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Asylum in Tension: Germany and the European Migrant Crisis

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Abstract

There is a tension influencing asylum policy in liberal democratic states. Rather than a simple binary tension affecting open or restrictive asylum policy, this tension is complex. The national interests, rights and obligations of states, the role of international norms, and human and moral concerns, as well as the experiences of citizens within liberal democratic states, form an entangled web of influences on the policies and practices governing the entrance and integration of asylum seekers. I explore the scholarly research concerned with the composition and manifestation of this complex tension and then apply the academic literature to the case study of Germany during the recent European migrant crisis. The German case study gives context to the academic literature and provides evidence validating the existence and influence of the identified tension. In demonstrating the existence and consequences of this tension in Germany asylum policy, I also extend previous arguments by noting the changing regional and international context and thus the evolving influence of the tension on not only German but also EU asylum policy. Since the Refugee Convention came into force in 1951, in the ensuing half-century the integration of European states into the EU, and the evolution of the international and regional environment have broadened and added complexity to the way asylum policy is considered and implemented. This has occurred alongside the conflation of asylum policy with other policy areas, such as defence and intelligence. The key policy decision in Germany to introduce an open door policy to Syrian asylum seekers in September 2015 is a prominent example illustrating the arguments I make in regard to the existence and increasing influence of the complex tensions shaping asylum policy in Germany, Europe, and other parts of the world.

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List of Abbreviations

AfD	Alternative for Germany
CDU	Christian Democratic Union
CEAS	Common European System
CSU	Christian Social Union in Bavaria
EEC	European Economic Community
EU	European Union
FRONTEX	European Border and Coast Guard Agency
IFRC	International Federation of Red Cross and Red Crescent
IOM	International Organisation for Migration
NGO	Non Governmental Organisation
SPD	Social Democratic Party of Germany
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

Chapter One: Introduction

“Few issues in Europe today are as controversial as the granting of political asylum.”

- Niklaus Steiner (2000)

“This is the first time in history that the European Union is facing such a massive influx of refugees from outside the region and Europe is very poorly prepared for that.”

- Alexander Betts (Kofanov, 2015)

Asylum policy in liberal democratic states is a controversial, complex and politically charged area of policy. It is also one of the least understood policy areas. Research encompassing asylum policy is often from an exclusively normative framework disengaged from the reality of asylum policy and the reality of political possibilities and state capabilities and interests. Or alternatively, there is research devoid of the influence of international norms, moral and legal obligations and values that are central to the identity of a liberal democratic state. Neither approach fully engages with the complexity and multi-faceted reality of asylum policy and practice and instead leaves an oversimplified view of asylum.

There are few scholars who have engaged with asylum policy on a more critical level attempting to understand what it is that gives this policy area its controversy and complexity. Those who have consider the fact that politicians make policy decisions regarding asylum that often contradict professed values or perceived national interest. Gibney (2004, p. 2) refers to a “kind of schizophrenia” that seems to permeate the way in which liberal democratic states respond to asylum seekers. Scholarly engagement with the complexity of asylum policy has focused on the identification of a tension that influences asylum policy and practice. Although different terminology is used by scholars to define this tension, it is generally described as being a tug-of-war between the sovereignty and rights of a state and moral and normative standards. The argument is that these elements are inherently in tension, or in binary opposition with one another, and this shapes asylum policy and practice. Gibney (2004) and Steiner (2000; 2009) have developed this further, arguing that while there is a tension that influences asylum policy and practice, it is not a simple opposition between two forces. Steiner writes that asylum is shaped by “a far more entangled and counterintuitive mix of motives”. In this thesis I intend to consider this identified tension and the argued influence it has on asylum policy within the context of the ongoing European migrant crisis, specifically focusing on Germany. I argue in line with Gibney (2004) and Steiner (2000; 2009), that there is a complex tension composed of an entanglement of elements that has and continues to shape asylum policy and practice in Germany.

Where scholars have studied some form of a tension influencing asylum policy and practice, case study evidence from countries including Germany has been used. However, the time frame for this

research has predominately focused on the 1990s and the heightened attention on asylum during these years. There has been little exploration of the contemporary situation, particularly in Europe. The context of irregular migration including asylum and refugee movements has changed substantially in the last 20 years. Alongside this, the regional context in Europe especially with regard to the increasing integration and membership in the EU has altered and added complexity to the tension influencing asylum policy and practice. Extending the above argument made by Gibney (2004) and Steiner (2000; 2009) to encompass the contemporary situation I argue that the complexity of the tension and the strength of its influence has increased in concert with the changes in the broader context in which Germany sits.

The influx of migrants into Europe over the last three years (2014-2016) offers a particularly pertinent period to analyse the identified tension and its influence on asylum policy and practice. This period and the response of the European states to the migrant crisis encapsulates the extent of the changes and the increased complexity and strength of the tension shaping asylum policy and practice. My decision to concentrate on Germany is based firstly on the historically unique engagement Germany has had with asylum and during the European migrant crisis. Secondly, Germany has an especially influential position in Europe by virtue of its leadership in the EU and the size of its economy. This position has amplified the effect of Germany's asylum policy and practice during the crisis. The pivotal decision by the German government, led by Chancellor Angela Merkel, to implement an open door policy and accept thousands of migrants best illustrates the effect of German asylum policy and practice. This decision transformed the crisis in Germany and in the EU and drew global attention with both censure and praise.

Significance

The broader topic of this thesis, asylum, is significant as numbers of asylum seekers and refugees continue to increase across the world. The nature of asylum and the irregular movements of people driven from their country by war, persecution and hardship creates an unpredictable environment that often leaves states struggling with adaptability and at risk of fluctuating between extremes of public and political opinion. As human mobility, including numbers of asylum seekers, refugees and those with marginal protection status, increases it is ever more vital to understand asylum and the corresponding policy and practice. The level and nature of engagement with asylum also impacts on the way that asylum is framed and public opinion regarding asylum policy and practice and attitudes towards migrants in general.

