing on what was considered negative (de-regulatory) and positive (regulatory) integration emerged via a number of scholars beginning with Tinbergen (1965), and later expanded to include strong (binding) and weak (non-binding) variants to explain the model's disparities (Vink, 2002).⁵ This led to the exploration of a two-way relationship, or a feedback loop. While these all provided valuable ways in which to uncover and identify the concept of Europeanization, none were adequate on their own.

⁵ Pinder, 1968; Tinbergen, 1965; Rehinder & Steward, 1984; and Scharpf in 1996.

Knill and Lehnkuhl (2002) argue that this inadequacy was because Europeanization takes place due to different mechanisms that correspond to distinct theoretical approaches that have been proposed to explain the range of impacts of European integration on domestic policies. This led them to the conclusion that the “distinctive basis of Europeanization rather than the particular policy area is the most important factor to be considered when investigating the domestic impact of varying European policies” (p. 256). They suggested three mechanisms of Europeanization that functioned in different ways and could combine hierarchically to make hybrids. They argue that *institutional compliance*, *changing domestic opportunity structures*, and *framing domestic beliefs and expectations*—are mechanisms of Europeanization that each function under different circumstances. These mechanisms will be used as a theoretical tool to help explain Europeanization in immigration and asylum policies of Italy and Spain. In order to accomplish that it will examine case studies from each country over the period of their development from the mid-1980s until the contemporary period. It will primarily look at the adoption of legislation from EU regulations and directives into national laws, and will do so using three time periods which are related to the type of decision-making used in the policy area at the time. They are: the *intergovernmental* period from 1984 until 1992 after Maastricht; the *semi-Community* period, from the 1997 signing of Amsterdam to 2007 pre-Lisbon; and the present *Community* period, from the signing of Lisbon in 2007 and beyond. This is relevant for this study as it provides the framework from which European practices on immigration and asylum evolved. However, rather than providing a list of directives, etc. and the national policies they were transposed into, this thesis will examine key immigration and asylum legislation and provide historical and political context which is necessary to determine the mechanism(s) at work. These time frames, and the

circumstances under which policies evolved, are connected and represent significant changes in the development of immigration and asylum policies.

1.2 Plan of the Thesis

This thesis is organized as follows. Chapter two will provide a chronological overview of the literature on Europeanization. It will highlight the development of the concept from theories of integration to questions around its definition and how it has been investigated, after which the theoretical framework for this thesis will be presented. The third chapter will outline the methodology which will be used in this research and will include the types of documentation, an elaboration of the timelines, as well as the importance of the chosen case studies. The fourth chapter will trace the development of immigration and asylum policies as they pertain to this study, pointing out critical points. The fifth chapter will examine and analyze the development of Italy's immigration and asylum policies. It will provide political context and explain how the country's immigration and asylum policies developed by unpacking major legislation. The sixth chapter will examine and analyze the development of Spain's immigration and asylum policies in the same fashion, by explaining the historical and political context pertinent to the development of the policy area. The seventh and final chapter will offer concluding arguments, highlighting the particular differences this thesis has found between the two case studies.

This thesis will argue that during different periods of EU policymaking European norms and policies were transferred to the national level, or Europeanized, in different ways by these two states. During the intergovernmental period of decision-making on immigration and asylum, before the area was moved to the EU's first pillar, policies were Europeanized in essentially the

same fashion.⁶ During the semi-Community decision-making era, Italy and Spain took separate trajectories; Italy all but ignored the further Communitarization of policies while Spain played a significant role in shaping policies to meet domestic needs. During the current Community period, both states are moving towards convergence again, albeit with Spain playing a more proactive role.

⁶ The European Union's pillar system was created with the Treaty of Maastricht, the development of which will be discussed in the fourth chapter.

2.0 Chapter Two: Literature on the Development of Europeanization

Scholars studying the European Union became curious about the manner and ways in which membership and policies introduced by the EU affected domestic political situations. As the EU and its policy competence grew horizontally and vertically, studies expanded as did theoretical arguments.

The study of Europeanization emerged in the mid-1980s (Ladrech, 1994; Bulmer, 1994; Héritier et al., 2001; Börzel, 2002, 2005; Radaelli, 2000, 2003; Schmidt, 2006; Bache, 2008), from debates on integration and research on European policy-making and is primarily researched as a concept rather than a theory, as a sub-topic of theories of integration. Its relative newness and the lack of consensus on its definition have resulted in questions as to its relevance and usefulness (Kassim, 2000). Nevertheless its persistence and the scope and expansion of research suggest evidence of its significance, the first section begins with a review of the concept's origins. This is followed by a brief discussion on how Europeanization has been defined, which is essential to understanding why it has been explored and conceptualized in so many often unrelated ways. After this, attention turns to perspectives and models which have been advanced to understand the process of Europeanization. In the second section of this review, discussion revolves around how the concept of Europeanization has been studied by academics; its influence on policies, power structures, institutions and actors—both internal and external—is briefly acknowledged in order to give a sense of the concept's development and expansion. Works on Europeanization and immigration and asylum policies are then discussed highlighting how researchers have studied it and the conclusions they have drawn, however the development of the field is still early and the shortage of organized immigration policies in the EU are reflected in the lack of research on Europeanization in this field. Finally, a description will be offered explaining the

argument which will be employed for the thesis, Knill and Lehmkuhl's mechanisms of Europeanization, and an explanation clarifying its usefulness to this research will at that time be provided.

2.1 The Development of the Concept of Europeanization

2.1.1 Integration: Early Theorizing on Europeanization

Since very early in the EU's history researchers have attempted to theorize Europeanization.

While the term is widely used in the contemporary context, in initial research on European integration the development of the concept was not expressed in a consistent fashion.

Preliminary theorization on integration focused on bottom-up processes, and was examined primarily through international relations (IR) theory privileging the role of the state.

Investigations involved the so-called grand theories of integration—neo-functionalism, as advanced by Haas (1958) and Schmitter (1969), and liberal institutionalism, as predominantly endorsed by Moravcsik (1998). After early interest, there was a lack attention to theorizing in this field primarily due to integration failures.⁷ However, the development of Single European Market and the Economic and Monetary Union required significantly more policy cooperation in the 1980s—resulting in progressively more transposition of legislation, thus further policy integration—and generating renewed interest and resulting in a move away from grand theories of integration towards more mid-range investigations.⁸

⁷ However, the 'spillover' hypothesis as advanced by Haas is still relevant in order to understand why certain policy areas were adopted when member states had little or no individual interest in participating (Ferguson, 2011).

⁸ Although some bridge the gap between grand theories of integration and mid-range conceptualizations, and include Caporaso (1996) who examines the evolving institutional structure through the lens of various forms of state and Parsons (2003) arguing the social constructivist view that a certain idea of Europe has been advanced by Community-minded (French) actors at opportune junctures.

Bulmer (2006) notes two periods of research on Europeanization, the first focusing on integration and evolving through three phases. Moravcsik's intergovernmental approach characterized the early years. The second phase was Sandholtz (1996), and Marks et al (1996), and the third Kohler-Koch (1996). Integration was the independent variable during this phase and while their agenda focused on governance and integration, not Europeanization per se, their work contributed to and helped organize future theorizing (p. 49). Research generated during the second period was more concentrated on the 'how' question and is discussed below after a brief clarification around the difficulty posed by definitions.⁹

2.1.2 Defining the Concept

Europeanization, rather than a theory, is a process—a phenomenon which researchers try to identify and explain. However, there is much disagreement on what constitutes Europeanization, how to recognize and categorize it, and how it influences states, democracy, policy-making, etc. Certainly, in order to proceed with research, it is important to provide an exact definition of what is or can be regarded as Europeanization—something which has evolved into its own debate and which most likely accounts for the variety of literature, perspectives and methods that have evolved. Indeed, as Featherstone (2003) argues, it is “the obligation of the researcher is to give [Europeanization] a precise meaning” (p. 3). In fact, the definition of Europeanization is intimately related to what is being analyzed—what this means is that the different ways in which it has been defined have evidenced different results.

Hix & Goetz (2000) note the general consensus is that “national institutions and actors matter in the sense that they have a profound, if not determining, effect on how European integration as a

⁹ Studies of Europeanization also took an institutionalist turn, beginning in the mid-1980s. See: Aspinwall, M., Schneider, G. (2000). Same Menu, Separate Tables: The institutionalist turn in political science and the study of European integration. *European Journal of Political Research*. 38:1. 1-36.

force of polity and politics change plays out in the domestic context” (p. 20). Green Cowles, et al (2001 p. 1) expand on this and define the impact of Europeanization as “the emergence and the development at the European level of distinct structures of governance—on the domestic structures of member states” and how processes of European integration alter nation-states, as well as their nation institutions and political cultures. They note how numerous structures are impacted—both formal, such as national and regional legal systems and administrations, and informal, such as relationships between government and business, public discourse, nation-state identities (p. 1). Indeed, Featherstone (2003) notes that it is a

process of structural change, variously affecting actors and institutions, ideas and interests. In a maximalist sense, the structural change that it entails must fundamentally be of a phenomenon exhibiting similar attributes to those that predominate in, or are closely identified with, ‘Europe’. Minimally, ‘Europeanization’ involves a response to the policies of the European Union. Significantly, even in the latter context, the scope of ‘Europeanization’ is broad, stretching across existing member states and applicant states, as the EU’s weight across the continent grows (p. 4).

Bulmer and Radaelli (2004) assert that Europeanization is “processes of a) construction, b) diffusion and c) institutionalism of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’ and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and sub-national) discourse, political structures and public policies” (p. 4).

However, Olsen (2002) argues that the issue is not the definition or “what Europeanization ‘really is’” but, more importantly “whether and how the term can be useful for understanding the

dynamics of the evolving European polity. That is, how it eventually may help us give better accounts of the emergence, development and impacts of a European, institutionally-ordered system”. He points to five changes, highlighting their significance. *Changes in external boundaries* involves the territorial reach of the EU as a system of governance and the degree of transformation of Europe; that is, enlargement as Europeanization. *Developing institutions at the European level* is indicated by ‘centre-building’ a collective entity function with capacity for joint action, and some measure of organization including formal and legal institutions and “a normative order based on overarching constitutive principles, structures and practices both facilitate and constrain the ability to make and enforce binding decisions and to sanction non-compliance”. *Exporting forms of political organization* is characterized by the representation of the EU and of its relationships internationally with “non-European actors and institutions and how Europe finds a place in a larger world order. Europeanization signifies a more positive export/import balance as non-European countries import more from Europe than *vice versa* and European solutions exert more influence in international fora”. A *political unification project* is identified as how Europe becomes an increasingly integrated and effective political entity, and this relationship to the European domain, EU institution building, “domestic adaptation, and how European developments impact and are impacted by systems of governance and events outside the European continent” (p. 923-924). Indeed, “research need not be hampered by competing definitions as long as their meaning, the phenomena in focus, the simplifying assumption used, the models of change and the theoretical challenges involved, are clarified and kept separate” (2002 p. 921). The final change Olsen identifies is the *central penetration of national systems of governance*—the benchmark of Europeanization that will be used for this thesis. It is indicated by a division of power and responsibility between multiple levels of governance which requires

“a balance between unity and diversity, central co-ordination and local autonomy”. That is, the adaptation of “national and sub-national systems of governance to a European political centre and European-wide norms” (p. 924).

2.2 Theorizing the Process

2.2.1 Negative and Positive Integration

Early theorizing on integration revealed different types of integration, which is not only relevant for understanding the perspective that has been chosen for this thesis, but helps categorize various types of policy and how they bring about different results in different states. In investigations on integration, Pinder (1968) and others (Tinbergen, 1965; Rehbinder & Steward, 1984; Scharpf, 1996) noted how integration was uneven. The “fundamental asymmetry” evidenced in European integration between “measures increasing market integration by eliminating national restraints on trade and distortions of competition on one hand, and common European policies to shape the conditions under which markets cooperate, on the other hand” resulting in further research on negative and positive integration (Scharpf, 1996 p. 15). The consensus was that ‘market-making’ policies—which refer to what states cannot do—were considered negative forms of integration. Alternatively positive integration addresses the results of policy changes by re-regulating, and can be viewed as ‘market-correcting’. For instance, competition policies opened up or liberalized markets—this is referred to as negative integration. Policies which were made to speak to some of the results of this by, for instance, putting labour standards in place via social policies, would be considered by this model as positive integration. This helped researchers understand why some policies are more easily absorbed than others, how and why integration differs with the same policies in different countries discussed in the next

section and, for this thesis, helps clarify the mechanisms of Europeanization which will be used in the case study analysis.

2.2.2 Uneven Integration

A further distinction was uncovered, that of uneven integration of the same policies by member states (Andersen, 2004; Börzel & Risse, 2000; Green Cowles et al, 2001; Héritier et al, 2001; Knill & Lenschow, 1998). Indeed, Featherstone (2003) argues that “[p]rofound disparities of impact remain—it is inherently an asymmetric process—and the attraction for researchers is to account for them” (p. 4). Vink (2002) expands on the negative/positive typology noted above by breaking each down into either strong or weak categorizations. Expanding on the above explanation, policies which were negative and legally binding to member states were categorized as strong and separated from those that were not legally binding, which were considered weak. Alternatively, positive policies were also separated into strong or weak. Thus, Vink notes that “Europeanization is not necessarily restricted to complying with EU regulations or transposing and implementing EU directives” (p. 4). Bulmer (2007) expanded on that notion by arguing that inter-EU transfer of values should be included in that categorization; that is, horizontal transfer from one member state to another (p. 47). Indeed, this inconsistency with integration highlights the need for investigations of similarly positioned states incorporating new EU policy areas at the same time, such as this thesis provides.

2.2.3 How Studies of Europeanization have been Applied

Because the process of Europeanization has been conceptualized in different ways, there are numerous ways in which it has been investigated and applied academically. A number of researchers have explored Europeanization vis-à-vis power structures and how they are altered

by Europe, including the point of entry the accession process (Bache, et al 2011) and the pre-accession process (Schimmelfennig & Sedelmeier, 2007; Grabbe, 2002). Also at the state level, national political systems (Goetz & Meyer-Sabing, 2008; Knill, 2001), and core executives (Laffan, 2007) have been researched.

As well, particular institutions and significant actors, such as policy makers at the EU level, have been examined, including the EU Council's working groups (Clark and Jones, 2011), and the courts (Nyikos, 2007). National bureaucrats within the Commission are also subject to Europeanization, argue Egeberg & Trondal (2009), in that "national (regulatory) agencies operate in a 'doublehatted' manner when practising EU legislation, serving both ministerial departments and the European Commission" (p. 779; also Egeberg, 2006). They conclude that

Implementation of EU policies at the national level is neither solely indirect via national governments (as the standard portrayal says), nor solely direct (through Commission-driven national agencies), nor solely networked (through transnational agency clusters). Implementation is instead compound with several sources of power represented more or less simultaneously.

Europe's affect on non-member neighbours has been also studied, such as in countries outside the EU, including Norway (Claes, 2002; Graver, 2003; Sverdrup and Kux, 1997), Switzerland (Sverdrup and Kux, 1997), institutional change in the Turkish military (Sarigil, 2007), and police reform in Bosnia (Juncos, 2011). As well, Sturma & Dieringerb (2005) who compare regions in Eastern and Western Europe and focus on theoretical approaches vis-à-vis the Europeanization of policy-making and the institutional choices that the process provides. They conclude that there is a "danger of overestimating formal institutional convergence when comparing the

Europeanization of regions, and of underestimating and/or overlooking the consequences of institutional reform for the future fabric of societies and regional political exchange” (p. 279).

Kratochvíl et al (2011) examine the ability of the EU to frame the public debates on its external policies by analyzing discourse in the print media news coverage of Ukraine.

Alternatively, a number of researchers focus on investigating concepts such as social movements and externalization. For instance, Liebert and Trenz (2010) consider the Europeanization of the mass media using process tracing as an analytical framework in order to examine political communication in parliaments, political and state institutions, as well as civil society, political parties (p. 9). Other studies on European influences on the state include social movements (della Porta & Caiani, 2009). As well, international influences such as the relationship between globalization and Europeanization (Kühnhardt, 2002; Eriksen & Fossum, 2008) have been studied. Rather than focusing on member states Lavanex & UçArer (2004) add to the literature on externalization arguing that immigration has been previously ignored as a mode of policy transfer, noting a continuum that ranges from “fully voluntary to more constrained forms of adaptation”. They point out that the scope and character of the transfer is dependent on existing links between EU and third country institutions as well as the domestic circumstances and the ‘cost’ associated with non-adaption (p. 417).

Specific policy areas that have been examined also include both regulatory and public policy, a few of which have opted for comparative studies on how the same policies are implemented by different states. These include environmental policy (Knill & Lenschow, 1998), as well as maritime inspection training (Gulbrandsen, 2010), railways (Knill & Lenschow, 2002) road haulage (Lehmkuhl, 1999) and telecommunications (Schneider, 2001). Researchers have also delved into areas of the public policy domain, including foreign policy (Torreblanca, 2001,

Wong, 2007; Ruà, 2008; Gross, 2009), higher education and research (Olsen, 2005), and tax policy (Radaelli, 1997). In fact, the comparative study of Europeanization is particularly valuable to the European project, uncovering the nuances of policy adoption thus contributing to the development of better policy design.

This brief sampling indicates that there is a growing body of literature exploring the EU's influence, both internally and externally, in a multitude of policy areas—regulatory and public—and by a number of actors and institutions, as reflective of the expanding breadth and depth of European norms, practices and policies and their influence. Among them, we can find studies of Europeanization of immigration and asylum policy which is explored next.

2.2.4 Europeanization and Immigration

Research in the area of the Europeanization of immigration and asylum is relatively new, in part because it has only recently been incorporated into the Community method of policy making, as will be discussed in chapter four.^{10 11} The process and impact on immigration and asylum policies of the various member states, including Germany (Prumm and Alscher, 2007; Ette & Kreienbrink, 2007), the Netherlands (Vink, 2002), the United Kingdom (Ette and Gerdes, 2007), Greece, Cyprus and Malta (Ladi, 2011), and Spain (Fauser, 2007) have recently been investigated. Kriesi, et al (2006) compare immigration policy networks in Western Europe, and asylum policy (Lavenex, 2006).

¹⁰ Geddes (2003) notes four periods which characterize immigration's integration: from 1957 to 1986 the EU had "minimal immigration policy involvement" and from 1986 to 1993 was a period of informal intergovernmentalism. Formal intergovernmental cooperation through the framework created by Maastricht occurred from 1993 to 1999 and finally increasing communitarization took place, first through Amsterdam.

¹¹ Ette and Kreienbrink (2007) note four reasons why there has been relatively little interest by Europeanization scholars in the policy area: competencies are fairly recent; influence is strongly intergovernmental; JHA policies play a small role in national political discourse; and studies tend to focus on the domestic impact of European policies (p. 3).

Rosenow (2009) traces the development of integration policies and argues that they would not have been established but for the emergence of the immigration policy field. She argues that while the European Commission played a significant role in the promotion of integration, their involvement was necessary but not sufficient to explain the establishment of the policies and that the role of integration was promoted by linking it to economic and social cohesion.