It is important to engage with what has become a global topic of concern and consider how liberal democratic states, which encompass the wealthier states in the world, should construct and implement asylum policy and practice. In order to consider this, there has to be continual engagement and understanding of the tension that influences such policy and practice. Asylum policy and practice is continually in flux by virtue of an ever evolving environment and the complex entanglement of elements interacting with that environment. This entanglement or tension underlies all asylum policy and practice no matter the context or the individual characteristics of liberal democratic states. The context and the characteristics of states will have a bearing however, on the strength and complexity of the tension. The significance of this thesis is therefore, in both the consideration of the tension influencing asylum policy and practice and the context and characteristics of Germany. The consideration of both illustrates the importance of engaging with these factors in order to better understand asylum policy and practice and in doing so, construct and implement improved policy and practice.

Thesis Structure

The chapters that follow begin with an outline of the methodology in Chapter Two and a literature review of research concerning asylum in Chapter Three. In Chapter Four I consider the aspects that form the complex tension influencing asylum policy and practice. Chapter Five takes a deeper analysis of this tension and the arguments made by both Gibney (2004) and Steiner (2000; 2009) regarding the absence of a simple binary tension but rather an entanglement of influences that produce asylum policy and practice. Respectively, Chapters Six and Seven give the historical and contemporary background to the German case study. I bring together the academic literature outlined in Chapters Four and Five with the German case study specifically from 2014-2016 during the European migrant crisis in Chapter Eight to answer my research question. Finally, in Chapter Nine, I consider the limitations of my thesis, suggest areas of future research and provide conclusions to my thesis.

Chapter Two: Method

Case Study Analysis

My thesis uses case study analysis in order to apply and analyse the academic argument of a complex tension in asylum policy with the degree of depth allowed for by the word count. Case study analysis employs specific focus on “one or several cases that are expected to provide insight into a larger population” (Gerring, 2008). I have chosen the sole case of Germany from the larger population of liberal democratic states, specifically those in Europe. I am expecting the German case study to provide insight into the phenomenon identified and theorised, most notably by Steiner (2000; 2009) and Gibney (2004), of a tension within asylum policy and practice that influences the way in which a state creates and carries out asylum policy. I will be using a typical-case approach as it is important the case I analyse is representative of a broader population because crucially, the phenomenon under consideration is not unique to one state (Gerring, 2008). It is important to note of course, that every state is different with a particular history and culture and I will include conclusions that consider Germany’s particular context. However, the primary conclusions I draw in Chapters Eight and Nine should have wider application than solely within the German context.

Case study analysis importantly allows for historical context. Tilly (2006) argues, “In the case of state transformation, there is no way to create comprehensive, plausible and verifiable explanations without taking history seriously into account”. The historical context for the German case study in Chapter Six begins after World War Two. There are a few reasons I begin here. The Refugee Convention and the Universal Declaration of Human Rights, the basis of international law concerning refugees and asylum seekers, were both written and signed in the period of time immediately succeeding the close of World War Two. Further the creation of the Federal Republic of Germany and the adoption of the German constitution, the Basic Law, occurred in the same time frame. Finally, the aftermath of the war presented the first key movement of asylum seekers into the liberal democratic German state (then, West Germany). While it would be interesting to provide earlier historical context, it is not pertinent to the subject of my thesis.

The emphasis throughout my thesis will be on the asylum policy and practice of liberal democratic states. This is due to the notable gaps in research and literature addressing asylum policy in states with differing governance and values. The academic literature addressing a tension in asylum policy has focused almost entirely on liberal democratic states. This can be attributed in part to the way in which asylum and the tension in asylum have been conceived. As will be considered in later chapters, the principle of asylum is deeply associated with the values integral within the identity of a liberal

democratic state. A consequence of this has been the heavy politicisation of the categories, asylum seeker, refugee, and migrant, in liberal democratic states and the resulting scepticism regarding an individual's motivations for entering or attempting to enter a liberal democratic country. This context provides the rationale behind the focus on liberal democratic states in my thesis. Although the focus on states characterised as liberal democratic is representative of the broader problem in asylum research of population bias, there is limited sample bias in my research. There are few appropriate case studies within the population of liberal democratic states in Europe, and the influence of German asylum policy and practice across Europe and more broadly, is a key reason for the selection of Germany. I have deemed it important to understand the influence of the tension in asylum policy within Germany as the consequences of such policy and practice have had great effect.

Due to the recent and ongoing nature of the European migrant crisis and the ever evolving response from the German government, there has been very little, if any, scholarly research and analysis directed at the crisis and the response. My research uses evidence and information from reputable media sources, German government and EU documents and non-governmental organisations such as the UNHCR and IOM. I then, analyse this information against the academic theories and arguments of a tension in asylum and answer the research questions below.

Germany

Germany is a federal republic made up of 16 states and a parliamentary democracy (Gesley, 2016). The federal government is composed of the Chancellor and his or her ministers who generally belong to the parties that form the ruling coalition. The multiparty system has been dominated by the Christian Democratic Union (CDU) and the Social Democratic Party of Germany (SPD) since 1949. The current government (2016) is made up of a grand coalition between the CDU/CSU (Christian Social Union in Bavaria) and the SPD with the next election to be held in 2017. Angela Merkel, the incumbent Chancellor, has been the German head of state since 2005. The combination of Germany's history of asylum policy and practice and the state's citizenship policies and values provide an interesting case for consideration of the academic theories and arguments of a tension in asylum policy. Furthermore, during the European migrant crisis, the policies undertaken by the German government have received extended publicity and discussion, agreement and censure from across Europe and the world. Germany, under the leadership of Angela Merkel, has taken a prominent leadership role in the collective response from the European Union in relation to this crisis, demonstrating further the influence German asylum policy and practice has across the European continent and more broadly.

Research Question

Using the Germany case study to answer the following research question, I specifically address asylum policy *and* practice, as often there are discrepancies between the professed policy of a state and the actual practice realised on the ground. The research question applies the academic arguments of a complex tension in asylum policy and practice to the German case study. Gibney (2004) and Steiner (2000; 2009), among others, have made the argument that asylum policy and practice is shaped by a complex tension involving the national interests, rights and obligations of a state, and moral and normative standards. This has not been explored in any great depth in light of the rapidly changing context of refugee and asylum movements in the world today, particularly in Europe. My thesis focuses on the following question:

Is this identified tension and the argued influence it has on asylum policy and practice evident in the German case study, specifically in 2014-2016 during the European migrant crisis?

My hypothesis in answer to this question is that the complex tension Gibney (2004) and Steiner (2000; 2009) have theorised is evident in German asylum policy and practice during the last three years of the European migrant crisis. I believe that the complexity of this tension and the strength of its influence has increased as the broader context in which Germany sits has changed. There is no direct causality between asylum policy and the complex tension scholars have identified, nor can causality be attributed solely to factors such as the history of a state or party politics. Rather the identified tension underlies these factors across liberal democratic states regardless of the specificities of leadership, history or other factors. As opposed to causing asylum policy and practice the complex tension instead influences or shapes how asylum policy and practice are constructed and implemented. I will explore this tension in some depth in Chapters Four and Five to demystify what may seem a vague influence without the necessary depth of understanding. Chapter Eight will serve the double purpose of answering the research question above and providing practical context to this influence within the case study of Germany to further define the identified tension. Chapter Eight and Nine will both draw conclusions in direct response to the research question but will also consider the implications upon the wider population of liberal democratic states.

Chapter Three: Literature Review

Definitions

Before reviewing the literature, it is important to clarify the definitions and terms used in this thesis. The terms ‘refugee, asylum seeker and migrant’ are used interchangeably in the media and in political contexts to considerable confusion. Without adequate context and explanation, the employment of each term with its own connotations is used to generate an emotive response at the expense of an accurate assessment. Consequently, I intend to clearly define each term and attempt to use them consistently recognising, if necessary, where a term has been used in contrary to the definitions set out below.

This thesis focuses on policy concerned with asylum seekers: those who arrive in a country outside their country of origin and claim asylum, seeking to be granted refugee status. The Universal Declaration of Human Rights provides a standard, later incorporated into international law on asylum, in Article 14 (1) stating: “Everyone has the right to seek and to enjoy in other countries asylum from persecution” (United Nations, 1948). The United Nations Convention relating to the Status of Refugees, which was adopted in 1951 (referred to henceforth as the Refugee Convention) is grounded on Article 14 (1) of the Declaration. The Refugee Convention and its only amendment, the 1967 Protocol, remain the cornerstone of international refugee protection today. The Refugee Convention both determines refugee status and the rights due refugees. A single definition for the term ‘refugee’ is outlined in Article 1(A) where a refugee is defined as any person who:

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear... is unwilling to return to it (UNHCR, 2010).

As Barnett notes, this definition is one of the most broadly accepted international norms today and “remains the sole legally binding international instrument” providing protection specifically to refugees (Barnett, 2002, p. 246). This is the most common definition against which an asylum seeker’s claim to refugee status will be assessed. However, each state party to the Refugee Convention interprets and applies the principles and standards in varying ways, particularly with regard to asylum seekers who do not yet have refugee status. I will explore this further within the specific context of Germany in later chapters.

The label migrant draws perhaps the most controversy. Used as a blanket term to encompass anyone moving outside their country of nationality for non-touristic reasons, migrant also frequently attracts the prefix economic. In contrast to the above terms there is no legal definition or foundation

for economic migrant in international law. Instead it is used to classify anyone deemed to be moving from one country to another to improve their living standards, economic or professional prospects (Economic Migrant, 2016). Illegal is another prefix often attached to the label migrant or migration. While some migrants do travel illegally across states without the correct documentation, it is not illegal to claim asylum in a country no matter how an individual may enter the country. The term illegal is problematically employed to label mixed migration flows without allowance for the legality of asylum.

The clarification of these terms is particularly pertinent for this thesis considering the current asylum influx into Germany within what has been termed the European migrant crisis. The movement of people into Europe has been complicated by many people delaying to claim asylum until they reach certain countries, such as Germany. This particular category of people is generally classed under the term migrant until they are officially claim asylum. I endeavour to use the same classification recognising however, that the term migrant attracts value judgments because of the presumed voluntary and economic nature of movement by a migrant. I use the term migrant only to distinguish those who have claimed asylum from those who have not but may do so. I will also refer to the recent and ongoing situation as the European migrant crisis to maintain consistency. In summary, a refugee will be defined as someone granted refugee status by a particular state or the UNHCR, a migrant as someone outside of their country of origin and who may or may not make a claim to asylum, and an asylum seeker as someone who has left their country of nationality, has made a claim to asylum in another country and is currently awaiting the outcome of their application for refugee status.

Although these definitions or categories may seem straightforward, the reality of displacement and movement blur the lines and considerably complicate the accuracy of each category, and the application in practice. The terms displacement or forced displacement are commonly used to encompass anyone who has been forced from their home for any number of reasons, either internally or externally from their home state. For the most part I refer to both refugees and asylum seekers rather than grouping them under one term, in order to allow for differentiation and direct analysis of *asylum* policy and practice. The blurring of the terms is similar in the variety of research canvassing the many facets of migration and displacement. In comparison to the plethora of research with a focus on refugees, there has been little explicit attention given to the policy and circumstances of asylum seekers. More often, attention is given in passing or only from within a refugee focus. Individuals will regularly be blanketed under the term refugee or migrant, rather than asylum seeker. With this in mind, the following review primarily addresses the areas where asylum has received more attention and has been differentiated from refugees, who by definition are only those with designated refugee status.

I seek to employ empirical and academic research to answer the research questions outlined in the previous chapter. Consequently, the following literature review addresses the current research concerning asylum, firstly empirical research followed by the academic research. The broad areas of research identified within each strand of research will be applied more specifically in the following chapters as the German case study is analysed. After review of the academic literature, the normative approach frequently taken within asylum research will be considered. After exploring the normative, the academic literature concerning the theoretical framework I have chosen is briefly reviewed.

Empirical Approaches

The most prominent empirical research concerning asylum has been and continues to be conducted by major international institutions and non-governmental organisations such as the UNHCR, the IOM, the IFRC or Human Rights Watch. Such research predominately provides evidence based research regarding asylum policy and practice of states or concerning country of origin and host country information. A pertinent example includes a study of the workings of the Common European System (CEAS) which includes a chapter outlining the evidence-based policy making in the CEAS (Guild, Costello, Garlick, Moreno-Lax, & Mouzourakis, 2014). A further example from Orchard and Miller (2014) is a policy brief addressing Europe's response to the refugee crisis in Syria and the wider region. These institutions and organisations often commission or fund the services of consultants or networks to provide research in these areas, for example the Asylum Research Consultancy or the European Country of Origin Information Network (Asylum Research Consultancy, 2014; ecoi.net, 2016).