Radaelli (1997), writing on the Europeanization of tax policy, argues that national policy making in the tax field is the product of processes of emulation. Fuentes (2000) argues that this is similarly the case with immigration and asylum, and summarizes Radaelli's conclusions that Europeanization occurs "through the adaptation of policies, ideas and values, not only from other countries, but also from discussions and debates among experts and policy makers at meetings organised by EU institutions, as well as from recommendations and proposals for policy emanating from those very same institutions" (p. 8). In reference to the Europeanization of refugee policies, Lavenex (2001) notes that the "degree to which a common European refugee body is likely to be realized depends not only on institutional reforms" in regard to the Community method, but also "the union's ability to develop a 'community of values', and the degree to which new normative frameworks, such as the Charter of Fundamental Rights, become a point of reference for political actors and the courts" (p. 852). She points out how the analysis of framing processes is "particularly relevant in policy fields characterized by a high degree of political controversy over the desirability of European legislation and the nature of the underlying social problem" and notes that in these cases European integration "not only transforms the locus of political deliberation but also may redefine the way in which political actors perceive and interpret the underlying social problem" (p. 855). In regard to immigration policymaking, Ette and Kreienbrink (2007) argue that "[r]egulations addressing the

harmonization of legal norms” are opposed by member states which “show little interest for more far-reaching common European regulatory policies” (p. 2). They point out that while the policy area is still dominated by the “logic of intergovernmental cooperation,” Germany took advantage of a ‘first mover strategy’ in regard to shaping policy. They note that “costs have been minimal but the benefits Germany reaped by influencing the immigration policies of its neighbouring countries by making the detour over Brussels are likely to be substantial”.

2.2.5 Mechanisms of Europeanization

In 2002 Knill and Lehmkuhl introduces the *mechanisms* of Europeanization, the main theoretical framework that this thesis will employ. While their focus is on regulatory policy, particularly changing and directing policy in industry settings, their analysis can also be useful to uncovering Europeanization in public policies—including immigration and asylum—as many of the same mechanisms are at work.¹² In fact, these mechanisms correspond to previous theoretical arguments that individually explain some cases of Europeanization, but each was inadequate on its own. As noted earlier, and will be discussed further in chapter four, agreement in this policy area has been difficult which has resulted in the need for a variety of policy tools in order to ensure member states’ policy transfer. In regard to this study, this framework provides a better accounting for the *ways* in which policies are Europeanized in comparison to the ‘fit’ hypothesis which simply assesses the degree of policy fit/misfit. In other words, Knill and Lehmkuhl’s mechanisms attempt to address the *why* and *how* questions of Europeanization—the purpose of this thesis.

¹² Knill and Lehmkuhl use three regulatory policy areas to illustrate their point: environmental policy to demonstrate the *institutional compliance* mechanism; road haulage policy to show change in *domestic opportunity structures*, and railways policy as an example of *framing*.

Like other researchers, Knill and Lehmkuhl identify a disparity in regard to Europeanization and, moving the analysis to the national level, have observed inconsistent results across both states and policy areas and note the “puzzling and inconsistent empirical findings,” suggesting that the “domestic impact of Europe varies somewhat unsystematically” (p. 255). They conceptualize Europeanization as an impact and identify three separate mechanisms—*institutional compliance*, *changing domestic opportunity structures*, and *framing domestic beliefs and expectations*—which are distinctive enough to account for the different patterns of change. Focusing on the Europeanization of domestic institutions, they diverge from research that points to pressure to adapt to European norms and argue instead that it is the “distinctive basis of Europeanization” that is key, not the policy area or institutional fit. They argue that there is no one approach to explaining the differential impacts and put forth a useful conceptualization for teasing out the Europeanization of regulatory policy. They argue that the *mechanisms* provide the answer for the varying impact often seen in research on European policy integration and note that the three mechanisms of Europeanization each require a particular approach in order to explain the impact domestically.

They point to past arguments on Europeanization which have included concepts such as fit; impact on domestic opportunity structures and interest constellations; a combination of the two; as well as the cognitive impact of European policies on the beliefs and expectations of domestic actors. However, they argue that it is the different mechanisms, which are the key to accounting for “corresponding patterns of domestic change” (p. 256). They distance their analysis from questions of ‘fit’ and “pressure to adapt to domestic arrangements to meet European requirements” as adequate tools for analysis on their own, however still find them a useful tool as part of their mechanisms argument which will be elaborated on below.

1. *Institutional compliance* The most explicit mechanism is that of *institutional compliance*; that is, the requirement for domestic adaptation to EU policy. This constrains institutional discretion and limits domestic ‘creativity’ when it comes to transposition of EU policies into domestic frameworks. Usually found in policies identified by Scharph (1994) as noted earlier in this chapter, as positive integration, or those which function to correct circumstances created by negative integration, these substitute national regulations.

Identifying this institutional model consists of two-steps, the first of which must be fulfilled before applying the second. The first step looks at institutional compatibility which provides a basis from which institutional modification may or may not occur. The second step examines the “particular interest constellation and institutional opportunity structures at the domestic level” and asks the question “to what extent do domestic actors who support regulatory change have sufficient powers and resources to ensure that their interests prevail?” (p. 259).

2. *Alteration of domestic opportunity structures* The second approach, the *alteration of domestic opportunity structures*, is characterized by negative integration, or market-making policies. Policy suggestions are intended, not to achieve objectives directly by prescribing outcomes, but less directly by altering the division of power and resources among domestic actors, and result in “new equilibrium” (p. 258). Generally aimed to eliminate market protectionist policies, they “exclude certain options from the range of national policies rather than positively prescribe distinctive institutional models” to be integrated at the national level.

This model is used to analyze the “extent to which European policies have altered the strategic position of domestic actors” thus it uncovers how policies may limit some actions, but provides opportunities for others. In other words, it highlights how European policies change domestic

opportunity structures so that “actors can successfully challenge existing regulatory arrangements” (p. 260). Expanding on this, the European impact is increased by the degree which domestic policy involves a “contested interest constellation” and an even division of powers and resources between conflicting actor coalitions (Héritier & Knill, 2001). In this context “Europe induced” changes are likely to tip the balance to favour one coalition and initiate regulatory reform (Knill and Lehmkuhl, 2002 p. 261). However, they argue, if one actor coalition is significantly more powerful than the other, it will dominate and the potential impact will be much *lower*. That is, in the case of significantly uneven interest constellations, the impact of Europeanization will a) not be significant enough to make a big difference in regard to the dominant actor and b) not be enough to equalize the power division to overcome the imbalance.

Uncovering this mechanism also requires a two-step process. The first step is the identification of the “constellations of domestic interests and opportunity structures where Europe-induced changes are more or less likely” (p. 261). However, because of the non-regulatory character of this model and “given the wide discretion for domestic adjustment in the absence of a European model which must be complied with, national changes might take various forms that need not necessarily follow the regulatory objectives underlying European legislation”. The second step requires examining the fit between reforms at the national level and the intended objectives from the European perspective. However, this necessitates close scrutiny of the interest constellations, thus cannot be accessed before it happens; as noted in the discussion of the relative strength of the interest coalitions, results can go in either direction depending on the balance beforehand.

3. *Framing domestic beliefs* The weakest mechanism of Europeanization according to Knill and Lehmkuhl is that of *framing domestic beliefs*, which neither stipulates regulatory change nor does it alter ‘institutional context’, but rather brings about Europeanization by “altering domestic

beliefs and expectations of domestic actors”. This particular mechanism is usually found in policies which are intended to lay the foundation for future, more demanding policies of negative or positive integration and are “designed to change the domestic political climate by stimulating and strengthening the overall support for broader European objectives” (p. 259). Because they focus on framing and perception, not regulations or regulatory tools, there is no compliance required; however they indicate, through cognitive means, adoption of European norms. They can do this on one of two ways.

The first way in which the framing of domestic beliefs can Europeanize domestic policies is that it *functions as a focal point*. Like the previous model, there is no institutional pressure to adapt these policies or norms into national political systems. This mechanism encompasses policies reliant on altering cognitive input and is expected to alter beliefs and expectations, rather than the structures themselves. The question in this case is ‘has European legislation modified the constellations of domestic interest enough to effect changes that would otherwise not have occurred?’ If different patterns of adaptation cannot be explained by EU changes to domestic opportunity structures, then under what circumstances do these varying patterns occur? Knill and Lehmkuhl argue that impacts at the national level occur under two sets of circumstances. The first one is that framing may alter the product of domestic “reforms that occur independently of European influence”. This could occur if “there is already a broad consensus for the reform at the domestic level with the direction of the intended reforms being basically in line with the overall objectives behind European legislation” (p. 263). In this case, European beliefs may offer a *point of convergence* in which they may present solutions for domestic developments. Thus in these circumstances with European and domestic beliefs, in line with the domestic actor coalition, may

function to shape outcomes by changing “secondary aspects” within national belief systems (Lavenex, 1999; Sabatier, 1998).

Under the second conditions, European beliefs *change the outcome as well as reform process*. In this case, European policies function to shape and affect “the beliefs and expectations of domestic veto players” thus playing “a decisive role in bringing about a consensus on national reforms” (p. 263). In this case “the extent to which European framing can potentially help to establish a domestic reform consensus is basically dependent on the initial constellation of interests and opportunity structures”.

However, the *framing* mechanism will be unable to prevail over domestic opposition to regulatory adjustment, thus the impact varies significantly depending on both the nature of the prevailing belief systems and what opportunities/constraints exist to reform.

Indeed, these mechanisms are not always ‘either/or’, and they expect ‘hybrid forms’ to arise, as will become apparent in the case study section of this thesis. For instance, European policies may sometimes “trigger national reforms by altering domestic opportunity structures or beliefs even though there is complete congruence between European and domestic policy and institutional arrangements” (p. 257). While policies may be categorized as one or the other of the models, in reality they are intrinsically linked and do not exist independently of each other. In fact, hybrid forms of Europeanization occur as a policy change inevitably produces other changes; in other words, “the prescription of an institutional model for domestic compliance will generally also affect domestic opportunity structures and the beliefs and expectations of domestic actors”.¹³

¹³ Olsen (1996) also predicted that ‘transformations’ would most likely “take the form of a multitude of co-evolving, parallel and not necessarily tightly-coupled processes” (p. 155). Featherstone (2003) concurs and notes how the

2.2.4 Application of Knill and Lehmkuhl's Framework to Immigration and Asylum

Because immigration and asylum policies encompass all three of the mechanisms suggested by Knill and Lehmkuhl, as well as hybrids, they provide a good analytical fit. Indeed, unlike other sectors which rely on regulation for compliance, the Europeanization of immigration and asylum policies relies heavily on framing, which it does through concepts such as freedom, security and justice and its use of directives for policymaking rather than regulations. In fact, the policy area continues to be wrought with issues from normative perspectives, including human rights and views that questions territoriality, on one end of the spectrum, to its close association with state sovereignty and the securitization of borders on the other. Thus because it is already identified by ideas—whether normative or from a state-centric perspective—it seems intuitive that ideas and conceptions function well to frame the solutions.¹⁴ This thesis will use the framework proposed by Knill and Lehmkuhl for its analysis of the two case studies, noting that the same mechanisms function similarly in regard to the Europeanization of public policy areas. Indeed, Knill and Lehmkuhl (1999) note that their model is *not* empirical but analytical and that European policies can be “characterized by a mixture of different mechanisms of Europeanization as the distinctive mechanisms are linked to each other in a hierarchical way with the more explicit mechanism encompassing weaker forms of Europeanization” (2002 p. 257).

2.3 Chapter Summary

This chapter has provided a review of how the area of study of Europeanization has evolved, and directed focus towards the particular definition, conceptualization and theoretical perspective

“impact of Europeanization is typically incremental, irregular, and uneven over time and between locations, national and subnational,” (p. 4).

¹⁴ Immigration is generally conceived by academics from either a security or a human rights perspective. For instance, unauthorized immigration or persons *sans papiers* is viewed as ‘illegal’ by states and those who support the state-centric perspective or as ‘irregular’ by human rights proponents.

that the analysis will take. First it looked at the concept as advancing from the so-called grand theories of integration. It then discussed definitions and noted how essential a clear definition is to directing research in this field. This was followed by the examination of perspectives and models that academics have advanced then moved on to how the concept has been applied in various ways. It looked at negative and positive integration and noted the research on uneven integration. It pointed out that comparative analysis of similar states advancing through the same policy development processes at the same time would add to the research on this policy area. It briefly touched on literature on how Europeanization has been applied and then focused on the somewhat sparse literature that exists on the Europeanization of immigration and asylum. Finally, it provided a discussion on Knill and Lehmkuhl's conception of the three mechanisms of Europeanization—*institutional compliance*, *alteration of domestic opportunity structures*, *framing domestic beliefs* as well as potential hybrids—as the theoretical tool that this thesis will use to determine how European immigration and asylum policies and norms have been integrated into the national policies of Italy and Spain.

The following chapter will explain the methodology which will be used to that end.

3.0 Chapter Three: Methodology

For the purpose of this thesis, Europeanization is primarily considered the transfer or transposition of EU regulations, directives, decisions, and rulings into the legal framework of the countries in question. It will also include—particularly in regard to the Schengen Agreement, as will be explained in the case studies—policy changes which are not necessarily articulated but that nevertheless are a requirement for countries to participate or belong to the European club.¹⁵

3.1 Legal Basis

The analysis will primarily revolve around the development and incorporation of legal tools/framework on which the EU and member governments rely to create their policies. As this thesis is based on the transfer of EU policies and norms to the national level, the transposition of directives is key as is the incorporation of regulations into domestic legislation. It will draw upon primary European Union documents including treaty text, directives, regulations, legislation, reports, communications and presidency conclusions, as well as documentation and reports from the European Migration Network (EMN) as well as external organizations including the International Organization for Migration (IOM).^{16 17} Additionally, secondary documents will be

¹⁵ The Schengen Agreement, signed in 1985, created a European external border which was the precursor to the internal border free area (Schengen Area, n/d c). Formed outside the EU framework, it was eventually incorporated into the *acquis* via the Amsterdam Treaty.

¹⁶ EU policy making tools include: *regulations*, which are legally binding to all member states; *decisions*, which are also binding, but only to whom they are directed; *directives*, which are binding, but not transferred *verbatim* and leave it to the member states to amend national legislation to meet EU identified goals; *recommendations* are non-binding allowing institutions “to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed”; Opinions are also non-binding, used by the Commission, Council, Parliament, the Committee of the Regions and the European Economic and Social Committee to also deliver an opinion without any legal ramifications (Europa, n/d a).

¹⁷“The consequences of the Union legal act depend upon its specific nature:

- A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States (Art 288, para 2 TFEU).
- A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods (Art 288, para 3 TFEU).
- A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only upon them (Art 288, para 4 TFEU).
- Recommendations and opinions shall have no binding force (Art 288, para 5 TFEU).

utilized; this includes academic research on actor preferences in treaty negotiations and on immigration and asylum policies and decision-making at the EU and national levels in Spain and Italy, as well as analysis of national policies. Thus it will build on previous research and provide a broad interpretation of the subject at hand. As well, media reports/articles will be utilized as necessary, as they often provide a snapshot of how policy choices play out on the ground and how they are interpreted by local media analysts. However, research is limited in some cases to the analysis provided by academics, as national documentation of legal texts is in the respective national languages, thus is unavailable for this research. That said, analysis has been restricted to peer-reviewed articles in highly regarded European academic journals. Indeed, it is important to make use of a variety of documents in order to uncover and connect and compare the corresponding events.

3.2 Case Studies

Two cases of two similar countries—Italy and Spain—will be compared as this thesis will analyze the alternate choices each country made vis-à-vis immigration and asylum policy and attempt to ascertain the role played by Europeanization. It will attempt to ascertain how and why these policies were adopted and how they were integrated. Vennesson (2008) notes the value of case studies in social science research highlighting four types: *configurative-ideographic*, “a systematic description of the phenomena with no explicit theoretical intention”; *interpretive case study*, which “uses theoretical frameworks to provide an explanation of particular cases which can lead as well to an evaluation and refinement of theories” and *hypothesis-generating/refining* studies which “seek to generate new hypotheses inductively and/or to refine existing

Article 288 TFEU provides that regulations, directives and decisions are ‘binding’ and are therefore legally enforceable. In contrast, Art 288 provides that recommendations and opinions have ‘no binding force’ and are therefore not legally enforceable” (Fairhurst, 2007 p. 64).

hypotheses”. The fourth type is *theory-evaluating* which “assess whether existing theories account for the processes and outcomes of selected cases” (p. 227-228). He points out how

[t]he researcher assesses a theory by identifying the causal chain(s) that link the independent and dependent variables. Her goal is to uncover the relations between possible causes and observed outcomes. This procedure can be used in theory testing as well as in theory development (p. 231).

This thesis intends to assess immigration and asylum policies in an attempt to determine Europeanization using Knill and Lehmkuhl’s mechanisms, thus it will use Vennesson’s *interpretive case study*.

3.2.1 Why Italy and Spain?

Italy and Spain are a good fit for an analysis for the Europeanization of immigration and asylum policy for a number of reasons. Since 2000, the two countries have reported significantly larger net inflows of migrants compared to the other twenty-five EU states (IOM, 2010 p. 6). Both have also developed their immigration and asylum policies at the same time as the EU. They both have significant EU maritime borders, a Mediterranean location—a location which has seen significant increases in irregular migration in recent decades, are both former sending and now receiving country of immigrants, are vulnerable to mass migrations thus are faced with significant policy challenges, were former fascist states moving towards democratization relatively recently, have informal economies that function as pull factors where migrants traditionally find work, as well as industries which participate this practice. As well, they have similar historical linkages (particularly in the case of Spain), societal norms, migratory processes and have functioned as traditional transit routes; with the EU’s new border arrangements their

external borders have become those of other member states and thus the EU's external borders. Finally, both states have had a number of regularizations, which are included in their organic immigration policies and have been used as tools with which large numbers of irregular migrants have been 'legalized'.¹⁸

3.3 Goodness of Fit

The 'goodness of fit' hypothesis has been utilized to assess the degree of Europeanization, however in this thesis it will be used, where appropriate, as a comparative tool to tease out where policy gaps exist. That is, rather than an instrument to explain why policy has or has not been Europeanized, it will be used as a methodological tool to uncover the contradictions between EU and national policies and—as prescribed by Knill and Lehmkuhl—will be used for a portion of their analysis.¹⁹

3.4 Timeframe

Because this is a comparative piece, focusing on Europeanization and the evolution of the policy field in the respective countries, the timeframe expands from the beginning of the development of policies in regard to each country's connection with the EU and the immigration and asylum policy framework, through to the post-Lisbon era. Within each case study the same division of three periods of time will be used. The first period is 1984 to post-Maastricht, in which decision-

¹⁸ However, legalization under these conditions may be temporary depending upon the conditions attached to the regularization. For instance, if the applicant is regularized under certain conditions i.e. employment and those conditions change, the migrant becomes 'illegal' again.