Beyond this, research using empirical evidence has concentrated on the treatment of asylum seekers, in particular the effect of detention, alternatives to detention and the deportation of asylum seekers. The psychological effects of detention, evident in levels of psychiatric symptoms among imprisoned asylum seekers, are well documented (Cleveland & Rousseau, 2013; Ichikawa, Nakahara, & Wakai, 2006; Newman, Proctor, & Dudley, 2013). As is the evidence showing that detention policies do not act as a deterrent to those seeking asylum (Costello & Kaytaz, 2013; Edwards, 2013). Empirical research, within the context of Europe, has also analysed asylum determination and convergence rates, the extent of responsibility sharing and the use of common standards across states and the influence of restrictive asylum policies on levels of irregular migration (Boven, Chatkupt, & Smead, 2011; Neumayer, 2005; Czaika & Hobolth, 2016). These examples are not all-encompassing but provide a review of the general themes of empirical research directly relating to asylum.

There is a push for more empirical research in a number of areas, particularly regarding climate change and the long-term effects of environmental change on migration decisions (Martin, 2015; Swing, 2015; Black, Kniveton, & Schmidt-Verkerk, 2011). A current example of this is the ‘Migration, Environment and Climate Change: Evidence for Policy’ project implemented by the IOM and funded under the EU’s Thematic Programme Migration & Asylum (International Organisation of Migration, 2016). This push also extends to other causes of displacement/movement, for example gender or sexuality related violence or persecution and the desire to understand the influence of phenomena such as female genital mutilation or child marriage in order to better address these causes and the ways asylum policy in particular can be improved (Novak-Irons, 2015; Reading & Rubin, 2011).

Academic Approaches

A symbiotic relationship exists between empirical research and academic research with the empirical informing and influencing the other and vice versa. Where empirical research has provided evidence-based research regarding country asylum policy and the treatment of asylum seekers, academic research has paid increasing attention to the structures and discourses at play in the formation of such policy and the justification for such treatment. As with other areas of research this has often taken place within the broader migration and refugee focus as opposed to specifically insulating asylum policy.

The description of migrants, from all persuasions, in the media, political rhetoric and public opinion has been well studied (Philo, Briant, & Donald, 2013; Robinson, 1998; Hammerstad, 2014). Hammerstad (2014), among others, writes of the securitisation of migration and borders (Lazaridis & Wadia, 2015a; Karyotis & Skleparis, 2013; Johnson, 2014; Vogl, 2015). She highlights the increasing tendency to link refugees to “traditionally ‘scary’ trends” such as terrorism and international crime (Hammerstad, 2014, pp. 268-269). Lazaridis and Wadia (2015b, p. 2) argue that Western governments, while trying to facilitate economic mobility, have simultaneously sought to control that mobility through “securitisation measures within migration regimes”. Asylum seekers and other migrant categories are consequently perceived as “agents of social instability or as potential terrorists seeking to exploit immigration systems” (Lazaridis & Wadia, 2015b, p. 2). The border industry and the security-oriented processes of border control are often a point of study, as Andersson (2014) explores in his ethnography of the European border industry or as Johnson (2014) considers through qualitative field research in Tanzania, Australia, Spain and Morocco. The language employed by the media and politicians particularly to justify policy or for electioneering to describe migrants who, for example, come in waves or floods to invade Western countries has been analysed by different academics (Philo, 10

Briant, & Donald, 2013; Andersson, 2014). The identification and analysis of an us and them or an insiders and outsiders dichotomy expressed in political discourse and through patterns of integration and adaptation is explored by Lazardia and Wadia (2015a), and Anderson (2013) among many others.

Normative Approaches

The majority of research addressing asylum in any form is understandably normative in nature. This is a complex issue and many researchers are deeply engaged in arguments for solutions and change. Often the empirical and academic research above, particularly that conducted or commissioned by non-governmental organisations with clear advocacy agendas, involves a normative element usually through concluding recommendations or the employment of naming and shaming methods aimed at specific country practices. Instances of this include reports from both Amnesty International and Human Rights Watch. Amnesty International has for example, written a number of reports directed at Australia's asylum policies which have concluding recommendations (Amnesty International, 2015a; Amnesty International, 2015b). Example reports from Human Rights Watch include an examination of the migrant deal negotiated between the EU and Turkey and the treatment of asylum seekers in European states (Human Rights Watch, 2016a; Human Rights Watch, 2016b). Policy briefings also combine a mix of normative and empirical research. Of particular note are the numerous briefings published by the EU and its individual country states regarding the current migrant crisis. Guild et al. (2015) provide one such example. These briefings attempt to ground policy recommendations in evidence in order to bring about change institutionally, and legally in a country or region.

While the above examples of normative research look specifically at state policies and practices, there is also normative research with a broader perspective critiquing the international refugee regime. For further context to the international refugee regime Barnett (2002) provides an overview of its evolution. This research has come in many forms but most notably through criticism of the heavy emphasis on persecution as a condition for refugee status and thus the success of an asylum claim. A number of academic scholars and humanitarian organisations have argued that the focus on persecution is too narrow and does not adequately address the changing trends in displacement (Shacknove, 1985; Betts, 2013; Long, 2013). Many solutions have been posited for this problem, from those arguing for a completely new regime or approach, to those working to build on and improve the current regime.

A number of key non-state organisations and institutions have been notable in their moves away from concern with legal status or category and toward needs or rights based approaches to

displacement (Oxfam, 2016; Pfanner, 2009). The IFRC, for example, began a new approach to what it termed “the humanitarian dimensions of migration” after the 30th International Conference of the Organisation in 2007 (Pfanner, 2009, p. 465). Rather than determining humanitarian action by legal status, the IFRC began to respond in accordance with the needs and vulnerabilities of migrants. This was a response to the acknowledgement that migration was one of the “major strategic challenges of the future” (Pfanner, 2009, p. 465). These changes in the IFRC and other non-state organisations and institutions have been influential to research trajectory and policy and practice.

Conversely are those who, while taking exception to aspects of the current regime, advocate for change within the current regime, usually through expansion of the definition of a refugee or the formation of new terminology and understandings. Many scholars and organisations have taken a cause-focused approach to change within the regime. This involves not only expanding the refugee definition to take into consideration, for example, gender or sexuality related persecution but also issues such as climate change (Gemenne, 2015; Barnett, 2002, p. 255-257). Other arguments promote new terminology for example, Betts’s (2013) term survival migration. This line of research follows the argument that the allocation of asylum should not be attributed to any particular cause but instead to a threshold of rights that when violated or unavailable lead people to cross borders (Betts, 2013, p. 16). Long (2013, p. 4) studying the asylum-migration nexus, argues for a revision of the separation between refugee protection and migration to “reconfigure understandings of longer-term refugee protection” to enable the prioritisation of secure sustainable livelihoods and the facilitation of movement.