¹⁹ In regard to analytical tools to assess the impact of Europeanization and understand how and where it can occur, some perspectives privilege the question of 'fit' or 'misfit' of institutional compatibility between EU policies and existing policy frameworks at the national level or, in other words, the degree of change necessary to adjust to European standards, have been advanced (Olsen, 1995; Duina, 1997; Héritier et al, 2001; Green Cowles & Risse, 2001; Green Cowles, et al, 2001; Fauser, 2007).¹⁹ Observing the same variation in integration results, these arguments expanded to incorporate the involvement of actors and institutions in explaining the discrepancies. However, others have argued that while identifying fit and misfit is useful, its application to Europeanization is limited (Knill and Lehmkuhl, 2002).

making was strictly intergovernmental. The second era of policy making is Amsterdam to pre-Lisbon, where immigration and asylum was moved from the third to the first pillar and policy-making was gradually moved to the Community method, and development of the area of freedom security and justice (AFSJ) began in earnest; this will be identified as the semi-Community stage. Finally, Lisbon and beyond is the Community era, when an increasing number of directives and regulations, as well as Article 17 of the Lisbon Treaty calling for a common immigration policy, further propelled the policy area to require regular, systematic, comprehensive reporting of compliance to prescribed European norms.

3.5 Analysis

For the analysis, comparison will be made between the member state policies and EU initiatives/policies in corresponding fields. Particular emphasis has been paid to significant junctures at the EU level however this is not exclusively the case, as shown in the Spanish case where particular European policies were formed by Spanish interests. Because both Italy and Spain were previous sending countries with a lack of articulated policies in this area policy was sometimes developed in a reactionary fashion, not in response to European changes, but reacting to migration flows and other domestic requirements. Therefore it is necessary to also include domestic changes in the analysis that are *not* in response to EU initiatives; in fact, these are indicative of processes of Europeanization. Indeed, because of the evolving nature of European initiatives towards the policy area, coupled with the deepening and widening nature of EU treaties, and changing political and migratory circumstances, it is necessary to look at multiple puzzle pieces rather than just what on the face of it appear to be junctures. Indeed, as Putnam (1988) argues, states/politicians often have ambitions that run parallel to conditions they adopt. In the case of the EU politicians allegedly ‘run to Europe’ when pressured to explain unpopular

policy changes to domestic audiences, as will become evident in chapter six in some of former Spanish Prime Minister José María Aznar's policies in Spain. In other words, it has been suggested that states—while outwardly appearing reluctant to adopt certain policies because they would be unpopular domestically—are actually in favour of said policy changes but blame the EU and their obligations to their 'European membership'. Aside from these 'two-level games', policies are adopted at any given time for a number of reasons, some of which are difficult to ascertain especially in the case of actor preferences. Thus, while unpacking policies to determine the role of Europeanization, others will inevitably be influential.

3.6 Limitations

Because political phenomena seldom happen for one reason alone, it would be misleading and misinformed to suggest that 'Europe' alone is responsible for certain policy choices. In order to establish this other factors will be acknowledged, however this will not be an analysis and quantification of every element and directive, but rather an explanation of the circumstances and context regarding EU and domestic policies; indeed, there is rarely one determinant responsible for policy change. As well, time and space does not allow for this thesis to evaluate policies in regard to their enforcement or effectiveness, but rather their adoption at the national level.

3.7 Chapter Summary

This chapter discussed the methodology that will be used for this thesis. It highlighted the sources as primarily legal documents but also external reports and scholarly works by peer reviewed sources. It discussed the case studies, why they were chosen and as well the time frame which will be used and how it is divided according to the type of policy-making which was employed by the EU during that era; this was followed by a discussion of the analysis, then the limitations of the research.

The following chapter will provide some historical background of the development of a common immigration and asylum policy area, tracing it through its development in the EU as it pertains to this study; however it will not provide a comprehensive list of every directive, regulation or initiative.

4.0 Chapter Four: Development of EU Immigration and Asylum Policies

*If there are diverse responses at [the] national level to international migration then why have EU member states ceded migration policy responsibilities to EU institutions and what effects do these competencies have on laws, institutions policies and collective identities in the member states?*²⁰

This fourth chapter will provide a chronological look at the development of immigration and asylum norms in the European Union, highlighting key events that codified and institutionalized the policy changes. This is relevant for this study as it explains the significance of the timeline during which European practices on immigration and asylum evolved. The first period for this study is the intergovernmental period from 1984 to post-Maastricht.²¹ The second period is the semi-Community phase and spans from the Treaty of Amsterdam to the pre-Lisbon period in which the policy area gradually transitioned. The third and final period was from the 2007 signing of the Lisbon Treaty to the present. These three timelines differentiate between the types of decisionmaking that have been used in the shaping of the immigration and asylum policy area, an area which will be shown to have progressed significantly from the EU's original competence.

The European Union, as a political as well as an economic union has experienced numerous changes to its organization, composition and policy areas.²² From its origin as an economic agreement with a political purpose to circumvent potential German expansion by facilitating cooperative economic growth, to its current composition, it has expanded vertically and horizontally to encompass an increasing number of policy areas—many of which have progressively sidestepped into portfolios customarily determined by nation states. Although

²⁰ Geddes, 2003 p. 126.

²¹ During this era Italy and Spain began to form their immigration and asylum policies.

²² The study of international political economic indicates different classifications of political and economic unions. See Ravenhill, J. (2008). *Global Political Economy*. Oxford: Oxford University Press, chapter six.

these modifications have often taken much debate, persuasion, and deal-making, they are nonetheless included in the EU's current manifestation. One of the more contentious policy areas is immigration and asylum—particularly controversial issues intimately linked to state sovereignty.²³ Thus, the question this section will address is how did these areas—to different degrees—evolve into power-sharing arrangements within the EU, rather than exclusively state controlled?

Immigration and asylum policies have progressed from of a number of fundamental security concerns that combined to initiate joint efforts between member states on borders and policing, to eventually include visas, migration control and refugee claims.²⁴ However, migration control was not always the issue it is in the contemporary context. In fact, after World War II, workers were required for re-construction efforts, resulting in relatively unrestricted immigration.²⁵ This 'loose' control changed with the escalation of unemployment resulting from the 1973 oil crisis and subsequent economic crisis in the 1970s, and border restrictions tightened significantly, resulting in accusations of a 'Fortress Europe'. However, the flow of immigrants continued and grew as did asylum applications as conventional access was increasingly denied.²⁶

²³ In regard to immigration and asylum generally, the 1648 Treaty of Westphalia ushered in an era of territorially and provided the foundation for the development of state-based land claims and the further conceptualization of state-based citizenship. Kostakopoulou (2004) speaks to discussions on causality of irregular migration and argues that “delimiting space and created bounded place... bears the decisive mark of human agency, but it is also intimately related to power” and the “practices of territoriality look objective and natural” making them “decoupled from the interests, needs and values they reflect and serve, and power relations are maintained” (p. 44). She notes how the link between nation and territory has “shaped the migration debate” (p. 50) and how the restrictions to these constructed borders is linked to irregular migration escalating asylum claims.

²⁴ Immigration/ asylum policies are interconnected with numerous other areas including visas, borders, legal and irregular migration, integration, and refugee claims.

²⁵ Lindstrøm notes three phases of European migration: massive recruitment of low-skilled workers from southern to “benefit the northern core”; family reunification with those initial workers; a massive increase in asylum migration following the collapse of the USSR. An increasing “conflation of immigration and asylum issues” followed (Lindstrøm, 2005).

²⁶ In light of the tightening of these borders, previous immigration flows were diverted—many to southern European countries (Fuentes, 2001 p. 119).

4.1 1957 Treaty of Rome

The envisioned single market and its constituent four freedoms—free movement of people, capital, services and goods envisioned in the 1957 Treaty of Rome—called for collective action and could not be realized without the elimination of internal borders, which required not only a significant strengthening of external borders, but common standards on admission. In fact, the free movement of workers was slated to come into being in 1968. Additionally, there were other security-related border concerns not the least of which were terrorism and organized crime that member states were attempting to address. This resulted in collaboration between national governments and agencies on these and other border-related issues through loosely organized group action outside EU institutions. Hence national cooperation on security areas and immigration developed and expanded on parallel trajectories, but outside of the EU governance structures and often on loosely ordered basis. In actuality, it became increasingly important and necessary to deal with these border issues jointly. What followed from these collaborations was early development of immigration and asylum policies.

Joint efforts within Europe aimed at developing policies concerning immigration issues began as early as 1974, with a proposed Social Action Programme with a resolution “to promote consultation on immigration policies vis-à-vis third countries” (Council Resolution, 1974). Early attempts to address the asylum, immigration, and border issue nexus focused on three clusters of persons: EC/EU citizens, who were entitled to free and safe movement; long-term EU residents who, although not citizens, resided in Europe and had residence and work permits; and third-country nationals (TCNs) attempting to enter EU/EC (Uçarer, 2007 p. 306). The Council of

Europe originally attempted to address wide-ranging border/immigration issues, but the range of interests ended in little agreement.²⁷

4.2 1975 TREVI

The TREVI Group was formed in 1975, external to the EU structure, as a loose forum in which national governments and agencies could cooperate on a variety of security and police issues such as drug trafficking, organized crime, terrorism and the illegal sale of arms, issues which were aggravated by inadequate border security.²⁸²⁹ Cooperation on TREVI resulted in the establishment of a number of other groups in four linked areas, and included immigration, asylum, and police and judicial cooperation (den Boer, 1996). One of these—the Ad Hoc Group on Immigration—was eventually incorporated into Justice and Home Affairs (JHA) and later provided the groundwork for the 1990 Dublin Convention on Asylum.

I. Intergovernmental Period

As noted above for the purpose of this thesis the intergovernmental period spans the period from 1984 to 1992 post-Maastricht

4.3 1990 Schengen Agreement

In 1985 negotiations for a common border area, later termed the Schengen Area, began between five member states—the Benelux countries as well as France and Germany—and focused on cooperative customs and policing. From this developed policies on common entry, removal of

²⁷ The Council of Europe is not part of the EU, but is an international organization of forty-seven European states. It deals with transnational issues however has no legislative powers. Agreements take the form of conventions.

²⁸ TREVI (Terrorisme, Radicalisme, Extrémisme et Violence Internationale) was an intergovernmental group that formed loosely after terrorist attacks such as those at the Munich Olympics. The group was informally structured and existed outside the margins of the EU.

²⁹ Despite its informality, lack of institutionalism, legality and no budget, TREVI was seen as relatively successful. It functioned from 1975 until 1992 and was incorporated into Maastricht where it formed the basis of JHA (Monar, 2008).

internal border controls and visas. In 1995 Spain and Portugal both joined voluntarily in the second agreement, years before it was integrated into the *acquis* with the Treaty of Amsterdam. This resulted in even more discussion on asylum, immigration and border control.³⁰ In the same year, the Guidelines for a Community Policy on Migration were introduced (Council Resolution, 1985) and work towards the Single European Act (SEA) highlighted the importance of further policy integration.

4.4 1986 Single European Act

In 1986, the introduction of the Single European Act restored attempts to move forward on the single market agenda, part of which was the removal of internal borders, in that “internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured” (1986 Article 8a). Indeed, this too had been envisioned in the 1957 Treaty of Rome.

4.5 Dublin Convention (Dublin I)

The Convention of Determining the State responsible for Examining Applications for Asylum Lodged in One of the Member states of the European Communities was created in June 1990 in Dublin. In essence, it clarified the member state responsible for addressing an asylum claim and functioned to prevent asylum shopping (Dublin Convention, 1990).

³⁰ The creation of state borders has provided the legal foundations in which countries base the control of rights of movement into and within their territorial space by foreign nationals, and has also allowed for the development of ‘illegality’ of migration based on non-citizenship and the unauthorized penetration of the said borders (Demmelhuber, 2011 p. 815). This conceptualization of territoriality has resulted in security focused policies and often contrasts rather sharply with the humanitarian perspective which often plays a much subordinated role. Either way, state control of borders is closely tied to state sovereignty and as such has been one of the policy areas most difficult to reach consensus on between EU member states.

4.6 1992/1993 Maastricht and the Pillar System³¹

The ‘fall of the wall’ in 1989, had international and European repercussions. Unsure of the consequences of these unexpected events, during the negotiations on the Treaty on European Union as it was then called, convened two conferences—one on the European Monetary System (EMS) and another on a political union (Europa, n/d b). Within the political union negotiations, the role of the Commission and Parliament were minimal, while the Council played the primary role. One of the concerns raised during these negotiations was possible waves of immigrants from Eastern Europe, thus the importance of immigration, asylum and borders was significant to the political union negotiations.

Signed in 1992 and entered into force in 1993, the Treaty of the European Union introduced a three pillar system of policy-making. Areas classed as first pillar were under the Community umbrella, the second pillar was the intergovernmental Common Foreign and Security Policy (CFSP) and the third—also intergovernmental—was termed Justice and Home Affairs (JHA) and included immigration, asylum, policing and the judicial cooperation.³² Both the second and third pillars were subject to unanimity decision making and unsurprisingly in regard to JHA initiatives, consensus was not easy and often resulted in agreement on the “lowest common denominator” (Uçarar, 2007 p. 309). In fact, it was widely agreed that portions of JHA would require an alternate policy making framework in order to achieve any progress. Indeed, any role by the Commission and the Parliament had essentially been marginalized by the intergovernmental decision-making framework highlighting a democratic deficit (Uçarar, 2001, den Boer, 1996).

³¹ Formerly the Treaty of European Union (TEU).

³² Some aspects of this had already been agreed to and were included in the 1990 Schengen Convention.

During this era a number of groups were formed including the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI) and a group mandated to ensure policy consistency, the Centre for Information, Discussion and Exchange on Asylum (CIREA).³³ The December 1998 Vienna Action Plan separated the immigration and asylum policy areas and set out the timeline for the AFSJ (area of freedom, security and justice) and better articulated the initiative (Vienna Action Plan, 1998).

While Maastricht has been indicated as the foundation of immigration and asylum policy, Kuijper (2004) argues that real progress on issues originated with the “further development and successive accessions to the Schengen agreement”, not from Maastricht (p. 631).

4.7 1997/1999 Treaty of Amsterdam³⁴

The Treaty of Amsterdam was signed in 1997 and came into force in 1999 and was also significant in regard to immigration and asylum policy area development. In 1996, the Dutch Minister of European Affairs, Micheil Patijn, submitted a proposal to the Amsterdam IGC to integrate the Schengen into the EU (den Boer & Corrado, 1999 p. 296). Schengen was incorporated into the treaty, and asylum, admission and residence of third-country nationals, as well as immigration, was moved from the intergovernmental third pillar to the Community-based first pillar, although there was a five year integration period as well as qualifications to this. Also included in Amsterdam was a commitment to work towards the AFSJ which had been originally conceptualized by Prime Minister Aznar of Spain at the Florence summit. Its eventual insertion vaguely articulated AFSJ as an area “in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum,

³³ In 1992 CIREA was replaced by EURASIL, the European Union Network for Asylum Practitioners.

³⁴ Amending the Treaty of the European Union, the Treaties establishing the European Communities and related acts

immigration and the prevention and combating of crime” (Treaty of Amsterdam, 1997 Article B).

4.8 1999 Tampere

At the October 1999 Tampere council, in Finland, a five year plan was created, which was valid from 1999 to 2004, and worked towards addressing Article 63 vis-à-vis a common asylum system the implementation of the AFSJ (Tampere European Council, 1999). At this time the Asylum and Migration Policy was formed and included elements of JHA, Development and Humanitarian Assistance, and the CFSP (Lindstrøm, 2005 p. 588). The Tampere Plan proposed taking into account the economic and demographic development of the Union; capacity of reception of each Member State along with their historical and cultural links with the countries of origin; the situation in the countries of origin and the impact of migration policy, such as so-called ‘brain drain’ and highlighted the importance of developing specific integration policies (based on fair treatment of third-country nationals residing legally in the Union, the prevention of social exclusion, racism and xenophobia and the respect for diversity). Plans for the establishment of standards in regard to family reunification, EU long-term resident status, students and researchers were included, as well as frameworks for integration. In regard to irregular migration, a comprehensive plan to address illegal migration and trafficking of human beings was articulated as well as minimum standards for the return of illegal residents.³⁵ The need for a charter of fundamental rights for the EU was expressed, as well as technical and financial assistance for sending countries, and further work towards readmission agreements

³⁵ The term ‘illegal immigration’ is usually used by those who view residence sans papiers as a security issue, while ‘irregular migration’ is generally from a human rights perspective and is the politically correct term; the terms will be used interchangeably in this paper.

(Tampere, 1999).³⁶ Finally, the Tampere Conclusions expressed the commitment to the 1951 Geneva Refugee Convention.³⁷ Thus while highlighting a common direction by indicating loosely defined goals Tampere nonetheless provided the basis from which further policy direction, particularly the AFSJ and a Common European Asylum System would be developed.

In order to track the progress of the AFSJ, the Commission issued a Communication to the Council and Parliament in April 2000 on the creation of a scoreboard mechanism to “keep under constant review progress made towards implementing the necessary measures and meeting the deadlines’ set by the Treaty of Amsterdam, the Vienna Action Plan and the conclusions of Tampere for the creation of an ‘area of freedom, security and justice’”. This required reports every six months regarding the progress made by the EU with the intention of ensuring transparency, keeping up momentum and exercising pressure and further notes that “responsibility for taking the initiative lies with the Commission rather than with a Member State (European Commission, 2000 p. 4). Resulting from this were bi-annual reports on the progress at the EU level towards creating and implementing legislation and other measures.

³⁶ It also expresses the importance of external action and a “...comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights, in particular rights of minorities, women and children. Partnership with third countries concerned will also be a key element for the success of such a policy, with a view to promoting co-development”. Additionally, it “agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement”.

³⁷ The Tampere Conclusions note that “[t]he aim is an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity. A common approach must also be developed to ensure the integration into our societies of those third country nationals who are lawfully resident in the Union”. In regard to a Common Asylum system it also note that “The European Council reaffirms the importance the Union and Member States attach to absolute respect of the right to seek asylum. It has agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement” (Tampere , 1999).

4.9 2003 Dublin Regulation (Dublin II)³⁸

In February 2003, the Dublin Convention was reformed to the Dublin Regulation (2003/343/CE) and clarifies the state responsible for refugee claims under the Geneva Convention or the EU Qualification Directive (Council Directive, 2004). It is the basis to the Dublin System which includes EURODAC Regulation, the EU fingerprint database.

4.10 2005 The Hague Programme

The Hague Programme replaced the Tampere agenda which had expired after its five year term. It expanded on the goals introduced by Tampere. As well, the five year transition period was over in regard to transferring immigration and asylum from intergovernmental decision making to the Community method, thus the sole right of initiative to propose new laws was ceded to the Commission, and the Council switched to majority voting in the policy area (the national veto was lost). Additionally, the European Parliament acquired co-decision power meaning that it could propose amendments and also veto legislation.

Although it was significant to the Commission and the Parliament, majority voting and co-decision applied to the areas of political asylum, refugees, and illegal immigration and did not apply to legal immigration (family reunification, labour migration, and the rights & duties of legal resident third country nationals or TCNs). Indeed, while states realized that EU cooperation was necessary on these matters, they nevertheless were unwilling to yield control to the Community. Within the Hague Programme, Frontex was created in 2005 “to enhance external border security by coordinating the operational cooperation of EU Member States, Schengen Associated Countries and other partners” (Frontex, n/d). Also with the Hague Programme came

³⁸ Dublin II has been criticized by human rights organizations as unrealistic and “fundamentally flawed” (Human Rights, 2011).

the focus on the external dimension of migration; that is, dialogue and cooperation with sending states.