A problem with research from an exclusive normative theory view is, as Gibney (2004, pp. 16-19) argues, the disconnection from the “actual capabilities of states”. He goes on to advocate engagement with interests, claims and government agendas. This argument articulates a central motivation for the select number of academics who have explored the intersection of state capability and interests with the humanitarian obligations and normative vision in asylum policy. This research has led to recognition that there is a tension within this intersection.

The Tension

Scholars who have focused on asylum, while few in number, have generally agreed that there is a tension that influences asylum policy and practice. Each researcher has conceptualised this tension differently. Plaut (1995, p. 3) explores what he calls a “fundamental dilemma: the clash of a nation’s real or perceived interests on the one side, and the needs of refugees on the other”. Collinson (1993) writes of the humanitarian or moral obligation to give protection to refugees that will always be

balanced by governments against the political and economic interests and concerns within the state. There will be, Shacknove (1993, p. 517) concludes, “at least one part State interest and at most one part compassion” within refugee policy. Joly (1996, p. 33) argues that the ethics regarding refugees and receiving states are complicated and rest “on an inherent tension between the sovereign state and its universalist obligations”. Finally, Lavenex (2001, p. 9) refers to the tension between particularism of the social order and universalism.

Work completed by Gibney (2004) and Steiner (2000; 2009) has been particularly seminal in the area of asylum research. Both scholars have deeply analysed what they argue is a complex configuration of cultural, moral, political, legal, ideological and economic motives that shape asylum policy. They have moved beyond describing the tension as being the result of opposition between two forces and have argued that asylum is shaped by “a far more entangled and counterintuitive mix of motives” (Steiner, 2000, p. 133). Gibney (2004) and Steiner (2000; 2009) also both analyse the German asylum context up until the mid-1990s as part of their research. As discussed in Chapter One, there has not been substantial analysis of the recent and ongoing European Migrant Crisis in regard to the tension influencing asylum policy. The following two chapters seek to explore this tension in more depth providing a foundation for the analysis of the contemporary German context in order to answer the research questions outlined in the previous chapter.

Chapter Four: The Tension (Part One)

The consideration of asylum policy across liberal democratic states requests that we examine a complex paradox: as the majority of these states have introduced a range of restrictive measures designed to deter asylum seekers, they have done so whilst publically declaring the moral significance of asylum and the legal responsibility owed to the Refugee Convention and human rights laws (Gibney, 2004, p. 2). This paradox in state policy and practice points to an underlying tension influencing asylum policy. An exploration of this tension will be considered in this, and the following chapter.

The existence of those seeking asylum and refuge, as argued by Arendt (1951) symbolise the prominence of the state. In a world shaped by borders, citizenship or the lack of it, is the determinant of state responsibility and duty to people. While, to varying degrees, international organisations and NGOs have a role in the shaping of asylum policy, the admittance and protection of asylum seekers is ultimately at the discretion of states. The influences upon state asylum policy are many, however I am going to consider these influences within three broad categories. Firstly, the rights and obligations of a state secondly, the national interests of a state and thirdly, human rights and moral obligations. Without falling into simplistic binaries and in recognition of the complexity and overlap between these categories, I will endeavour to consider the key elements and arguments within these categories and how they feed a tension which in turn influences asylum policy and practice.

State Rights and Obligations

One element of the tension identified by academics shaping asylum policy is described as the obligations and rights of states. These obligations are explained in this context as those obliged to the state entity itself and correspondingly therefore, to those who make up the state; the citizens. As academics have sought to theorise and explain these obligations and rights, they have often drawn from broader theoretical thought on borders, immigration and the construction of political community. Shacknove (1993, p. 519) argues that “asylum is fundamentally a question of inclusion...into national territory and community” granted only to some and therefore, should be characterised as a migration issue or concern. This characterisation enables the transfer of broader thought and analysis regarding migration and the question of inclusion to the subject of asylum.

The idea that sovereignty is found with the people rather than the monarch came out of the revolutions in France and the United States of America. Within a territory, defined by borders, there are a people who make up a nation state. From this idea came the institutionalisation of citizenship

whereby the criteria of membership are defined and the relationship, consisting of rights and obligations, between the citizen and the state are determined (Lavenex, 2001, p. 8). Brubaker (1992, p. 21) argues that the modern state is a membership organisation, an “association of citizens” and not merely a territorial organisation. Every modern state is made up of a bounded citizenry that has internal inclusivity. There is, according to Brubaker (1992, p. 21), a “conceptually clear, legally consequential, and ideologically charged distinction between citizens and foreigners”. It is difficult to deny that citizenship has exclusivity and weight relative to the international standing of the state to which one holds membership. What this membership means vis-à-vis the rights and obligations of citizens and those of foreigners or outsiders is contested. This contestation extends to how a state, as a membership organisation, should implement policies and justify practices regarding migration and specifically asylum.

The most prominent strand of political theory, labelled here as ‘partialism’, will be considered below. Partialism defends the claim that states, as representatives of communities of citizens, have moral justification to implement entrance policies that privilege their members’ interests (Gibney, 2004). From this view, a person’s identity is predominately comprised from their membership in national and cultural communities. Walzer (1983), in his influential book *Spheres of Justice*, argues that the distinctiveness between communities is dependent on closure to enable stability. He argues, a level of political organisation, such as a sovereign state, must be present to claim authority and restrain entry through admissions policy serving to “defend the liberty and welfare, the politics and culture of a group of people committed to one another and to their common life” (Walzer, 1983, p. 39). The modern nation-state is, according to Scruton (1990, p. 320), the site of a “moral unity between people, based in territory, language, association, history and culture”. Clad (1994, p. 150) argues that the power to exclude remains the essence of sovereignty. The state has the right and the obligation to its citizens to control the admittance of outsiders to protect against the threat that immigrants and refugees may pose to the cultural environment of the political community.