4.11 European Pact on Immigration and Asylum

*While political rhetoric about demographic change and the role of migration in Europe's future competitiveness has increased exponentially, only the bare minimum has been achieved in concrete terms.*³⁹

In 2008, the European Pact on Migration and Asylum was signed and although not legally binding, it nevertheless indicates the course in which future policies will be directed. Adopted by the European Council during the period when the Treaty of Lisbon was undergoing national ratifications/legislative debates, it is not policy per se, but it indicated a loosely defined commitment on the part of member states to: organize legal immigration to take account of the priorities, needs and reception capabilities determined by each Member State, and to encourage integration; control illegal immigration by ensuring the return of illegal immigrants to their country of origin or a country of transit; make border controls more effective; construct a Europe of asylum; and to create a comprehensive partnership with countries of origin and transit to encourage synergy between migration and development (European Pact, 2008). It also condemned regularizations as undercutting the principle behind common migration policies, and noted that immigration should be determined on an individual basis. Bilateral or EU level agreements were also encouraged as were the coordination of readmission agreements (European Pact, 2008). Indeed, Bertozzi notes that the “[l]ack of progress and coordination in the area of readmission agreements has brought Europe to the uncomfortable situation where bilateral agreements are the common practice and readmission agreements the exception” (Bertozzi, 2008). The Pact also proposed annual debates and required yearly reports on implementation of

³⁹ Collett, 2008 p. 1

obligations from member states and the requirement for states to keep the Commission informed of whichever measures they plan to enact.

The following year the Pact was followed by Commission recommendations on monitoring implementations, which includes a comprehensive framework formatting the manner in which reports are to appear, leaving little room for vagueness in the results (European Commission, 2008). In order to help facilitate these plans the European Migration Policy Centre was created. However, while reporting mechanisms are in place, it is difficult to gauge from the reports if policies and practices are applied ‘on the ground’. Critics argue that the Pact is indicative of an increasingly conservative turn in migration “in line with changing public and political attitudes” and looking at migration policy “through the prism of ‘control first’, making this more explicit than in the past”. Indeed, only one of the previously mentioned areas of focus concerns the promotion of immigration and “even this refers to preventing illegal and undesirable migration” (Collett, 2008 p. 2).

4.12 2007/09 Treaty of Lisbon

The Treaty of Lisbon followed the failed Constitutional Treaty and a period of reflection after which the charge to conclude reforms, *sans* all mention of a constitutionality, was led by Angela Merkel during the Germany presidency. The treaty was signed in 2007 and entered into force in 2009. With the treaty, the European Community (EC) was merged into the European Union (EU), the TEC was renamed the Treaty on the Functioning of the European Union (TFEU), and the current Title IV of the TEC was renumbered Title V. The treaty made important changes to decision-making and competence in regard to immigration and asylum law.⁴⁰ The changes to the

⁴⁰ For a detailed account of the specific changes to the legal competencies see: Peers, S. (2008). Legislative Update: EU Immigration and Asylum Competence and Decision-Making in the Treaty of Lisbon. *European Journal of Migration and Law*. 10: 219–247.

jurisdiction of the Court of Justice in regard to law in this area led to a significant increase the role played by the Court (Peers, 2008). It also extended decision-making rules based on qualified majority voting (QMV). As well, the power of the European Parliament was increased and co-decision was extended to include labour migration. The treaty articulated the objective of attaining a common immigration policy, and stated the goal of “efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings” and that measures would be adopted in the following areas:

(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification; (b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States; (c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation; (d) combating trafficking in persons, in particular women and children (TFEU, 2008 Article 79).

The Treaty also incorporated the Charter of Fundamental Rights of the European Union into its legal framework, in that “the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights” (Art. 6(1) of the Treaty on the European Union). While not articulating the Charter *verbatim* its reference indicates its inclusion, thus it is legally binding.⁴¹ Also included in the Charter is the recognition of the right to asylum; indeed “[c]ompliance with

⁴¹ However the Charter applies to national legislation only when it intersects with matters of EU competence (Article 1).

the Charter” will require “the validity and legality of the Union's secondary legislation, including Directives and Regulations in the field of asylum” (Gil-Bazo, 2008 p. 33).

4.13 2010 Stockholm Programme

Building on Tampere and The Hague, the Stockholm Programme was created during the Swedish presidency and valid for the period from 2010-2014. Developing the Global Approach to Migration, its key focus is on the external dimension of migration, which includes plans to work with sending, or ‘third’ countries. Also articulated in Stockholm was the intention to create the Common European Asylum System (CEAS) by 2012. As well, the plan for better coordination between Europol, Eurojust, the Fundamental Rights Agency, Frontex and Civil law was highlighted (The Stockholm Programme, 2010).

Thus while success is slow, member states are nevertheless moving slowly towards collective policies in this area. However much of the progress has been in the areas of asylum and border control, and much less in so-called legal immigration.

4.14 Chapter Summary

This chapter has provided the legal and normative context in which member states have obligated themselves to thus far in regard to immigration and asylum, which is summarized in Table 1. It traced the evolution of the field, highlighting key junctures vis-à-vis expanding EU competence. Beginning as a loosely defined borderless area, the EU’s borders have expanded as have policies that are, arguably, crucial to its success. While member states have indicated the need for common policies to address the issues which result from the removal of internal borders, they nevertheless have been reluctant to shift control to collective decision-making and prefer—as seen in the Maastricht years—to retain direct their own border policies, which yields

scant results. Dublin I and II were somewhat easier to accomplish, despite criticisms that they miss the mark in many cases. The creation of the AFSJ through the Amsterdam Treaty provided a better articulated concept of what cooperative action would create. This provided the groundwork for the three programmes—Tampere, The Hague and Stockholm—from which the progress has been made. The Pact has moved policy forward again, by articulating agreed upon best practices, and although the EU still has no policy on immigration and asylum per se, the Pact defines policy areas in which focus is to be directed. Finally, the Lisbon Treaty has further entrenched the proposals for common immigration and asylum policies and includes the Charter which provides the legal basis from which court challenges can be launched.

In regard to Europeanization, as articulated in the previous chapter this thesis primarily looks at how member states have transferred values, directives, and legal standards to the national level. While it appears like a simple task, because many of the ‘tools’ with which the EU has attempted to direct member action, as well as the ambiguity of the results, it is difficult to determine how far reaching progress has been. Indeed, the creation of the reporting mechanism sprung from a need to monitor and clarify what action states have taken and how they have implemented recommendations. In the two case studies following this chapter, an attempt will be made to maneuver through policy changes enacted by Italy and Spain and tease out where Europeanization of their immigration and asylum fields has occurred and what form it has taken.⁴²

⁴² EU legislation must be implemented by the member states. It consists of directives and regulations. Regulations are legally binding on member states. In contrast, directives point out the results that are to be achieved and leave it to the states to determine how to translate them into their national laws, therefore changes only have to be made to national legal systems if there is a conflict with directives.

Date	Event
1985	First Schengen agreement between France, Germany, Benelux signed
June 1990	Dublin Convention determining country responsible for examining asylum request is signed (referred to as Dublin I)
1990	Schengen implementation agreement signed
1990	Italy joins Schengen
1991	Spain (and Portugal) join Schengen
1993	Title VI of the Treaty of Maastricht creates pillar system with third pillar JHA
March 1995	Schengen enters into force with Spain (and Portugal)
1997	Treaty of Amsterdam signed
October 1997	Italy permitted to implement Schengen
1997	The legally binding Dublin Regulation II comes into force (2003/343/CE)
1999	Treaty of Amsterdam enters into force -Schengen incorporated into <i>acquis communautaire</i> -Visas, asylum, immigration and other policies related to free movement of persons moved to first pillar
October 1999	Tampere summit on area of freedom security and justice (AFSJ)
1999 to 2004	Tampere programme
November 2000	Communication of the Commission on a Community migration policy COM(2000)757 Final
March 2001	Council regulation on 539/2001 lists which TCNs require a visa to enter EU territorial space (European Commission, 2000)
May 2001	Directive 2001/51 on carrier sanctions
Dec 2001	Laeken European Council
June 2002	Seville summit
Oct 2002	Commission communication on a return policy on illegal residents COM(2002)564 Final
2005-2010	The Hague Programme
2010 – 2015	Stockholm Programme
2007	Treaty of Lisbon signed
October 2008	European Pact on Migration and Asylum was signed
2009	Treaty of Lisbon enters into force

Table 1: Summary of EU developments related to immigration/asylum policy field (Sourced from various EU documents)

5.0 Chapter Five: Case Study #1: Italy

This first case study will look at the development of Italy's immigration and asylum policies incorporating, where appropriate, Knill and Lehnkuhl's analysis. This will happen in three sections, the first of which will provide some historical context as it relates to the study. In Italy's case the way in which its political system was conceptualized during its democratization phase helps explain some of its later circumstances, particularly its weak policymaking framework, thus will contribute to the descriptive portion of the analysis. The second section will trace the evolution of Italy's immigration and asylum policies, the circumstances around them, as well as the corresponding EU recommendations. This second section will be sub-divided into three separate periods reflecting the intergovernmental (1984 to post-Maastricht), early Community (Amsterdam 1997 to pre-Lisbon) and fully communitarized (Lisbon and beyond) phases of EU immigration and asylum policy decision-making. As mentioned in chapter four, these timeframes are indicative of deeper and wider incorporation of EU competencies in the field. The third and final part will be a summary of the findings and will argue that Italy's immigration and asylum policies began in response to potential membership in Schengen, and while evidencing a general movement away from Europe in the second era, have gradually become more Europeanized albeit in a piecemeal and inconsistent fashion in the third and current time period. This back and forth movement is in part due to reactionary policies and institutional failures as well as the political leanings of its leaders which have ranged from pro-Europe to what could arguably be described as Eurosceptic, who have privileged national interests above EU obligations. That said, institutional reform has improved, as has transposition of EU directives, however these remain highly dependent on national interests. The Europeanization of Italy's immigration and asylum policy can be explained by different mechanisms of

Europeanization under different political actors and at different times during the policy's development.

Section I

5.1 Democratization

Italy's democratization occurred rather fast with the end of the Second World War and with the offer of Marshall Plan funding, the country quickly moved toward a pro-Europe movement. The charge, partially led by Spinelli, led to other pro-Europe demonstrations there and across Europe, eventually including other well-known European actors such as Mitterrand, Anenauer, Schuman and Hallestein; thus also began Italy's integration. It joined the European Coal and Steel Community (ECSC) with the signing Treaty of Paris in 1951 as a founding member. What is interesting in regard to this thesis is that Italy's party system was first developed "along the lines of at least two different models" which changed to a solely proportional system after 1990. This helped to "create a fragmented, unstable party system with at least eight national parties represented in parliament at any given time" (Bindi, 2011 p. 65). This also produced over fifty cabinets from just before its EU membership until a 'political earthquake' took place in the early 1990s altering the country's political system, finally resulting in political stability by the end of the first decade of the new millennium (p. 66-68). In regard to this thesis, this is important because it demonstrates the fragility of the political system which eventually contributes to the problems with policy integration in the second era, as discussed in section II.

5.2 Membership

Italy was one of the six founding members of the EU, joining with France, Germany, and the Benelux states in 1952. It was one of the most pro-Europe of the founding members, enthusiastically in favour of integration, which Corrado (2002) notes, was in reference its need to

re-establish itself in light of its fascist past (p. 225). Indeed, she points to the EU as Italy's anchor "to cling to in order to be able to overcome internal deficiencies and problems" and highlights the EU's modernizing influences vis-à-vis reforms that otherwise would not have taken place (p. 226). However, there was a disconnect between this pro-Europe attitude and what was actually playing out on the ground and, in fact, Italy's participation in the integration process in general had been steadily declining evidenced by its lack of decision-making and delays in Community law implementation; these trends were predominantly reflective of the volatility of the country's political system, having experienced fifty-seven governments from 1946 to 1996 (p. 227). Italy's membership to the EU is important to this thesis as it demonstrates how membership was perceived as important to the country, despite internal political turmoil. In other words, this suggests that because the country realized the value of European membership, it was willing to adopt standards via Schengen, which supports Knill and Lehnkuhl's strongest categorization of Europeanization, that of *institutional compliance*.

5.3 National Policy Making Apparatus

Bindi (2011) notes that the involvement of national parliaments in the EU has gone from no or little involvement in the 1980s to some interest after the SEA in 1987, to much more involvement after Maastricht with its inclusion of a political union and in answer to the EU's democratic deficit concerns. Due to the wider and deeper involvement of the Union in national policies after the entry into force of Maastricht then Amsterdam parliaments, national parliaments became more involved with EU affairs, particularly in regard to scrutiny in the drafting of EU legislation (p. 82).⁴³ Italy's Constitution, rather than resulting from homogeneous views, was crafted from "a number of partial agreements among ideologically distant political

⁴³ In the Maastricht Treaty, Declarations 13 and 14, and in the Amsterdam Treaty, Protocol on the Role of National Parliaments outlines the role of national parliaments; with the Lisbon Treaty their role is further enhanced.

forces". A strong executive was dangerous to the new democracy, thus in Italy's case a series of checks and balances allow the parliament to question and sanction the executive as they see fit.

The political parties also have a privileged role over the executive (Bindi, 2011 p. 83).

The involvement of the Italian parliament in EU affairs was much like it was in other states in that in earlier years it was not necessarily required, thus was minimal and EU affairs were subsumed under foreign relations (ibid. p. 84). From the 1960s until the mid-1980s there was a backlog in the implementation of EU directives until the plethora of directives, resulting from coming into force of the SEA, motivated reforms. However, these reforms created a situation whereby the senate and Chamber of Deputies saw this additional flexibility "not as a way to exert control over Brussels, but as a 'temporary extension' over its traditional lawmaking" although this power remained underused (p. 85). Subsequent reforms to the decision-making framework occurred in response to Amsterdam, Nice and the Constitutional treaty (p. 87). In the 1990s the involvement of the Italian parliament in EU decisionmaking was minimal and uncoordinated (p.91).⁴⁴ Bindi notes that despite early misses and failures

in the wave of reforms that followed the signing of the Amsterdam Treaty, the parliament's role in EU affairs moved away from the implementation of EU directives and toward a more positive and proactive role in shaping the national position on draft EU legislation (p. 105).

However, in regard to migration policies Pastore (2008) argues that the "legal, institutional and administrative infrastructures for the management of migration and for the promotion of integration processes are still underdeveloped" and that with the "chronic statistical deficiency

⁴⁴ Bindi highlights examples of miscommunications, missed deadlines, finally making decisions at the national level after they were already moved forward at the EU level, and points to information and infrastructure failures in that regard. The problem has since been rectified, but in the past has led to frustration by many actors.

and systematic shortage of funding for empirical research, this kind of infrastructural 'backwardness' affects the cognitive foundations of migration policymaking" (p. 141). Indeed, the implementation record leaves something to be desired, particularly in the early years, but also in present circumstances.

Thus while Italy was characterized early on as one of the more pro-European states, on the other hand its institutional failures made implementation difficult and inconsistent, as did its political volatility. Quaglia & Radaelli (2007 p. 927) refer to Italy's political situation as comparable to a "political pendulum" in particular gravitating between the centre left government of Prodi (1996 to 2001; 2006 to 2008) more compliant to EU policies and Berlusconi (2001 to 2006; 2008 to present) who focused on domestic politics, either ignoring or in conflict with the EU (p. 930). Indeed, this is evident as well in the significant changes between Italy's two main immigration legislations which will be discussed in Section II.

This discussion of the national policy making apparatus in Italy is significant because it demonstrates that integration failures were not necessarily a rejection of EU recommendations, but rather a reflection of the institutional difficulties that the country was experiencing. Indeed, this is necessary to take into account when attempting to assess the Europeanization of the policy area.

Section II

5.4 Immigration and Asylum: Sender to Receiver

Up until relatively recently, Italy was a country of emigration; however, the last 20 years have evidenced significant changes with an unpredictable and often unmanageable flow of record numbers of migrants (Bia, 2004 p.10; Kosic & Triandafyllidou, 2007 p. 188). Italy's negative

migration numbers began an about face in the 1970s with the tightening up of the borders of western European states following the 1973 oil crisis and the economic difficulties that accompanied it, diverting migration flows towards southern Europe; in fact, Italy became the “back door to the rest of Europe as an alternative to northern destinations of immigrants” (Veikou & Triandafyllidou, 2001 p. 3). A large number of those migrants were undocumented and worked in the informal labour market. Veikou & Triandafyllidou (2001) note Italy’s particularly large underground economy and rigid segmentation of the labour market as significantly responsible for migrant employment in low wage, short-term jobs in the informal economy, a situation which has functioned to inhibit effective policy design (p. 4).

Despite its unexpected and significant immigration flows, Italy’s first comprehensive immigration law did not appear until 1986, before which there were significant gaps in legislation. Indeed, the lack of an organic asylum policy was reflective of Italy’s emigrant past. The major policy reforms enacted in Italy are indicative of a gradual but unmistakable move towards securitization and reflect the European trend away from humanitarian perspectives and more closely associated with strict control of borders. Veikou & Triandafyllidou (2001) highlight the difference by noting how “the western European type of economic argumentation bypasses a normative discourse linked to notions of human rights for instance, and justifies discrimination de-legitimizing the position of immigrants in the host society through ethnic and cultural arguments” (p. 6). Indeed, this reflects the dominant move—perhaps led by the privileged position of Schengen dictated policies in the realm of border control, immigration and asylum, coupled with the member states’ collective inability to reach agreement on anything more than the lowest common denominator.

5.4.1 Early Policy Area Development and EC/Schengen Relationship

*Italian governments had adopted a stop-and-contain attitude towards immigration, a price Italy had to pay for its European membership. The main efforts of the Italian government were thus concentrated on improving external controls.*⁴⁵

Italy's unforeseen arrival of increasing numbers of immigrants occurred for a number of reasons coupled with the previously mentioned economic crisis. Unlike many European states, it had only a very brief colonial past thus it had somewhat of a positive image. Many of these economic migrants and asylum seekers were undocumented thus under the radar, and increasingly from Africa, Asia as well as Eastern Europe (Veikou & Triandafyllidou, 2001 p.3). Despite this informality, the consequences of the large volume of unexpected migrants soon became apparent, generating what was largely interpreted as a social emergency, prompting discussions around the need for better social infrastructure to address housing, cultural and employment. However, the unregistered nature of informal migration made it difficult to plan and operate functional social policies to address these unforeseen circumstances. As well, while the country already had a history of a large informal economy, this massive influx of cheap labour exacerbated the situation and, coupled with the "rigid segmentation of the labour market", functioned to perpetuate the immigrant cycle of employment in temporary, low-paying jobs in the informal market (Veikou & Triandafyllidou, 2001 p 4). Once it did join, Italy did not function as a part of Schengen until 1998, as there were doubts about its capacity to meet "Schengen obligations" (Geddes, 2003 p. 157).

5.5 Italy's Immigration and Asylum Policies

The following section highlights and explains the development of Italy's immigration and asylum laws within time periods reflecting EU policy changes. By explaining the changes that occurred to Italian policy it will highlight Europeanization as uncovered by Knill and

⁴⁵ González-Enríquez & Triandafyllidou, 2009 p. 115.

Lehnhuhm's mechanisms. It should also be noted that immigration and asylum policies developed along separate and distinct streams with asylum policy all but non-existent but for EU prescriptions, which will be discussed later in this chapter.

5.6 Period I—1984 Intergovernmental to 1992 Post-Maastricht

5.6.1 39/1990 Martelli Law

Pastore notes that the “fundamental normative and institutional features of the Italian regulation system were only defined relatively late, during the 1990s” (2008 p. 105). Indeed, before Italy introduced the 1990 Martelli law (39/1990), the country had no immigration policy of which to speak.⁴⁶ While the Martelli law introduced some liberal reforms, such as withdrawing the previous qualification that the country had towards the Geneva Convention which limited its application to people of European descent, it brought in some not so liberal reforms as well.⁴⁷ It began the restriction of entrance to the country and the enhancing of border control, for instance, by making visas necessary for citizens of sending countries; border control was hence increased and expulsions were used as a means by which to offset irregular migration.

Although the EU had no competence here per se, through Martelli the entrance to both the country and the EU became more restricted. The Schengen Agreement was signed in 1985, anticipating “the provision on free movement and was an attempt by five Member States to achieve progress outside the EU framework” (Schengen Agreement/Convention, n/d). The Schengen Convention was signed on 27 November 1990 and was ratified September 1993 but

⁴⁶ ‘Visas, asylum, immigration and other policies related to free movement of persons’ was added to the Treaty of Amsterdam under Title IV and provides the legal basis for Schengen. The Treaty of Lisbon amends this significantly renaming it to the Area of Freedom, Security and Justice, grouping it into general provisions, policies on border checks, asylum and immigration, judicial cooperation in civil matters, judicial cooperation in criminal matters, and police cooperation.

⁴⁷ In order to meet the Schengen guidelines, states are inspected, must meet standards in regard to police cooperation, borders, visas and air borders.

was not fully operational in Italy until 1998. Thus Schengen negotiations were ongoing at the same time as the 1990 Martelli law was being formed. Pastore (2008) notes that “Italian migration legislation was profoundly shaped by Schengen conditionality” (p. 106). Indeed, many argue that “the rationale behind Act 39/90 was part of the Schengen process, as a way to both implement some requirements for membership and to reassure ‘old’ immigration countries like Germany or the Netherlands that Italy was indeed able to prevent the entry of unwanted immigrants into the Schengen space” (Finotelli & Sciortino, 2009 p. 123).⁴⁸

While Schengen was outside of the EU domain as such until it became part of the *acquis communautaire* with the 1999 Treaty of Amsterdam, it will be argued that although Schengen progressed outside of the EU framework it nevertheless personified a crucial component of the EU’s plan for the eventual deconstruction of internal borders.⁴⁹ In fact, as noted in the chapter on immigration and asylum, the securitization of external borders was central to early JHA policy development. In fact, Schengen is regarded as the *de facto* Italian/European border in the contemporary context, indicated by Italy’s recent letter to European Council requesting changes to the policy (Euractiv.com. April 27, 2011).

In order to do comply with Schengen regulations, it was necessary for border controls to tighten.⁵⁰ Although unable to confirm this with documentation, as Schengen functioned outside of the EU structure at the time, the contradiction between Italy’s practices and the need for cheap migrant labour on one hand and the tightening of the borders on the other is perhaps indicative of

⁴⁸ Also Pastore, 2008.

⁴⁹ Visas, asylum, immigration and other policies related to free movement of persons’ was added to the Treaty of Amsterdam under Title IV and provides the legal basis for Schengen. The Treaty of Lisbon amends this significantly renaming it to the Area of Freedom, Security and Justice, grouping it into general provisions, policies on border checks, asylum and immigration, judicial cooperation in civil matters, judicial cooperation in criminal matters, and police cooperation.

⁵⁰ In order to meet the Schengen guidelines, states are inspected, must meet standards in regard to police cooperation, borders, visas and air borders.

this trend towards Schengen and via Amsterdam, EU dominance in regard to borders. Indeed, Pastore (2008) argues that Italy's immigration policies "were drafted under severe pressure by international political constraints generated in the Schengen intergovernmental environment" (p. 106). Additionally, interviews with Italian officials conducted by Zincone and Di Gregorio (2002) in regard to this period also suggest that this is the case. Indeed the dates of Italy's new laws suggest that these were not coincidental events; 39/1990 was introduced early in the year and Italy signed Schengen at the end of the same year. This demonstrates Knill and Lehnkuhl's strongest categorization of Europeanization, that of *institutional compliance*, whereby EU policies are "very prescriptive and demand that Member States adopt specified measures in order to comply with EU requirements" (2002 p. 257). Policies in this category constrain institutional discretion and limit domestic interpretations when it comes to transposition of EU policies into domestic frameworks. The first step in assessing this category requires an examination of institutional compatibility and questions the ability of the country to adapt; this refers back to discussions of 'fit' as noted in chapter two. Because Italy had virtually no immigration laws and no organic policy of which to speak, there would be little conflict with existing institutions, however there was difficulty with institutional *capacity*, which was discussed earlier. Because there was no existing organic law it was more a matter of 1) creating laws that spoke to the requirements and 2) creating the institutional framework to carry that out, which Italy did, although it was late as noted earlier. The second asks "to what extent do domestic actors who support regulatory change have sufficient powers and resources to ensure that their interests prevail?" (p. 259). In this case the government had the capacity to enact changes, and was indeed interested in joining the 'Schengen club'.

5.7 Period II—1997 Amsterdam to 2007 Pre-Lisbon

With the 1997 Amsterdam Treaty, competence in immigration and asylum was transferred to the first pillar and Community method of policy making, albeit after a five-year transition period.

Some policy areas, such as asylum and borders, were more amenable to the Community method than others as they had already been framed and in many cases implemented by Dublin I (which had introduced the same year) and Schengen. This second era was characterized by the switch from intergovernmentalism to semi-Community policymaking. At the time, the European Union was also beginning development of the AFSJ as articulated in the treaty and further elaborated after Tampere in 1999.

5.7.1 40/1998 Turco-Napolitano Law

The Turco-Napolitano law, introduced by the Prodi government in 1998, brought with it a mix of rights and restrictions and featured “interesting combinations of national considerations and Western European systemic changes” representative of the “general framework of the European Union discourse on migration a critical situation” (Veikou & Triandafyllidou, 200 p. 6). It also formed the basis for the country’s current admission system, based on quotas (Pastore, 2008 p. 106) and is considered the country’s first organic law on migration. It introduced ad hoc quotas intended to be annually adjusted (*decreto flussi*), regularizations, and detention centres (*centri di permanenza temporanea e assistenza*) or CPTAs, as well as providing the police and *Questori* with the power to return migrants to their country of origin. Alternatively it also granted rights (based on stable long term status), education and initiated the stay card (*carta di soggiorno*) (Pastore, 2008 p. 106). However, as Veikou & Triandafyllidou (2001) note, at the time there was a significant gap between policy and outcome, structural ambiguity and inconsistency (p. 19-20).

The Turco-Napolitano Act also fulfills the requirements of Knill and Lehnkuhl's first and strongest category, of *institutional compliance* in much the same way as the Martelli Law did; was introduced during the time period when Italy (and Austria) were attempting to convince Schengen members that they were functionally ready and able. Schengen had been incorporated into the *acquis* with the Treaty of Amsterdam, thus compliance was (eventually) mandatory, even more so than when Italy joined Schengen *outside* the EU framework. This mechanism acts as a constraint towards institutional discretion, thus it limits domestic interpretation when it comes to transposition of policies into domestic laws and function to substitute national regulations. However, in contrast the Bossi-Fini legislation marked a significant turn in Italy's immigration policies incorporating highly securitized and sometimes controversial practices.

5.7.2. 189/2002 Bossi-Fini Law

With the new Berlusconi government in May of 2001 "immigration was immediately identified as a priority for the...government, with a draft immigration law sent to the Council of Ministers on 2 November 2001" (Geddes, 2008 p. 359). The law was created in a different fashion than Turco-Napolitano and "was basically a combination of measures proposed separately...with no consultation at EU level or with local and regional actors. Also excluded from consultation was Foreign Minister Ruggiero, despite the potential foreign policy implications of these measures" (p. 360). The proposed law was approved by the cabinet on 14 September 2001. Immigration regulations became harsher in general, instituting a doubling of detention terms, making family reunification more difficult, limiting housing, removing the sponsorship mechanism, and introducing 'illegal' entry. Indeed, during this era policies reflected the "institutional production of illegality" in regard to irregular migration (Cillo, 2007 p. 9). Residence was linked to having a job with a contract, a residence permit and a residence, with the employer guaranteeing housing

and possible repatriation. It encouraged temporary work, which was linked to the seasonal demands for employees in certain sectors. The law also enhanced the role of detention centres and criminalized migration for those who were repatriated then returned (Pastore, 2008 p110). However, as Geddes (2008) concludes, “[w]hile Bossi–Fini did embody a notably illiberal approach to migration with its attempt to create guest worker-style recruitment and the framing of immigrant settlement as corrosive of social order, there was a huge increase in the legally resident immigrant population. The discovery of this gap between rhetoric and reality is nothing new” (p. 363). Italy’s attitude towards the EU at this time can best be described as disinterested. Indeed, the Italian presidency led by Berlusconi was viewed as overall unproductive and appeared to indicate a general lack of regard for the EU (Italy's Chaos-prone Presidency, 2003).

In this case Knill and Lehnkuhl’s second categorization of Europeanization of the *alteration of domestic opportunity structures* is useful in that directives were issued that, while offering policy options they were nevertheless non-compulsory, but still absorbed into Italian law. In this case the mechanism of Europeanization that assesses the “extent to which European policies have altered the strategic position of domestic actors” would be the most relevant. Like the strongest mechanism, this too requires two steps. In this model an analysis of the actor coalitions is necessary, and if one actor coalition is significantly more powerful than the other, it will dominate and the potential impact will be much *lower* (2002 p. 261).⁵¹ Here the framework helped explain the lack of Europeanization. In Italy’s case the Berlusconi government was in power since the 2001 election win and this represented a significantly uneven interest constellation. In this case the impact of Europeanization was not enough to make a significant

⁵¹ Knill and Lehnkuhl do not specifically indicate that the coalition should be against EU recommended changes, however, they are referring to how Europeanization would *not* occur, thus it is assumed that the issues contradict domestic desires.

difference nor was it enough to equalize the power division enough to overcome the imbalance. During this period of time a significant number of directives were issued and while a number of them have been adopted, as discussed above, many missed the deadline and others were transposed but did not always result in being fully institutionalized; that is action was not taken or was slow. While Knill and Lehnkuhl note that in this mechanism that “given the wide discretion for domestic adjustment in the absence of a European model which must be complied with, national changes might take various forms that need not necessarily follow the regulatory objectives underlying European legislation” (p. 261), it is difficult to determine how much of the delay, etc. was due to lack of institutional capacity.

Since Bossi-Fini and some of the institutional reform vis-à-vis the much improved relationship between the Italian parliament and EU actors, progress has been better in regard to adopting some European norms into Italian legislation. Council Directive 2004/114/EC on the ‘conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service’ was incorporated into 286/1998 (European Council, 2004) as was 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research (European Council, 2005). In 2005 new legislation was adopted in Italy in order to transpose Council Directive 2001/40/EC on mutual recognition of expulsion into Italian law. Although the law had missed the deadline of December 2002 thus was three years late it nonetheless did reflect the directive (European Council, 2001). Indeed, delays in the transposition of legislation are in many instances the norm in regard to immigration and asylum policies in Italy. The period in question also evidenced a significant government change from the Prodi era with the Berlusconi election win in 2001.

5.8 Period III—2007 to Present—Lisbon and Beyond—Community Method

The Treaty of Lisbon signed in 2007 and entered into force in 2009 marked another significant juncture in regard to immigration and asylum policy with the disassembling of the pillar system and the addition of the Charter. EU proposals during this period were still slow in moving into Italian legislation, but have been progressing. In 2007 Council Directive 2003/86/EC on family reunification was transposed into Italian law by amending decree 286/1998 with 5/2007 (albeit the law was a year after the transposition deadline (2003/86/EC: art. 3(2)).⁵² The adopted interpretation was much more liberal than what had previously existed within the Italian law (Boca, 2009 p.24). Directive 2003/109/EC (Decree 3/2007) concerning the status of third country nationals long-term residents, and Directive 2005/36/EC (Decree No 206/2007) on credential recognition were also transposed in 2007. These demonstrate Knill and Lehmkuhl's weakest categorization, that of *framing* which produces Europeanization by *altering domestic beliefs and expectations of domestic actors*. This mechanism is usually found in policies which are intended to lay the foundation for future—more demanding—policies of negative or positive integration and are “designed to change the domestic political climate by stimulating and strengthening the overall support for broader European objectives” (p. 259).

In regard to 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals, better known as the return directive (European Council/Parliament, 2005) the deadline for transposing the directive was December 2010; as of the most recent European Migration Network report (January, 2011), no movement forward has been made (European Migration Network, 2010). Thus without compliance this indicates rejection of the EU norm on the return directive. During 2008, no additional EU Directives were

⁵² Determining “conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States” (2003/86/EC:art.1).

incorporated into Italy's immigration and asylum body of legislation (EMN Italy, 2009). The so-called European Blue Card (Directive 2009/50/CE), and employer sanctions (Directive 2009/52/CE, 2009) and domestic measures which would comply with these are part of draft bill termed 'regulations to fulfill obligations for Italy being part of the European Communities' otherwise known as Communitarian Law 2010 and as of December 2010 were still being debated in parliament (EMN, 2010 p. 20). This does indicate that there is movement on initiatives—the ones with which Italy has little difficulty—however the return directive in particular appears to be problematic.

5.9 Asylum

This section on Italy will include a separate asylum section, which will not appear in the chapter in Spain, which had a particular perspective on issues associated with asylum and will be incorporated into a different discussion. In regard to asylum, Italy's policies have been left wanting. The presidency conclusion to separate immigration and asylum as separate and distinct policy areas indicates that states should also treat them as such, however before 2005/85/EC Italy had no organic asylum policy to speak of (Vienna European Council, 2008).⁵³ In fact, up until 2005, Italy "lacked any national legislation on asylum" (UNHCR, 2005; Pastore, 2008 p. 106). The country's Constitution acknowledges asylum for any foreigner who has been denied the adequate execution of the same democratic liberties assured by the Italian Constitution in their

⁵³ When looking at the priorities ahead, different considerations must apply to immigration policy on the one hand and asylum policy on the other. Future work in these areas will essentially be determined by the fact that the new Treaty itself contains an obligation to take action within five years in a wide range of immigration and asylum-related areas involving both substance and procedure. An impressive amount of work has already been carried out. However, the instruments adopted so far often suffer from two weaknesses: they are frequently based on 'soft law', such as resolutions or recommendations that have no legally binding effect. And they do not have adequate monitoring arrangements. The commitment in the Amsterdam Treaty to use European Community instruments in the future provides the opportunity to correct where necessary these weaknesses (Vienna European Council (11 and 12 December 1998) Presidency Conclusions).

own country however, an effective mechanism in this regard was lacking (Italian Constitution, 1948 Article 10).

This lack of policy was acknowledged by the Parliament which has taken steps to resolve the problem, albeit changes have been very slow. The 1951 Geneva Convention was included in Italian law (722/1954) with the qualification which limited its application to persons of European descent, the so-called geographic limitation. This geographic caveat was lifted early in 1990. The 1990 Martelli Law added a new procedures and mechanisms for assistance, which became operational in 1991. The 1995 Dini Decree (489/1990) would have provided the legal basis for entry and residence of non-EU citizens on an emergency basis, however it was never enacted. Except for a residence permit for ‘humanitarian reasons’ and temporary protection, Turco-Napolitano (286/98) provided little in the way of improving the asylum/refugee policy. Bossi-Fini (189/2002) included humanitarian protection in reference to persons fleeing from conflict and added a national fund for the guarantee of protection of refugees, facilitated by United Nations High Commissioner for Refugees (UNHCR), the Ministry of the Interior and the Network of Italian Municipalities, and was intended for work towards integration of persons already with refugee status, as well as reception of new applicants (European Migration Network, 2010). While these policies have moved in a forward direction, momentum has been slow. However, after 2003 the number of EU directives on asylum increased, and many have been incorporated into Italian law. They include 2003/9/EC indicating minimum standards for the reception of asylum seekers was into transposed into 140/2005; 2004/83/EC into 2005/85 (then 251/2007 on facilitating the change).⁵⁴ In 2008, 25/2008 transposed 2005/85/EC on

⁵⁴ 2004/83/EC was on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Council Directive 2004/83/EC).

minimum standards for the member states' procedures for granting and withdrawing refugee status—reforms, which Boca (2009) argues, have considerably contributed to the development of a more organic asylum framework (p. 7).

The Europeanization of Italy's asylum policy falls under the heading of *framing domestic beliefs*. Italy had no asylum policy to reference, and what legislation it has now is to a large extent due to EU directives. Work towards their incorporation and the creation of an organic policy in particular, was supported domestically by international, European and Italian NGOs and interest groups that promoted a more humanitarian perspective to both immigration and asylum policies. In this case “the extent to which European framing can potentially help to establish a domestic reform consensus is basically dependent on the initial constellation of interests and opportunity structures”. Policies that fall into this category are “designed to change the domestic political climate by stimulating and strengthening the overall support for broader European objectives” (p. 259). Under the second conditions of this category, European beliefs *change the outcome as well as reform process* and certainly this policy has been codified and institutionalized (EMN Italy 2009). In fact, European directives functioned as playing “a decisive role in bringing about a consensus on national reforms” and were “dependent on the initial constellation of interests and opportunity structures” (Knill and Lehnkuhl, 2002 p. 263). In this case, European beliefs offer a point of convergence in which they may offer solutions for domestic developments. Thus these circumstances, with European and domestic beliefs in line with the domestic actor coalition, may function to shape outcomes by changing “secondary aspects” within national belief systems (Lavenex, 1999; Sabatier, 1998).