From this perspective, the tendency is for the modern state itself to be seen as a community specifically, a political community. The argument follows that partiality of membership is required to maintain the bonds of trust and commonality and to create a more just and democratic community (Gibney, 2004, pp. 30-31). Admitting foreigners therefore, has the consequence of diluting these aspects of a community or of a state. The partiality of membership is contingent on the preservation of territory and borders. Walzer (1983, p. 44) argues that “so many critical issues (including issues of distributive justice, such as welfare, education, and so on) can best be resolved within geographical units”, therefore, “the focus of political life can never be established elsewhere”. There is within states, namely in this instance liberal democratic states, a commitment to a framework of rights and

institutions: a political community. There has to however, be further differentiation between states, even those with similar political values and ideals, for the defence of the partialist position to hold (Gibney, 2004, p. 44). This is where as above, values based in territory, culture, language and history are influential in creating necessary divisions to buttress the partialist argument.

The discussion concerning rights within the partialist paradigm is one that Etzioni (1990, pp. 216-218) articulates as a balance of the interests of community and respect for individual rights. He argues that a preoccupation with individual rights to the exclusion of responsibilities destroys the sense of community. Within the partialist framework with its focus on shared moral values rather than rational choices made by abstract individuals, the rights of the receiving community to maintain its cultural identity and standard of living take precedence over the individual rights of refugees (Plaut, 1995). Following this argument to its extreme, if rights are found entirely within a community or state and not an individual, the displaced person forced outside of their community and state is without rights. This is a situation Arendt (1951) lamented in post-World War Two Europe, when she argued, entrance and citizenship policies ensured those seeking protection and asylum were outcasts denied rights. Etzioni (1990, p. 227) argues however, it is not one at the exception of the other, and individual rights do require protection. He advocates for a responsive community that speaks to the best of human impulses: compassion, cooperation and understanding. But one that ultimately gives precedence to the rights of the community above the individual and to the citizen over the foreigner.

Partialists share the view that legitimate refugee policy must mirror the interests and values expressed by the state's members. There are diverging opinions however, as to the interpretation and formation of values and interests. One view holds that the results of democratic politics constitute a reflection of the values and interests of the majority (Clad, 1994). Gibney (2004, p. 33) argues that this reliance on democracy as a standard may give moral legitimacy to policy and state action that completely disregards the claims of refugees. For this reason a second view is held by many partialists who advocate the examination of the shared understandings of members of a state, thus moving beyond public opinion and elections in order to garner a more critical standard for entrance to the state (Walzer, 1983). Walzer (1983, pp. 48-51) argues that the community's shared understanding of membership rightfully determines entrance policy for immigrants but discusses, albeit it with more questions than answers, the duty to grant asylum. He comes to a conclusion that there is the existence of a principle of mutual aid in regard to asylum seekers that "can only modify and not transform admissions policies rooted in a particular community's understanding of itself" (Walzer, 1983, p. 51). Walzer's musings considering refugees and asylum seekers allude to the tension influencing asylum policy between the conception of a state and a political community and the moral principles entrenched in international humanitarian and legal thought.

There are identifiable problems with the partialist view and with partialist understandings of membership, values and interests. There is with regard to the argument of shared understandings, for example, a problematic assumption that there is or could be consensus in liberal democracies concerning the meaning of membership and the treatment of refugees (Gibney, 2004, p. 33). Carens (1987) questions the partialist argument, in particular the strength of the claim that the state has the right to exclude. He asks, “If freedom of movement within the state is so important that it overrides the claims of local political communities, on what grounds can we restrict freedom of movement across states?” (Carens, 1987, p. 267). He argues that a stronger case for moral distinctiveness of the nation-state as a community is required to give legitimacy to the argument that states can restrict entry and movement but communities within states, including federal states, can not. The moral argument, founded in universalism, for the equal treatment of individuals in the public sphere within a state has been tenuous throughout history, with various groups often excluded on the basis of their gender, sexuality, ethnicity, visa category and religion from having equal rights of participation and belonging in the political community. The varied treatment of individuals and the immigration policies of a state, including those concerning asylum seekers, place constraints on an individual’s rights and membership to the political community and in doing so, weaken the moral claim to restrict entry on the basis of protecting that community.

An important argument articulated by Gibney (2004, p. 35) holds that the partialist defence of the moral legitimacy of a state’s control over who may enter its territory needs to grow in strength as the consequences for outsiders not allowed to enter takes on increasing weight. While partialists may defend the moral legitimacy of controlling regular immigration where the consequences for refusal of entry may be the loss of a promotion, the improvement of economic prospects or the opportunity to travel, the costs for refugees and asylum seekers may result in death or further persecution and insecurity. Consequently, a stronger defence of entrance decisions concerning asylum seekers and refugees is required. People, including politicians and leaders, may readily accept that the right to control regular immigration is a legitimate area of discretion for a state due to the importance of protecting noted state interests and political community and identity (Gibney, 2004, p. 35). However, there is less assured acceptance of this right extending to vulnerable populations of displaced people. This points further to the existence of a tension shaping decisions to grant or deny entrance to outsiders identifying as asylum seekers or refugees that is not solely explained by the partialist argument.

In spite of the noted criticisms in the section presented above, the ideas and arguments made have contributed to key trajectories that shape the rights and obligations of a state and in turn influence asylum policy. Due to its concern with the “continued viability and cultural integrity of communities”,

partialism and similar views account for an indisputably significant dimension of human values and motivations behind state policy and practice (Gibney, 2004, p. 35). The ideas presented in this section demonstrate elements of the rhetoric behind restrictive asylum policies and the pushback against more inclusive asylum policy. They also undoubtedly present a challenge to a more expansive understanding of the responsibilities towards asylum seekers and refugees that transcend borders and citizenship.

National Interests

With the above ideas in mind, it is important to also consider the argument that state behaviour is contingent on the rational pursuit of supposed national interests. Leaders within states rationally weigh the interests of the state with the creation of and adherence to asylum policy. It is too simplistic to suggest that state rationale naturally leads to a curbing of asylum in the state. As will be discussed below, national interests regarding asylum are much more complex in reality.