5.10 Regularizations—An Exception to the Rule?

Discussion on immigration policies in Italy cannot take place without reference to the practice of enacting regularizations, which have periodically been used as tools of sorts with which governments attempt to address the consequences of irregular migration, and Italy was no exception. The country realized the importance—indeed necessity—of labour inflows and, as discussed previously, initiated a quota system in an attempt to manage the numbers of migrants entering the country; however it fell short of meeting the demand. In fact, its initiative did not “fit the Italian policy-making and implementation infrastructure. The difficulties in programming the new entries, weak internal controls as well as the attractiveness of the informal economy and the ‘expansionist’ outcomes of a common visa policy favoured the increase of irregular migration”. The outcome was that the regularizations became a way to balance the state/market balance and at the same time functioned as a way in which to establish some form of control, albeit falling significantly short of what would be considered ideal (González-Enríquez & Triandafyllidou, 2009 p. 115).⁵⁵

The 2001 Commission issued a Communication on illegal immigration noting that regularizations “should not be used as measures against irregular immigration” (COM(2001)672:6). Clearly, regularizations are clearly contrary to EU recommendations, and while the directive in question was not legally binding, it nevertheless indicates a policy direction; as such regularizations after the articulation of this agreement indicates a non-

⁵⁵ Indeed, Finotelli & Sciortino (2008) argue that “the informal economy is part of a civic culture which is very tolerant towards irregular employment. For these reasons, struggling effectively against this phenomenon would also mean interfering in the complicated relationship between State and Society” (p. 6). Persistence of irregular migration is “linked to structural features of the Italian economy and society” (Veikou & Triandafyllidou, 2001 p. 9). Pastore (2008) argues that large numbers of irregular immigrant populations are not reason enough for most countries to enact mass legalizations, however, “deep cultural differences in the conception of the rule of law, the different attitudes of national trade unions towards undocumented foreign labour and different roles played by non-governmental actors (including churches) in migration policymaking” account for the different attitudes towards regularizations in Italy and other southern European countries (p. 116).

European response to immigration issues, and in this case does not show evidence of Europeanization. How the regularizations fit with the Europeanization argument presented in this thesis, is that they indicate that the policy choices that Italy made in deference to European norms did not address the immigration and labour requirements of the country. In other words, regularizations can be viewed as a consequence of Italy adopting European standards not reflective of the country's needs.

Section III

5.11 Chapter Summary

This chapter has traced the evolution of Italy's immigration and asylum policies while at the same time providing some context in regard to some of the political and institutional circumstances that contributed to the adoption of policies. In the early days of membership Italy's pro-European rhetoric in regard to deeper integration did not always play out on the ground, and immigration and asylum policy was no different. Indeed, a shortage of experience in immigration in addition to insufficient legal capacity and overburdened public administration have combined to restrict the development of the type of policies the country needed in response to its escalating immigration numbers. Over and above its institutional problems, the country's "transformation into an immigration country was embedded in a deep political crisis that favoured the birth of quite successful populist parties" (Finotelli & Sciortino p. 120). Indeed, this was accompanied by a harsher interpretation of policy choices in the Bossi-Fini era in which a "strong anti-immigrant stance...contributed to a particularly restrictive implementation of the Schengen/EU acquis" (Pastore, 2008 p. 106).

While attempting to manage the growing number of migrants and at the same time as addressing the policy failures of the past, the country was also forced, via Schengen in the intergovernmental era, (and later by Amsterdam and Lisbon), to redirect policies closer to European norms. This is evidenced by the Janus-faced nature of the Martelli law. The incorporation of Schengen during the early Community period is an example of Knill and Lehnkuhl's strongest categorization of Europeanization in which the requirement for domestic adaptation to EU policy takes place. Indeed, this is confirmed in the second period when the Agreement was subsumed by the Amsterdam Treaty to which Italy was a signatory.

Thus, early in second era, that of the semi-Community policymaking, there was at first a continuation of *institutional compliance*, followed by the *alteration of domestic opportunity structures*, in which the coalitional balance was strong and resistant to Europe at first, then policies which were not in contrast with government interests were gradually adopted. During the third period, that of Community decision making, Italy's transposition rate has been patchy with uncontroversial directives easier to absorb, similar to the latter part of the second era, but with directives conflicting with the current government's position proving difficult. In that regard, Knill and Lehnkuhl's mechanism *framing domestic beliefs* has been dominant in this period, as it was in regard to the development of Italy's asylum policy. Both were consistent with Knill and Lehmkuhl's argument European legislation has contributed to "altering expectations and beliefs of domestic actors in such a way as to motivate domestic institutional change" and "sufficiently altered the constellation of domestic interests and hence favoured reforms that would otherwise not have emerged" (p. 262).

Unsurprisingly regularizations were found to contradict European norms, and thus are not evidence of Europeanization. However, similar to what will be found in the analysis of Spanish policies, regularizations are indicators that the policies adopted were more reflective of European requirements than domestic needs.

Regarding institutional reform, it did take place however Pastore (2008) argues that Italy still “lacks the capacity for the proper administrative management of a quickly growing legal immigrant population” adding that Italy's "rules and procedures for the admission of economic immigrants is inadequate" (p. 121-122). While this makes it difficult to determine whether transposition of European directives, etc. is due to institutional failure or a rejection of the proposals themselves, this thesis will go with the assumption of the latter.

The following chapter will provide a case study of Spain's immigration and asylum policy development.

6.0 Chapter Six—Case Study #2: Spain

In Brussels, Spain's application has caused surprise, pleasure and a degree of perplexity. Surprise, because of the speed with which the Spanish ambassador has acted upon last week's rumours in taking today's step towards the European Economic Community.

Corriere della Sera, Feb. 10, 1962⁵⁶

This chapter will document the development of Spain's immigration and asylum policies using Knill and Lehmkuhl's analysis throughout to uncover and explain Europeanization where it appears. Like the chapter on Italy, it will do so in three sections: the first will provide some background as it relates to this case study by providing context to Spain's democratization and membership in the EU. Indeed, Spain's late democratization is not only connected to the early integration of its immigration and asylum policies, but it demonstrates the executive dominance of the state which will contribute to the theoretical argument. The second section will look at the corresponding policy changes between Spain and the EU, however because this thesis is comparative in nature, and not an analysis of each of Spain's policy changes, it will be restricted to some of the key changes in order to facilitate comparison. This second section will be subdivided into three separate periods reflecting the intergovernmental (1984 to post-Maastricht), early Community (Amsterdam 1997 to pre-Lisbon) and fully communitarized (Lisbon and beyond) phases of EU immigration and asylum policy decision-making. This will be followed by a summary of the findings and will conclude that in the absence of national policy Spain's immigration and asylum policy field began to Europeanize early in order to meet Schengen/EU requirements, an example of the most explicit form of Europeanization, that of *institutional compliance*. In addition, Spanish presidential actors have, on occasion, played a significant role in the transfer of domestic policy to the European level, thus manipulating the European

⁵⁶ Stefani, U. (1962). Anche la Spagna ha chiesto l'associazione al M.E.C., in *Corriere della Sera*. 10.02.1962, No 35; anno 87. p. 6. Translated by the CVCE.

immigration and asylum policy field in order to meet their own needs or as Closa and Heywood (2004) define it, the “Europeanization of Spanish problems” (p. 233). In fact, EU membership has also provided the government a way in which to justify their policy choices by blaming ‘EU obligations’—critiqued in EU circles as running ‘to Europe’; indeed, this was evidenced in Prime Minister González’s practice of framing and legitimating policy by highlighting Spain’s obligations to Europe, as did Aznar but in a much more integrative fashion, as this chapter will discuss (p. 44). This will be used to demonstrate a theoretical hybrid as has occurred between Knill and Lehmkuhl’s second and third mechanisms of Europeanization, a combination of *alteration of domestic opportunity structures* by shifting the division of power and resources among domestic actors and *framing domestic beliefs* where European beliefs modified the constellations of domestic interest enough to effect changes that would otherwise not have occurred.

Section I

6.1 Democratization

Spain’s entry into the EU came more than thirty years after Italy’s, as part of the EU’s third enlargement along with Portugal. Under General Francisco Franco’s dictatorship, and in part as a consequence of its non-membership in the economic union formed by its European neighbours, the country was increasingly marginalized, both politically and economically (Closa & Heywood, 2004 p. 13). However, while there were numerous economic motivations for membership, they were secondary to the political motivations (p.15). According to Closa and Heywood, two perspectives permeated Spanish society: that of Spanish ‘exceptionalism’, or alternately, the belief that “Spain itself was the ‘problem’ and Europe the solution” (p. 7). In fact, it was prominent Spanish intellectual Joaquín Costa that coined the term ‘Europeanization’ at the close of the 18th century in reference to the “sense of incorporating liberal, democratic and

progressive values instead of falling back on Spanish tradition” (p. 7).⁵⁷ In regard to forming a relationship with Spain and with its Franco, Europe was also of two minds; while some felt it was absolutely essential for the state to democratize first, others felt that forms of inclusion would lead to eventual democratization. In the late 1950s *Opus Dei* ‘technocrats’ attempted to transform the country’s economic system; indeed, “many technocrats who had risen to power during the late Franco period had begun to regard the authoritarian regime as an impediment to modernization and joined with those acting outside the state bureaucracy in demanding the country’s return to democracy” (Encarnación, 2001 p. 42).⁵⁸ After Franco’s death in 1975, swift movement was made towards democratization and reforming Spain’s malfunctioning state and economic apparatus, part of which was the 1977 bid for European membership; in fact, “in a remarkably short space of time, the transition brought about the establishment of internationally recognized democratic institutions and standards” (Closa & Heywood, 2004 p. 13). However, the combination of the opposite views still remained and evolved to define Spain’s attitude towards Europe; while Spanish technocrats were guided by the EC bureaucracy in regard to which policies to pursue, they nevertheless “pursued their own logic using the existing frameworks” (Chari & Heywood, 2008 p. 179). However, Spain’s so-called model transition was not smooth, and during constitutional negotiations “failure to secure a broad-based consensus on basic constitutional issues could lead to rejection of the new regime by significant groups, to polarization of both elite and mass opinions over latent and potentially explosive cleavages, and even perhaps to the collapse of the regime” (Gunther et al, 1987 p. 113). As a result, when there

⁵⁷ Costa, Joaquín. (1900), *Reconstitución y europeización de España* (Reconstitution and Europeanization of Spain).

⁵⁸ It was these ‘institutional dynamics’ that existed within Spain’s bureaucracy before democratization and through successive political administrations that later worked with EU administration during the accession process.

⁵⁹ *Opus Dei* (a Catholic order) ‘technocrats’ assumed leading governmental roles and attempted to move the Spanish economy out of its policy of economic autarky towards modernization, but had significant obstacles to overcome including state-owned industries, declining industries, high unemployment, lack of effective social policies, and foreign led industrialization/technology (Closa & Heywood, 2004 p. 9).

was consensus on key issues, institutionalization was strong and continuous, but in the areas in which agreement was not reached, institutionalization is still weak decades later (Field & Hamann, 2008 p.7; Ferguson, 2010 p. 2). In regard to policies on immigration and asylum, they were virtually non-existent, thus indicating the need for legislation due to changing migration patterns in Spain and also providing opportunities for European norms to shape the policy area. This section is important to the argument as it demonstrates Spain's ambitions towards 'Europeanization' as well as the institutional difficulties it faced in regard to its democratic transition; these two factors combined as well as the membership and executive dominance sections below lay the groundwork for the Europeanization of Spanish immigration and asylum policies.

6.2 Membership

Membership was seen as very important to Spain; however its 1962 request for membership to the EEC by the Franco regime was not met enthusiastically and in June 1970 only a Preferential Trade Agreement was reached unlike other states where more significant arrangements were concluded. Franco died in 1975, Spain re-applied July 28, 1977, and accession negotiations lasted an unprecedented period of time, from 1979 until 1985. González was elected in 1986 and for reasons both economic and political, "the prime foreign policy objective of the first González government was accession to the EEC" (Moreno Juste & Sío-López, n/d) although membership was in fact supported by all parties (Closa and Heywood, 2004 p. 41; Moreno Juste, 1998).

Within Spain there was widespread acceptance of the prospect of membership and broad social and political support, as membership was perceived to consolidate Spain's democratic transition (Basabe Lloréns, 2002). Since then, Spain has continually attempted to cast itself as a key player in European affairs, rather than on the periphery of the EU (Moreno Juste & Sío-López, n/d).

Thus European membership was seen by the vast majority of society and political actors as key, not only to Spain's political and economic future, but to its desired role as a core European states; as such the country entered into its early membership years keen to adapt to European standards.

6.3 Executive Dominance

Executive dominance in Spain is, in part, a result of an abundance of political resources and the availability of strong legislative tools and has led to a disproportionate amount of power in the hands of the Spanish executive to enact change along party lines (Ajenjo & Molina, 2008; Teruel, 2009). Indeed, the dominance of political parties in Spain is a “reflection of the weak institutionalisation of territorial relations and intergovernmental conflict” that occurred during the democratization process (Keating and Wilson, 2009 p. 536). Some argue that EU membership has even served to augment Spain's presidential policy style (Cienfuegos, 2001; Closa & Heywood, 2004 p. 59; Heywood & Molina, 2000; Molina, 2001). As well, the government has constitutionally-allocated responsibility over foreign policy (Closa & Heywood, 2004 p. 60). Indeed, during periods of majority government this is particularly evident as demonstrated by González's ‘hegemonic project’ and Aznar's actions in regard to asylum the third pillar (Closa & Heywood, 2004 p. 44)⁶⁰. As well, during Nice negotiations, the “traditional Spanish negotiation structures and institutional mechanisms...were overshadowed by the role directly played by the cabinet of Prime Minister” (Basabe Lloréns, 2006 p. 264). Thus the country has been characterized by immature policy areas that provided opportunities for European policy integration; strong executives, particularly in majority government situations; and an under-developed democracy limiting dissenting voices, which functioned to further

⁶⁰ During the González era the socio-economic restructuring that took place with during the democratic transition were legitimized by referencing the requirements for European membership.

strengthen the role of the executive. These combined provided openings for EU and Spanish immigration interests to intersect.

Section II

6.4 Immigration and Asylum: Sender to Receiver

Spain, also a latecomer to immigration and traditionally a sending country, became a receiving country during the 1980s; indeed, the nation's foreign resident population increased by ten times in the period from 1985 to 2005 (Fauser, 2007p 136). This about face was produced by a combination of international, European and domestic changes, a large part of which was Spain's EC membership. Indeed, by the mid-1980s the country was also experiencing significant immigration flows which were, "attracted by the beginnings of the economic boom that coincided with Spain's entry into the European Community" (Cornelius, 2004 p. 387). However, the reversal of the trend began before Spanish membership with the 1973 oil and subsequent economic crisis the result of which was significant numbers of Spanish 'guest workers' in northern European countries returning to Spain between 1970 and 1986 (Fuentes, 2000 p. 8). In addition, by the late 1970s a growing number of immigrants from Africa, Asia and Latin America began to flock to the country instead of the customary northern European locations, whose borders had tightened in response to rising unemployment, in effect reversing Spain's emigrant history and making it a net recipient of migration (Fuentes, 2001 p. 122). Thus due to its political and economic transitions combined with its recent membership in the EU and the unavailability of many traditional migration destinations, Spain had become an appealing alternative to economic migrants from developing countries (Fuentes, 2001 p. 119).

Naturally, the recent transition from dictatorship to democracy and the country's former emigrant past also meant that it not only had no immigration and asylum policy framework to

speak of, but that this was a situation that quickly needed to be addressed. In fact, this inexperience along with waves of immigration flows, the requirement for cheap labour and the different ideological perspectives of subsequent, strong executives, make for a piecemeal and sometimes reactionary policies depending on the government in power. What became consistent however, were increasing efforts of successive Spanish governments' to integrate itself with the EU.

6.4.1 Early Policy Area Development and EC/Schengen Relationship

As noted previously, prior to EC membership there had been no efforts to create a 'comprehensive' immigration and asylum policy and Spain's first policies were formed in 1985 as a requirement for entry into Schengen generally, and the EC particularly (Cornelius, 2004 p. 404; Freeman, 1995 p. 895).

Fuentes (2000) argues that in the absence of its own immigration policy, in the first two decades of membership Spain relied heavily on European policies resulting in early integration of the policy area and "very restrictive policies that did not correspond to the situation of migratory processes in Spain" (p. 1). Bazo (1998) notes that Spain's new EU membership and in particular its function as the gateway to Europe via the Schengen area created obligations on the part of Spain and required changes to national legislation. She points out that the reasons for the changes in domestic policy were found "*not* in the situation of the country itself, but in the demands placed upon Spain by the States of the European Union with more serious immigration problems" (p. 217). Indeed, Fuentes (2000) suggests that with the implementation of Schengen "restrictive tendencies took the shape of a strong emphasis on issues of border control (common

visa policies, co-ordination of police forces, exchange of computerised personal data)” but also advanced the concept of ‘illegal immigration’ (p. 4).⁶¹

6.5 Spain’s Immigration and Asylum Policies

This section will determine and explain the presence of Europeanization by examining Spanish activities at both the domestic and the EU level, which includes changes to Spain’s immigration and asylum policies and the country’s increasing influence on EU policies and norms.^{62 63}

6.6 Period I—1984 Intergovernmental to 1992 Post-Maastricht

As discussed in the chapter on development of the policies around immigration and asylum, the field was essentially intergovernmental in nature up until the Treaty of Amsterdam, when that portion of the third pillar was transferred to the Community method, albeit over a five-year transition period.

6.6.1 Asylum Act—5/1984

In contrast to Italy, asylum and immigration policy in Spain developed along two separate streams with some overlap and also unlike Italy, Spain’s asylum laws began before its immigration policy. In 1984 the Spanish government introduced the Asylum Act (5/1984) which combined the Geneva Convention plus elements of the Spanish Constitution and allowed claimants to apply from within or outside the country.

⁶¹ In regard to visas, all EU states within Schengen are subject to the same visa stipulations (Regulation, 2009).

⁶² As of 2009, policies are legally based in Law 12/2009 or the Asylum Law; Organic Law 2/2009 or the Aliens Law, both of which have been amended a number of times, as well as the Constitution, and a quantity of Royal Decrees.

⁶³ It is easy to understand how “countries with long geographically accessible ‘external’ borders (notably in Southern and Eastern Europe) have a much greater preoccupation with border management than those Schengen countries whose only remaining external borders within the EU are at international airports and sea ports” (IOM, 2010 p. 8).

6.6.2 Organic Law 7/1985

In July of 1985 Spain's first law on immigration was created—the 'Law on the Rights and Freedoms of Foreigners' or *Ley de Extranjería*.⁶⁴ Incorporating the policing aspects of migration, the law was quickly passed with very little parliamentary debate due to its association with EC membership, but was subsequently criticized by the left as well as migrant advocacies as overly restrictive and not nuanced to accommodate Spain's migration realities. In fact, a number of court rulings came about criticizing certain facets of the law and its application particularly expulsions, detentions, and denial of *habeas corpus* and its highly restrictive nature was diluted and softened by judicial decisions (Fuentes, 2000 p. 18). Actually, it "did not provide for aspects of migration...well aware of the immediate reality of Spain's incorporation into the European Community" (Gómez & De Carlos, 2008 p. 147). Others also argue that the strict immigration policy promoted by Spain during this early period was due to its impending membership in the EC (Cornelius, 1994; Freeman, 1995; Fuentes, 2000; Zapata-Barrero & De Witte, 2007) although May 1985 documents relating to Spain's accession refer to immigration only in the context of immigration between member states, family immigration and access to employment (European Commission, 1985a Section IV Art. 54-60).⁶⁵ As well, the Commission's June 1985 White paper (European Commission, 1985b) focused on EC access, crime prevention and labour migration, in contrast to the Spanish Alien law, which addressed regularization, border control and international crime (Fauser, 2007 p. 140; Fuentes, 2000 p. 10). In fact, the immigration law had already been debated in parliament by the time the Commission's White paper was presented to the Council June 14, 1985 in Milan, and came into force less than three weeks later. However,

⁶⁴ Spanish immigration law is referred interchangeably as the Alien Law, *Ley de Extranjería* and the 'Law on the Rights and Freedoms of Foreigners in Spain'.

⁶⁵ This reflected the concerns of some member states fearing an influx of unemployed workers during the recession that the member states were experiencing at the time (Deschamps, n/d).

while accession negotiations were underway vis-à-vis Spain's EC membership, Schengen was also being developed and negotiations were in progress between the original five Schengen countries—France, Germany and the Benelux states, which were also five of the original six EC states.⁶⁶ Indeed, in the preliminary Schengen negotiations it was recognized that the “least unfriendly country” would “find itself with the most problems” (Kapteyn, 1991 p. 378) and the new Spanish law, critiqued as overly restrictive, put strong emphasis on border control. Thus while all on seemingly separate paths, Schengen negotiations, Spanish accession, and early development towards common standards on immigration all occurred in a parallel timeframe and with most of the same actors in foreign/external affairs; this coupled with Spain's enthusiasm for membership suggests a strong link.

In January of 1986 Spain joined the EU and in June of the same year Felipe González's PSOE won the general election and would remain in power until 1996. In June of 1991 Spain joined Schengen Area voluntarily before its 1997 incorporation into the *acquis communautaire* with the Treaty of Amsterdam (European Council, 1991). However, this voluntary aspect of Spain joining Schengen should not detract from the theoretical argument that this falls under Knill and Lehmkuhl's first categorization; as noted earlier in this chapter, Spain saw membership as crucial not only to signify its democratic transition, but as vital to its political and economic future.

Indeed, not an agreement without substance, Schengen required states to meet preconditions for implementation and maintain specific criteria. Along with information sharing, common visa requirements, and agreeing to adhere to identity and document checking, Spain was obliged to ignore its own domestic agenda and subscribe to Schengen constraints. This is confirmed by the

⁶⁶ Schengen was developed outside the EC framework and between national governments, thus documentation is not readily available.

by the June 1985 Agreement on the Accession of Spain, which was later included in 1990 Schengen *acquis* stating that “The Kingdom of Spain undertakes to refrain from invoking its reservations and declarations made when ratifying the European Convention on Extradition of 13 December 1957 and the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 in so far as they are incompatible with the 1990 Convention” (Schengen Acquis, 1990). Thus, the agreement suggests that Spain had particular objections in regard to extradition, but in order to comply its protests were in essence ignored.

Spain’s entry into Schengen demonstrates Knill and Lehmkuhl’s categorization of *institutional compliance*, that of adopting very prescriptive and “specified measures” (2002 p. 257). Indeed, the 1990 *acquis* noted that it would not be brought into force “between the five Signatory States to the 1990 Convention and the Kingdom of Spain until the preconditions for implementation of the 1990 Convention have been fulfilled in these six States and checks at the external borders are effective there” (Schengen Acquis, 1990).⁶⁷ This indicates that membership was dependent on Spain’s compliance to European norms via Schengen, thus can be used to fulfill analytical requirement for domestic adaptation to EU policy, which constrains institutional discretion and limits opportunity for domestic interpretations. These Europeanization mechanisms function as Scharpf’s (1994) positive integration which works towards correcting circumstances created by negative integration. Thus, as noted in chapter four, the promotion of a single market and the ambition to break down internal border controls—a plan that was somewhat parallel with

⁶⁷ Decision of the Executive Committee of 27 October 1998 on the adoption of measures to fight illegal immigration (SCH/Com-ex (98) 37 def. 2); Decision of the Central Group of 27 October 1998 on the adoption of measures to fight illegal immigration (SCH/C (98) 117); Decision of the Executive Committee of 16 December 1998 on the abolition of the grey list of States whose nationals are subject to the visa requirement by certain Schengen States (SCH/Com-ex (98) 53, rev. 2); Decision of the Executive Committee of 16 December 1998 on the introduction of a harmonised form providing proof of invitation, sponsorship and accommodation (SCH/Com-ex (98) 57); Declaration of the Executive Committee of 26 June 1996 on extradition (SCH/Com-ex (96) decl. 6, rev. 2); Declaration of the Executive Committee of 18 April 1996 defining the concept of alien (SCH/Com-ex (96) decl. 5).

Schengen project—also fits that criteria. The two step process prescribed by Knill and Lehmkuhl in this case, involves first looking at institutional compatibility, which—because Spain had no immigration strategy or guidelines of which to speak—left a policy void which needed to be addressed.⁶⁸ The second step requires an assessment of the extent to which “domestic actors who support regulatory change have sufficient powers and resources to ensure that their interests prevail” (p. 259). In the case of Spain this is demonstrated by the evidence presented that executive dominance prevails in regard to policy making, although in this case there was system wide political support for EU membership.

6.6.3 Act 9/1994

In February of 1994, a Communication was issued from the Commission to the Council and Parliament on immigration and asylum policies. The document notes the “particular the need for a comprehensive approach which addresses the key components of an effective immigration policy: action on migration pressure, particularly through co-operation with the main countries of would-be emigration to Europe; action on controlling immigration in order to keep it within manageable structures; action strengthen policies for legal immigrants” (European Commission, 1994). Although this was ultimately an unsuccessful attempt to advance common policies on immigration, many of the tenets were reproduced in a plan approved by the PSOE government in 1994 (Hailbronner, 1995 p. 203). They highlight the their priorities to “prevent the creation of migratory flows by co-operating to promote the social and economic development of the countries where those flows originate”, “to increase knowledge of those flows, as well as the demand for unskilled labour in the Spanish economy, with the objective of regulating

⁶⁸ In fact, Spain during this era had a “stock of undocumented foreigners living in Spain without a residence or work permit (a by-product of the previous laxity in the control of immigration)...and the lack of a public agency with experienced staff specialized on immigration” (Fuentes, 2000 p.10).

immigration effectively”, and “to facilitate the social integration of immigrant populations into the Spanish society” (Fuentes, 2000 p. 23). This case of policy adaptation demonstrates a hybrid of Knill & Lehmkuhl’s second and third mechanisms, that of *altering domestic opportunity structures* and *domestic framing*. Knill & Lehmkuhl note how these mechanisms have a hierarchical relationship and that mechanisms from one can open the window of opportunity for another. In this case, the Commission’s recommendations created an opportunity for Spain to advance policies which it then framed for domestic acceptance. Indeed, that would Spain have fabricated these quite liberal tenets without the influence and framework of the Commission’s recommendations is rather unlikely, particularly given that less than ten years earlier it was barely a functioning democracy with little policy expertise in this area of which to speak.

6.6.4 Asylum Act 9/1994

In 1994, Asylum Act 5/1984 was reformed by the significantly more restrictive Act 9/1994, which separated refugees from asylum claimants, added a pre-examination element and removed the ability for claimants to remain in Spain for six months to find work and residence.

Additionally, the tenets of Dublin I as well as the 1992 London Resolutions were integrated into the revised law.⁶⁹⁷⁰ Fauser argues that “despite the fact that these recommendations formulated at a meeting of the European Council in London 1992 were not strictly binding, they exercised great influence in many countries” (p. 141). To most EU member countries the application of (1997) Dublin I represented a shift towards restrictive policies (Fuentes, 2000 p. 4). While there was “broad political consensus” within Spain on the asylum rights issue (Closa and Heywood, 2003 p. 128) there was criticism that the Dublin Convention contravened Article 13 (on aliens,

⁶⁹ The Dublin Convention on determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities. OJ 19.08.1997. No C 254

⁷⁰ The December 1992 London Resolution on manifestly unfounded applications for asylum, determined which applications for asylum were ‘manifestly unfounded’. It also promoted accelerated procedures where applications could be rejected quickly on objective grounds.

extradition, and asylum) of the 1978 Constitution (Fauser, 2007 p. 142).⁷¹⁷² While the PSOE was in power during these changes, there was broad support for the reforms, so their application went forward with relative ease. In regard to Knill and Lehmkuhl's mechanisms this again indicates another hybrid of the second and third mechanisms, those of *domestic opportunities* and *framing* as a policy change that produces other changes or how the change to domestic opportunity structures alter the beliefs and expectations of domestic actors.

In 1995, a resolution was approved by the Council on a fast track procedure in regard to the EU's asylum process, however Spain pushed for an even faster procedure with more functionality in order to avoid the usual legal technicalities. The result of this was simplified extradition procedures avoiding previous 'sticky points' such as limitations on which country's nationals could be extradited; it also reduced the number of states which could decline requests. While the initial procedure was targeted towards third country nationals (TCNs), Spain manipulated it to address its domestic agenda, and to do so quickly (Closa & Heywood, 2003 p. 234).⁷³

In March of 1995, in regard to preferences in the lead up to the Amsterdam IGC, Spain was unwilling at first to transfer control of decision making of JHA from the ineffective intergovernmental to the Community method, particularly in respect to free movement, external borders and asylum, noting it as problematic "as long as the law of some Member States allows asylum to be granted to nationals of other Member States" (White paper, n/d). However it later came to consider communitarization, again noting its objection to asylum between member

⁷¹ The 1997 Dublin Convention worked toward the prevention of multiple asylum claims by determining which EC state would be responsible for examining asylum applications (97/C 254/01).

⁷² At the time the Constitution was written there was virtually no immigration to Spain (Gómez & De Carlos, 2008 p. 147).

⁷³ See European Council, 1995.

states. It was also one of the few member states that supported Schengen's incorporation into the *acquis* via the Treaty (European Parliament).

Spanish governments made moves towards shaping EU policies before Aznar came to power; in fact, in 1995 the Spanish Permanent Representative had "sought to reshape the Schengen agreement to better serve Spanish interests". The molding of EU policies and blaming the results on Europe continued into the millennium with the Spanish demand for Columbian visitors to first obtain visas, "provoking outrage among both Spanish and Columbian intellectuals and politicians. The Spanish government protested that it had only yielded in order to facilitate the new agreement, but opponents did not fail to notice that the new measures coincided with a hardening of Spanish immigration law" (Closa & Heywood, p. 228-30).⁷⁴

6.6.5 Area of Freedom Security and Justice

At the 1996 conference in Florence, Aznar proposed a summit on the creation of an area of freedom, security and justice (AFSJ). On a theoretical aside, while early integration theories investigated Europeanization as a top-down process, others (Menz, 2011) see it as a bottom up process as well. Putnam (1988) also highlights the 'two-level' games that states play in domestic negotiations in which they use results of an international negotiation to legitimize their policies; his theory has been much references in EU studies. Menz (2011) points to the role of two-level games noting that Europeanization is not only a top-down process, but also bottom up. Goetz and Hix note that new opportunities can occur that provide an "exit from domestic constraints, either to promote certain policies, or to veto others, or to secure information advantages" (2001, p. 10). Ette and Kreienbrink (2007) note how Germany took advantage of its 'first mover advantage' in

⁷⁴ Spanish efforts to shape EU policy is unsurprising; indeed, "countries with long geographically accessible 'external' borders (notably in Southern and Eastern Europe) have a much greater preoccupation with border management than those Schengen countries whose only remaining external borders within the EU are at international airports and sea ports" (IOM, 2010 p. 8).

regard to initiatives it led in the development of the policy area, in which it forcefully shaped European policies “uploading many of its national policies or policy proposals” (p. 4). Börzel also references Europeanization being a two-way process (2002: 193). Indeed, “[o]n immigration, the EU provides the Spanish government with a useful means of ‘blame avoidance’ and a way to legitimize Spanish domestic policies. In the fight against terrorism, meanwhile, the EU provides a wider arena and a wider range of instruments” (Closa & Heywood, 2003 p. 233). As well, Fauser (2007) notes the “interaction of top-down influences by the EU and bottom-up processes stemming from the national level as decisive to the explanation of the process of Europeanization” (p. 152). This again works with the aforementioned hybrid of Knill and Lehmkuhl’s second and third mechanisms.

At the 1996 Amsterdam IGC Carlos Westendorp, the Spanish permanent representative and chair of the Reflection Group highlighted Spain’s goals which were to increase the EU’s “capacity for taking action in response to internal and external challenges” (Closa & Heywood, 2003 p. 123).⁷⁵ Two of Spain’s three priorities during the negotiations were a “statute on ultra-peripheral regions” (Canary Islands, etc.) and elimination of asylum rights for EU citizens (p. 127). The move by Spain in suggesting, promoting and working to create the area of freedom, security and justice demonstrates another hybrid of Knill and Lehmkuhl’s *alteration of domestic opportunity structures* and *framing domestic beliefs*. The first of these two mechanism functions to determine the “extent to which European policies have altered the strategic position of domestic actors” (p. 260). In this case EU membership, the political union, and its expansion into the field of immigration and asylum—previously a domestic field—provided opportunities to change domestic opportunity structures, towards more securitized policies which would fulfill Aznar’s

⁷⁵ This arrangement was strategically manipulated by González who convinced the 1994 European Council.

domestic agenda. In this model, Knill and Lehmkuhl note how “actors can successfully challenge existing regulatory arrangements” (p. 260). Additionally, the *framing* of the issues was done in terms which would be palatable both at the EU and national level.

6.7 Period II—1997 Amsterdam to 2007 Pre-Lisbon

During the period leading up to the Amsterdam Treaty the country continued to promote its agenda on immigration and asylum in particular. In a February 19, 1997 Memorandum on the question of inadmissibility of asylum for citizens of the Union from Spanish delegation to the Intergovernmental Conference (signed by Javier Elorza, Spain’s Permanent Representative) was distributed to the Secretariat of the Conference of the Representatives of the Governments of the Member States, Brussels on February 24, 1997, the Spanish government stated their opinion on political asylum (CONF/3826/97 Memorandum, 1997).⁷⁶

6.7.1 1997/9 Treaty of Amsterdam and the Area of Freedom, Security and Justice

Spanish officials worked to advance their agenda in the Treaty of Amsterdam, currently the backbone of the immigration and asylum policy field, by defining the objective of the third pillar as “creating an area of freedom, security and justice” (Closa & Heywood, 2003 p. 235). In fact, one of the Spanish government’s primary objectives was to eliminate the right of asylum for EU citizens, thereby solving their extradition problem vis-à-vis suspected ETA terrorists gaining asylum in sympathetic EU states. Fauser (2007) also notes the increased Spanish influence at the EU level, especially in support of common policies in regard to third pillar issues, and ultimately contributed to the 1999 Tampere summit (p. 144).⁷⁷ Closa and Heywood (2004) argue that

⁷⁶ Two further documents were CONF/3880/97 Protocol on Asylum Presidency Note: political asylum within the EU for nationals of EU Member States, dated April 15, 1997 (which was a response from the presidency), and CONF/3919/97 Political Asylum dated May 21, 1997 Amendments to Protocol (which was amended the original proposal) <http://www.uni-koeln.de/wiso-fak/powi/wessels/DE/PROJEKTE/FORUP/CDDEX.HTM>.

⁷⁷ The October 1999 Tampere summit under the Finnish presidency expanded the Amsterdam Treaty’s JHA provisions and the December 1998 Action Plan on freedom, security and justice. The presidency conclusions included a framework for a common immigration and asylum policy, and focused on four key areas: partnerships

“Spanish officials defined the new third pillar EU objective included in the Treaty of Amsterdam as ‘creating a space of freedom, security and justice’, and under this bold heading they included several concrete policy proposals that aimed at shaping the third pillar to suit Spanish interests” (p. 235). Indeed, Spain has often pursued a privileged position from which to influence EU policies in its favour.

The late 1990s brought better developed policy suggestions vis-à-vis addressing irregular migration, and although still not mandatory “official policies in Spain were based on those recommendations” (Fauser, 2007 p. 139). The conclusions of the October 1999 Tampere Council were particularly instrumental and highlighted that “The European Council is determined to develop the Union as an area of freedom, security and justice by making full use of the possibilities offered by the Treaty of Amsterdam” (Tampere Summit Conclusions, 1999).

6.7.2 Organic Law 4/2000; Organic Law 8/2000

In 2000, Organic Law 4/2000 or *Ley de Extranjería* was debated and passed (BOE Official Gazette No. 10, 2000).⁷⁸ In light of the country’s restrictive first immigration laws, 4/2000 was quite liberal, offering equality with Spanish nationals in regard to civil and social rights as well as public housing, free education, and free access to health care; irregular migrants also received free health care. Indeed, during the parliamentary debate, EU policy drafts were produced, ‘substantiating’ the necessity to improve Spanish standards (Fuentes, 2000 p. 25). However, Aznar’s PP won a majority in March of 2000 and within months amended the 4/2000’s reforms to the point that the law was critiqued as in essence a new law altogether (Zapata-Barrero, 2009

with countries of origin; a common European asylum system; fair treatment of TCNs; and management of migration flows.

⁷⁸<http://translate.google.ca/translate?hl=en&sl=es&u=http://servicios.laverdad.es/servicios/especiales/leyextran/&ei=NgYjTqDjJaOOsAL-vs3MAw&sa=X&oi=translate&ct=result&resnum=3&ved=0CDwQ7gEwAg&prev=/search%3Fq%3DLey%2Bde%2BExtranjer%25C3%25ADa%26hl%3Den%26rls%3Dcom.microsoft:en-us%26prmd%3Dvns>

p. 1107) This amendment—Organic Law 8/2000—significantly altered legislation, was notably more restrictive and retracted most of the law’s previous liberal elements. In fact these norms, which were not binding elsewhere, were nevertheless integrated into Spanish policy via Alien Law (Fauser, 2007 p. 143). References were made at the time to the necessity of conforming to EU commitments via Tampere although conclusions from Tampere were non-binding. It also pointed to commitments regarding Schengen in regard to entry, visas, and length of stay (Presentation of motives, 2000).

After Aznar and the PP won a majority in 2000 there was a “gradual break away from the priorities of foreign and European policy which had previously been established; this was visible in the handling and priorities of the European agenda of the Aznar government”. One of the aspects that stood out in this was the fight against terrorism (Moreno Juste & Sío-López, n/d).⁷⁹ In 2002 Spain held the Council presidency with the articulated agenda of ‘More Europe’ (Closa & Heywood, 2003 p. 120). One of the priorities was in regard to terrorism and the Europeanization of measures, which was boosted by the global implications of the September 11 attacks (Moreno Juste & Sío-López, n/d). Also led by the PP government was a “key event in the fight against irregular migration” under the Spanish presidency led by Aznar (Zapata-Barrero, 2009 p. 1101).⁸⁰ A significant amount of attention was paid to issues of immigration and asylum as indicated by the European Parliament resolution on the conclusions of the six-month presidency at the Seville Summit (2002). In fact, nine of the thirty-two conclusions focused on the development of common policies, and included plans to link the EU’s relations with third countries to migration control. As well, proposals advanced by Spain and the UK to cut

⁷⁹ The PP was also pro-Europe, but ‘Europe of federal states’ (Closa and Heywood, 2003 p. 48).