Theorising about national interests influencing asylum policy and practice, Shacknove (1988) divides these interests into foreign policy concerns, economic stability, and political stability. Academics often draw on asylum policy during the Cold War to illustrate the role of foreign policy in advancing certain policies over others. Steiner (2000, p. 3) argues that states are often reluctant to accept refugees from allies but readily take in refugees from foes, demonstrating the idea that within the decision to grant asylum to a person is an explicit judgement of that person's state of origin and the treatment of its citizens. There are numerous examples during the Cold War of the non-communist West accepting refugees from communist countries in large part to satisfy their foreign policy concerns (Joly, 1996, pp. 26-31). As Steiner (2000, p. 4) points out however, in the post-Cold War world, asylum policy can not be so easily explained by relations between the sending and receiving countries. He contends in the year 2000, that there is now no distinction between 'good' and 'bad' refugees (Steiner, 2000, p. 4). Recent developments question this argument, although perhaps with a more indistinct designation between acceptable or non-acceptable refugees than during the Cold War. This will be discussed in later chapters with reference to Germany and the European migrant crisis.

In terms of economic stability, Joly (1996, pp. 21-22) points to the noted fluctuation of asylum policy in accordance with the perceived economic conditions in the state across time. Policies tend to be more generous and relaxed in positive periods of economic growth and high labour requirements, with the reverse occurring in times of recession. The ability to deliver housing, education and other social services is weighed by governments who remain sensitive to the possibility of public backlash (Joly, 1996, p. 23). Governments have to balance the provision of social services to asylum seekers and refugees with the assurance of an adequate standard of living for citizens. Here an overlap exists

with philosophies and arguments, similar to those discussed in the above section, concerning the citizen versus the foreigner and where obligation lies. Notwithstanding philosophical influences, many factors come together to produce a particular asylum decision. The granting of asylum and creation of asylum policy is by nature subjective and a number of influencing elements must align for an individual to receive asylum, including stable economic conditions in the host country. It is very seldom based solely on the fulfilment of the refugee definition.

It is important to consider the practical role that membership discretion plays in protecting the ties of culture and nationality which enable the facilitation of collective political action to achieve justice, particularly distributive justice. Egalitarian and just political regimes may be undermined if these ties are ignored, as the entrance of foreigners may jeopardise these attachments within a society. This argument of practicality is commonly proffered by those who may be sceptical of the moral legitimacy of the partialist argument (Gibney, 2004, pp. 31-32). This speaks to the concept of domestic political stability referred to by Shacknove (1988), but also to a wider understanding of global political stability. As will be discussed below, the production of refugees and asylum seekers is necessarily entwined with state interdependence. A group of people seeking protection in another state signifies the existence of problems and insecurity within their state of origin. It is asserted that the presence of refugees and asylum seekers is destabilising not only to the state into which they have travelled, but to the entire global state system (Shacknove, 1993, pp. 529-530). This is often stated as a domino effect of instability from state to state, influenced in part by movements of displaced people, whether refugee or asylum seeker (Gorlick, 2003).

State or national interests are not objective, but instead are grounded loosely in fact and largely stem from debate, conflict and compromise (Shacknove, 1993, p. 518). It is difficult to determine the effect of a potential or existing asylum policy with regards to a state's national interests (Steiner, 2000). Joly (1996, p. 18) argues that while national interest features prominently in asylum policy, the notion of national interest itself has a variety of aspects and interpretations. The entrance decisions made by states are mitigated by many factors. A measure of consensus concerning policy is sought within a liberal democracy, but this is always going to be diminished according to the structure of power and the relative clout held by various groups in the state. This reality, Joly (1996, p. 19) notes, explains the "variations and complexities of asylum policies over space and time". If sides were to be prescribed, albeit crudely to the tension, the consideration of national interest does not sit comfortably with one side or the other. National interest would appear rather, as a bridge between the rights and obligations of states, and humanitarian and moral obligations. There are times where, arguably, it is in the professed national interest of a state to lean towards more unrestrictive asylum policies. There are equally times where the opposite holds greater sway for national interest, or at the very least the

discourse of national interest. Where international reputation, value promotion or stability are in question, there are arguments made for more liberal asylum policy. Alternatively, when a state may be in recession or public attention is focused inwardly on an issue requiring social expenditure, a restrictive asylum policy may take precedence. The composition of a government in relation to the balance of political interests may also influence the interpretation of national interest with regard to asylum policy and practice. This appearance of a bridge is complicated in reality by perception and the simultaneous use of arguments in defence of national interest by multiple parties. The complexity of national interests regarding asylum speaks to the lack of a simple binary in the tension influencing asylum policy and practice. In Chapter Five I explore further the complications of morality and obligation and the ways in which politicians and governments employ discourse and arguments to further an agenda or a perspective. This mirrors the way in which national interest is used to similarly create and justify all manner of asylum policy and practice.

Human Rights and Moral Obligations

Human rights and moral obligations are in no way deemed irrelevant in the face of state rights. State behaviour and adherence to international morals concerning asylum challenges the dominant paradigm that state behaviour is explained by the rational pursuit of supposed national interests, or a partialist propensity to protect the state. Shacknove (1993, p. 517) notes that it is neither desirable nor possible to justify commitment to asylum in sole consideration of self-interest, but that “historically, asylum has been animated fundamentally by compassion and solidarity”. As argued above, asylum is located within the context of immigration. However, this does not remove the normative dimension of asylum which remains uniquely concerned with a specific group of people. Joly (1996, p. 33) argues, that there are ethical factors attached to refugees that are absent from other migrant categories. These factors cannot be totally ignored by policy makers. The section below will consider the formation and influence of these normative and ethical factors, and outline the dominant political theory that provides an alternative to the ideas and arguments proffered by partialism. These alternative arguments commonly influence the loosening of asylum policy, whether providing extended services and/or rights to asylum seekers or increasing asylum numbers.

The essence of human rights is found in their universality: the understanding of shared human values and morals. These values and morals have formed norms which remain independent from historical and political characteristics, ensuring that at least in principle, states do not have any absolute rights over and above individual inalienable human rights (Lavenex, 2001, p. 9; Joly, 1996). Roxstrom and Gibney (2003, p. 44) argue that human rights are based on the idea that “respect for basic human rights is imperative from a moral perspective”. Enshrined in the Universal Declaration of

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Human Rights, these rights apply to all human beings regardless of citizenship of a particular state (Plaut, 1995, p. 15; Roxstrom & Gibney, 2003). The Declaration enjoys near international consensus and constitutes an ultimate guarantee, even when states or individuals choose to ignore certain rights. Signatory states are bound by the Declaration and other various international treaties and conventions which curtail state sovereignty. The transformation of human rights from a peripheral concern within international relations to a key objective is one that Shacknove (1993) attributes to the expression of human rights values within the discourse of state interest. He argues that there is now broad acceptance that “respect for human rights is one necessary pillar of world order” (Shacknove, 1993, p. 518). Joly (1996, p. 35) acknowledges the level of awareness that is evident surrounding human rights issues, not only originating from the Universal Declaration of Human Rights, but also from a number of other international instruments such as the The United Nations 1984 Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment. These instruments reflect customary international law and international norms which are discussed below. This means that even where states are not under treaty obligations, they are still bound by customary law and expected behaviour in the international setting with regard to the rights of humans (Helton, 2003, p. 25).