⁸⁰ Up until December of 2006, the Presidency of the Council rotated and was held by different member states for six month terms. As of January of 2007, this switched to presidency trios and now three countries function for eighteen months together.

development aid to countries that did not cooperate on readmission were met with significant disapproval, particularly from France, Sweden and Luxembourg. Although this ended in plans to offer financial incentives and plans for joint border controls (Moreno Juste & Sío-López, n/d) and the conclusions noted that “future measures taken by the EU against a non-cooperating third country should not jeopardise development objectives” (European Parliament, 2002). This indicates that Aznar favoured highly restrictive policies which he promoted at the EU level; moreover he attempted to use ‘obligations to Europe’ to enact these policies at home.

Indeed, while it appears on the face of it that Spain continued to incorporate European initiatives on immigration and asylum, in fact Spanish actors—particularly Aznar—continually pushed Spanish interests onto the EU agenda during his two terms, promoting many of those initiatives, particularly abolition of asylum for EU citizens.⁸¹ The EU provided significantly more tools with which Spain could address their domestic terrorism concerns; indeed Spain’s motivation for Europeanization in third pillar matters is can be found in their issues with the ETA (2004 p. 233).⁸² Powell (2001) points to how the Aznar government paid particular attention to issues defined by the third pillar at the Amsterdam IGC most notably “by rejecting the very notion of political asylum for EU nationals in other member states, a concern largely dictated by its determination to develop EU procedures and institutions (such as Europol and Eurojust) capable of proving effective in the on-going struggle against ETA” (p. 13). Basabe Lloréns (2006) notes that “Spain has been keen on playing a leading role in the fields of Home and Judicial Affairs...proposing new initiative in a systematic way; this has to be interpreted in terms of the relevance of such issues to domestic politics and its impact on the Spanish public opinion” (p. 331). In this case, a hybrid of Knill and Lehmkuhl’s second and third mechanisms of

⁸¹ As noted early González also ‘pointed to Europe’ while enacting socio-economic reforms.

⁸² Basque separatist group

Europeanization is again appropriate, in that it provided “opportunity structures so that national actors can successfully challenge existing regulatory arrangements” (p. 260). Additionally, “European legislation has contributed to altering expectations and beliefs of domestic actors in such a way as to motivate domestic institutional change” (p. 262). As Knill and Lehmkuhl predicted there are hybrids which would occur, and given that their framework was conceived with regulatory policy in mind—not public policy—the issue becomes one of public standards, not economic interest; thus framing becomes useful and even necessary to introduce potentially unpopular changes. Although there were no clearly divided actor coalitions (as are indicated in the first step of the opportunity structures mechanism), framing was used to ‘sell’ the restrictive policies at home by pointing to the country’s EU ‘obligations’. In the case of Aznar’s conservative ambitions in regard to immigration and asylum policy it could be argued that regardless of the fact that he pushed the Spanish agenda at EU policy planning levels, he needed the EU to legitimize his reforms at home. Thus if a counterfactual argument were applied and the question were asked ‘would those policies have been accepted without Aznar having the opportunity to shape them at the European level and being able to frame them as EU-mandated changes (which they were not)’ the answer suggests not.

Closa and Heywood refer to Spain’s transfer of domestic problems to the EU level via the third pillar as “the Europeanization of Spanish problems” in that the country contributed significantly to structure and content of EU policies, particularly immigration policies; the EU’s ‘restrictive policies’ were then blamed for policies that were adopted domestically. In reality, “successive Spanish governments saw their position strengthened by the availability of European policies that fit with their own course on specific matters” (Fauser, 2007 p 138).

Besides policies manipulated onto the EU agenda by Spain, other European recommendations were adopted into Spanish law. In 2003 mutual recognition of expulsion D 2001/40; carrier sanctions D2001/51, common definitions on facilitating unauthorized entry, stay and residence D 2002/90 were transposed into the Alien Law (Fauser, 2007 p. 145). Indeed, some directives were already part of Spanish law before they were issued.

Spain's efforts in this regard functioned as a feedback loop in that the government pointed to EU efforts at Tampere, etc., and "these in turn were influenced by active Spanish advocacy for the government's approach" (Fauser, 2007 p. 146). Fauser notes that Spain's influence at the EU level contributed to the "shrinking differences between European and Spanish policies on migration" or "making Europe more Spanish" (p. 151).

In 2003 a directive regarding family reunification (2003/86/EC) was introduced for determining the conditions for the exercise of the right to family reunification, which are addressed by Articles 16-19 LOE and 39-44 RLOE (Gómez & De Carlos, 2008 p. 158), as were 2003/81/EC for residence permits for victims of trafficking and 2004/114/EC on third country nationals admitted for study purposes which, among others, were included in the 2003 reform to the Alien Law. As well, 2004/82/EC (European Council 2004a) on airlines communicating passenger data, which, when introduced as a directive in 2004 was literally the same as Spain's existing legislation, which comes as no surprise as the Spanish government had made the proposal in 2003.⁸³ In February of 2007 the Royal Decree 240/2007—the transposition of European Directive 2004/38/EC on entry, free movement and residence of EU and EEA citizens—was

⁸³ _____. (2003). Initiative of the Kingdom of Spain with a view to adopting a Council Directive on the obligation of carriers to communicate passenger data. (2003/C 82/08). Official Journal of the European Union. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:082:0023:0024:EN:PDF>

entered into force in Spain.⁸⁴ It refers specifically to the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and, except for some misinterpretations which were referred to the courts to correct, it was a fairly accurate rendition of the European Directive. Human rights organizations argued that a couple of the points contradicted Spanish legislation and EC law and it was referred to the Supreme Court (Analysis of the legislation, 2008 p. 6). As the decree is the transposition of a directive, this again demonstrates Knill and Lehmkuhl's third mechanism of Europeanization, that of framing the transfer of norms.

6.8 Period III: 2007 to Present—Lisbon and Beyond

As noted in chapter four, the Lisbon Treaty marked another juncture in regard to immigration and asylum policy, which has led to a number of new directives, some of which were incorporated into the Alien Law and others needed a Royal Decree. The December, 2009 of the Alien Act includes 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals; Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals and also 2009/50/CE on the European Blue Card.

6.9 Regularizations—An Exception to the Rule?

*The principle of the uniformity of Community law is tempered by the principle of non-discrimination and it is therefore possible for the Community institutions in adopting rules to take due account of the objective differences between the situations of the various Member States.*⁸⁵

As mentioned in the chapter on Italy, the Commission issued a communication in regard to regularizations (COM (2001)672:6). However, far from relying on Europe's recommendations,

⁸⁴ European Commission, 2004 2004/38/EC.

⁸⁵ European Commission (1978) Communication sent to the Council on 20 April 1978 General Considerations on the problems of enlargement (p. 16).

Spain had domestic needs that occasionally transcend its obligations to other member states (Fuentes, 2000). On the face of it the question of Spain's six regularizations appears to stand in stark contrast to the Europeanization argument as it contradicts the European immigration agenda thus regularizations indicate a non-European response to immigration issues. Aznar accused the regularization by the PSOE as creating an *efecto llamada* or a pull effect thus attracting more unwanted immigration (El Pais, 2001) however in the coming years he would himself use regularizations as a tool.⁸⁶ This further indicates that Spain's policies were not reflective of the country's immigration and asylum realities. Therefore while regularizations are a clear contradiction of European norms, it should not detract from the general Europeanization argument in regard to Spain's policies. Indeed, as discussed in the Italian case, regularizations are help to confirm the argument that European norms had been adopted by Spain, which were not reflective of domestic needs and realities.

Section III

6.10 Chapter Summary

This chapter has introduced the history and circumstances particular to the development and Europeanization of immigration and asylum policy in Spain. It discussed the democratic transition highlighting the importance of EC membership, the country's less than smooth democratization and the dominance of the executive in policy making. Then it looked at Spain's shift from sender to receiver of immigrants and, highlighting Knill and Lehmkuhl's mechanisms throughout, it traced its accession to the EC and the obligations that relationship entailed and the evolution of its asylum and immigration policy through intergovernmental, semi-Community and

⁸⁶ Spain has carried out six regularizations, including (PSOE) 1986—38,181; (PSOE) 1991—110,100; (PSOE) 1996—21,300; (PP) 2000—163,900; (PP) 2001—216,400; and (PSOE) 2005—548,700 (Izquierdo, et al, 2009 p. 678).

then Community periods. Spain's regularizations were discussed, tracing their existence to various origins. Thus, a brief but comprehensive representation of Europe's influence vis-à-vis Spanish immigration and asylum policy has been presented.

From this chapter, a few basic conclusions can be drawn. Like Italy, Spain had no foundational immigration policy to build on when it was unexpectedly faced with significant and repeated immigration flows. The Europeanization of Spain's immigration policies occurred early on in the absence of their own policy framework and in response to the perceived requirement for European membership and articulated conditions for Schengen membership. When it became apparent that the European policies Spain had quickly adopted at first were excessively restrictive, it again chose from the European menu, this time choosing options closely in line with Community recommendations. While those lasted mere months until a new administration, the new government this time chose European options, albeit from the securitized, intergovernmental side of the menu, erstwhile pointing to Europe; indeed, "Although political parties agree on the importance of immigration and that it presents a problem for the Spanish state, they disagree on how exactly to manage immigration flows" (Zapata-Barrero & De Witte, 2007 p. 85). This ushered in an era where Spain led by Aznar played an even larger role in the development of the securitized aspect of Europe's immigration and asylum policy recommendations, which it then went on to adopt (Fuentes, 2000).

Fauser (2007) argues that Spain's immigration and asylum policies can be characterized as 'selective' Europeanization. Using the fit/misfit hypothesis, she notes how some European policies are integrated while others are not and argues that this 'selection' is based on the "interplay between European and domestic politics". What she argues here is that "successive Spanish governments saw their position strengthened by the availability of European policies

that fit with their own course on specific matters” (p. 138). Indeed, Spain’s and the EU’s immersing immigration and asylum policy fields occurred in tandem and allowed for Spanish officials to adopt EU norms when it suited their needs. Because Spain was able to shape policy at the EU level it could then be altered at the domestic level as demonstrated particularly by Tampere. Indeed, in parliamentary debates in regard to the restrictive 8/2000 reforms they failed to mention that Spain had a range of policy options from which to choose, or that some of the restrictions even contradicted European norms; in fact, references were continually made to “responsibilities Spain had to bear, based on Amsterdam, Schengen and Tampere” (Fauser, 2007 p. 144).

In regard to Knill and Lehmkuhl’s analysis, the first or intergovernmental era was characterized by *institutional compliance* in regard to Spanish membership in the EC and the changes it saw as necessary to join the ‘European club’ which included compliance to the developing Schengen regulations. During the second, or semi-Community era, Spain primarily manipulated EU policies so they fit the Spanish agenda, thus taking advantage of opportunities afforded by Europe. It then framed those policies to sell them at home. The directives which Spain did not fashion could be conceptualized as *framing* mechanisms. During the third, or Community era, directives were, for the most part, easily absorbed into Spanish law and demonstrate Knill and Lehmkuhl’s *framing* mechanisms again.

The final chapter will provide a summary and a comparative analysis of the two case studies.

7.0 Chapter Seven: Conclusion

The European Union, as a political and economic union, is new among political entities. Indeed, whether considered an intergovernmental organization, multi-level polity or *sui generis* it has nevertheless had a significant influence on the policies of its member countries, an effect which has been conceptualized as Europeanization. Since its early manifestation as the ECSC, the EU has evolved and expanded to incorporate new policy domains, one of which is immigration and asylum—an area traditionally associated closely with national sovereignty. Indeed, agreement and development has been slow coming and, due primarily to the difficulty of state consensus, many of the policies in this area are more like a ‘buffet of alternatives’ than a policy. Nevertheless they still steer states towards adopting options as part of their commitment to the single market, the Schengen Agreement and the area of freedom, security and justice. In recent years, two member states—Italy and Spain, which are similar in many respects, have made different immigration and asylum policy choices. The purpose of this thesis was to determine the Europeanization of these policy areas in the countries in question.

This thesis highlighted the evolving and expanding body of EU competencies in various previously national policy fields. It focused on the trend towards immigration and asylum policies, as a field closely associated with state sovereignty and ideas of citizenship. It talked about Italy and Spain, their particular situations in that regard, and highlighted the importance of research in this area. The evolution of the concept of Europeanization (as it pertains to this research) was introduced and discussed, as well as Knill and Lehmkuhl’s mechanisms of Europeanization, the theoretical perspective which was used. It noted too that the methodology would be an examination of EU and domestic legislation backed up by peer reviewed articles and occasional media reports. The policy field of immigration and asylum was reviewed, and

then the case studies were presented, providing the context to the respective national situations which would ultimately enrich the analysis and case studies highlighted key policy changes utilizing Knill and Lehmkuhl's conception of the mechanisms of Europeanization to help analyze the policy field. This analysis led to the general conclusion that while both countries continue to be defined by similar structural circumstances that work to significantly affect their immigration and asylum policies, the development of their policy areas has taken separate trajectories. More specifically, it was found that contrary to expected findings there appears to be a trend towards increasing Europeanization of the policy area. That said, this does not indicate deeper integration.

7.1 Europeanization Findings

In regard to Europeanization, the addition of immigration and asylum to the EU's area of policy competence has uncovered some interesting results. Both countries began without any real immigration and asylum programs, and after the early Europeanization of their external border regimes they took separate trajectories during the second period in question. While both continued to move in a securitized direction regardless of the government in power, in line with a general securitization of European borders, in the first half of the second era Italy's immigration laws remained in line with European recommendations during this semi-Community phase. At the same time, Spain began to manipulate European norms to reflect Spanish interests. In the latter half of this period Italy moved away from European norms, while Spain aggressively pursued the 'Europeanization of Spanish problems'. At the very end of this era there is evidence of some convergence between Italian and European policies, albeit transposition was slow sometimes missing European deadlines. As noted within the chapter it is difficult to tell how much of this was due to institutional failures and how much was influenced by Italy's failure to

give credit to EU policies. As well, Italy's asylum policies developed completely during this time, as there was no policy to speak of in the earlier time period. Finally, in the contemporary context there is evidence of policy convergence with both states again, albeit with Italy less compliant and with Spain adopting policies which it had already shaped.

Italy was a member for three decades longer than Spain and while experiencing early Europeanization of the policy field through the Martelli Law, then Turco-Napolitano, a significant change in government heralded in an era first of heavily securitized interpretations of EU/Schengen choices with Bossi-Fini, then a patchy adoption of European norms in the latter period. There were significant delays incorporating directives and transposing legislation primarily due to institutional failures/dysfunction as well as political instability, at times ignoring EU norms completely. Institutional reforms improved the transposition process with each treaty (SEA, Maastricht and Amsterdam and by Lisbon). Again, during the post-Lisbon era, Italy appears to be adopting directives more readily than in the past, although in 2008 had transposed no legislation and the returns directive is still a sticking point.

Spain's strong executive pushed through legislation at first in a compliant fashion, then in contrast to Italy, by functioning in a feedback loop; in other words it fashioned policy at the EU level and then adopted the same often restrictive—and at times not even European obligations—domestically. In other words, Spain, as a new and arguably enthusiastic EU member, first fashioned policies which spoke to borders concerns which it saw as important to membership via Schengen, thus ignored its own demographics. It has continued this pattern and, unsurprisingly, it appears that it has made compliance easier at times with Spanish policy mirroring directives before they are issued.

7.2 Timeframes

During the first era, at which time intergovernmental policymaking on immigration and asylum prevailed, both states were found to show evidence of Knill and Lehmkuhl's strongest mechanism of Europeanization, that of *institutional compliance*. This was in response to what they perceived as border/membership requirements which required them to substitute prescribed legislation. While documentation has not been found of this, primarily due to Schengen existing outside of the EU framework until Amsterdam, the early development of the EU norms in regard to immigration and asylum occurred at the same time as the development of Schengen, and as such suggests a relationship; except for Italy the founding members of Schengen were also the founding EC members. In regard to Spain, from various accounts it appears that policies were formed in response to what was interpreted as necessary for membership in the 'European club'. Indeed, it is an easy assumption that foreign affairs departments in each of the founding countries were intimately involved in the planning and development of both immigration and asylum and Schengen at the same time as Spain's accession.

By examining the policies during the semi-Community time period, it became apparent that policymaking had begun to change, as did the instances of Europeanization. Italy, which at first showed early compliance in regard to its late operationalization of Schengen, later in the era showed much less policy compliance; indeed there was not much evidence of Europeanization during this era. In contrast, rather than ignoring European suggestions as Italy appeared to do, during this time period Spain sought to directly influence European policy, which it did during the late 1990s. During the gradual shift from intergovernmental to a growing semi-Community method of policymaking, particularly before Amsterdam, Aznar took advantage of opportunities which occurred as a result of Spain's membership in order to fashion European policies to meet

what were perceived as Spanish needs. This was explained by a hybrid of Knill and Lehmkuhl's second and third mechanisms.

During the third time period policies were primarily fashioned using the Community-method. Both countries are absorbing directives, although Spain is faster and much more compliant, likely due to the fact that it had worked to shape them to reflect Spanish interests. In these instances it appears that Knill and Lehmkuhl's third mechanism is at work, in which *framing* is used to transfer policies to the national level.

7.2 Final Words

The addition of immigration and asylum to the policy competence of the EU has opened the door again to examine how policies closely associated with national/state sovereignty constructed at the EU level are incorporated at the national level.

One of the interesting findings of this thesis and an area for future research is how common interests have 'evolved'. Indeed, during the first period of intergovernmental policy, consensus meant reaching the lowest common denominator. In the case studies domestic policies diverted from perceived domestic needs to absorb European norms, resulting in the recurrent regularizations which both states have been heavily criticized for. During the semi-Community period they gradually moved towards adopting European recommendations with Spain playing a lead role in shaping policies. The current period, characterized as the Community-method, shows relative ease in regard to institutionalization of policies. At first this appears to indicate the successful movement of this policy area away from member-state control. However, as evidenced by Spanish manipulation of policies to address its own needs, it seems like more of the same wine in different bottles. In other words the policy area continues to be ruled by

intergovernmental logic which suggests that Europeanization in this policy area is somewhat more complex.

This generates interesting questions about how we should define Europeanization, particularly in reference to immigration and asylum given the dominant role that states seem to play in policy formation. In fact, it seems to be that rather than policy area being incorporated into the Community-method, this mode of policy-making has been ‘stretched’ to include intergovernmentalism with member states still shaping policies, but within the confines of the Community-method.

In fact, while we expect that policies that emerge from the EU framework to hold members to a higher standard, reflecting the way things ‘should be’, we see that this is not necessarily the case; this is something that has implications for human rights advocates who may, in fact, already realize that the lowest common denominator still prevails and still privileges state interest.⁸⁷

⁸⁷ In fact, when we trace the evolution of immigration and asylum policy development from TREVI, Schengen, to the third pillar with Maastricht, the first pillar with Amsterdam it appears that policy-making has been incorporated into the EU’s typical policy-making structure. In fact, as was demonstrated with Spain and its dominant role in proposing, and shaping the area of freedom, security and justice into the conclusions of the Tampere Council (later integrated into the treaties with Amsterdam), followed by the Hague and Stockholm Programmes, that immigration and asylum decisions are still formed by the member states at the Council level.

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