As mentioned in Chapter Three, the universal right to *seek* asylum is included in the Universal Declaration of Human Rights (United Nations, 1948). The emphasis being on the word ‘seek’ because, as Joly (1996, p. 18) notes, nowhere is it stated that asylum seekers have the right to obtain asylum. The right to grant asylum is held by the state. The tension within this right does not however completely negate the significant moral and humanitarian tenets concerning the asylum seeker or refugee. An individual seeking asylum does not forfeit their human rights on the basis of their refugee status (Roxstrom & Gibney, 2003, p. 39). The inclusion of this right to seek asylum in an instrument of international law adds a persuasive ethical factor to asylum policy and practice. International recognition of the moral rights of refugees and asylum seekers has grown since the Declaration and the Refugee Convention, outlined in Chapter Three, were codified and signed. A range of instruments now express these rights in varying forms and, as is the case in Germany, which will be considered in a later chapter, the rights of refugees and asylum seekers have also been included in national constitutions at different times throughout history (Joly, 1996).

International norms play an important role in the direction of asylum policy. Norms, according to Steiner (2000, p. 13), are “standards of behaviour that are expected of actors in a given context”. Asylum itself, he contends, has become an important international norm. The expected standards of behaviour concerning asylum are outlined most prominently in the Refugee Convention, particularly the definition of a refugee which governs who should receive refugee status and the explanation of the principle of non-refoulement. Non-refoulement refers to the “obligation not to return refugees to the

country where they would suffer punishment or persecution” (Plaut, 1995, p. 12). The norm of non-refoulement has been effective in protecting asylum seekers and refugees from deportation, particularly in Europe. The fear of violating non-refoulement is central to the tension influencing asylum policy, as will be discussed in the following chapter. This international convention, among others provides an influential normative dimension to asylum policy in an individual state, while also existing as an instrument for appeal by refugee advocates. In addition to these fundamental norms are broader human rights norms, such as the provision to seek asylum in the Universal Declaration of Human Rights mentioned above. The lack of coercion inciting compliance to norms inevitably raises the question of why states, especially powerful ones, obey norms. Scholars highlight a norm’s legitimacy, a potential particular interest served by compliance and the socialisation of humans to follow ‘rules’ as reasons for norm compliance (Steiner, 2000; Franck, 1990; Kratochwil, 1989). As Steiner (2000, p. 14) argues, the issue of compliance should not be fixated on as it is difficult, if not impossible, to understand definitively why a state chooses to comply or deviate from a norm.

Alongside the norms of an individual state concerning the admission and treatment of asylum seekers, are those norms regarding the obligations of states to other states. States have an obligation to not create refugees by affording their residents a minimum standard of treatment (Joly, 1996, p. 35). There are also obligations upon states to aid other states who have large refugee populations through what has been deemed ‘burden-sharing’ (Goodwin-Gill, 1988, p. 115; Gorlick, 2003). A further argument, illustrating the contested and fluid nature of national interests as argued in the section above, follows that granting asylum is a method, although imperfect, of controlling and regulating refugee populations whose very existence threatens the stability of the state system (Shacknove, 1993, pp. 529-530). When there is ambiguity around who is responsible for asylum seekers and refugees the potential for international conflict increases. It is in a state’s national interest therefore, to adhere to norms of burden-sharing by maintaining the provision of asylum to ensure international order and prevent conflict. As a few scholars have highlighted, the very division of the world into territorial states automatically designates the production of refugees to be a problem of international interdependence (Lavenex, 2001; Brubaker, 1992; Goodwin-Gill, 1996). By definition an asylum seeker or refugee who has left their country of origin has to have entered into another territory, and as a result is without rights until the state from which they seek asylum provides protection. Should a state deny protection the responsibility to provide shelter is directly shifted to another state. States with significant refugee populations, due to close proximity to refugee-producing states, are heavily burdened by large numbers of people requiring protection and most often aid in order to survive. Norms and arguments for burden-sharing of refugee populations between states do exist, however the means of sharing, whether through resettlement or financial aid, are contested and controversial.

Before turning to look at the moral argument in asylum policy and practice, it is important to consider that morality and norms are not interchangeable. While acknowledging that there is a large degree of convergence, Steiner (2000, pp. 16-17) distinguishes three key differences between norms and morality. The first being that norms can be immoral and the second that a norm is limited to a certain group of actors in a particular context, whereas a moral commitment is independent of a set of actors or context. Finally, a norm is more easily changed than a moral standard, simply because of its contextual element.

Recognising that “morality has never functioned in a vacuum”, Plaut (1995, p. 7) argues, that in spite of the wars, increasing displacement, confusion and complexities in the world today, there remains a “small but potent force called the moral law”. Literature draws attention to the role of religious and philosophical foundations as key influences shaping the moral pull or law within asylum policy, particularly Judeo-Christianity and liberalism or utilitarianism. The basis of arguments from Judeo-Christianity draw on the Old and New Testaments and the idea that refugees exist throughout the Bible along with commands to help them (Steiner, 2000, pp. 10-11). Admonishments to treat strangers with kindness and protect their rights are frequently repeated (Plaut, 1995, p. 17). There are also extensive references by refugee advocates to the broader biblical ideas of justice, and aiding the poor and powerless in society (Steiner, 2000, p. 11).

There is both overlap and conflict between the religious and secular traditions represented by Judeo-Christianity and liberalism or utilitarianism. These philosophical perspectives fall into the dominant theoretical alternative to partialism, labelled impartialism by Gibney (2004). He explains that within this alternative, the state is seen as a “cosmopolitan moral agent” and is morally required to account equally for the rights and interests of citizens and foreigner when making entrance decisions (Gibney, 2004). There is a moral imperative to consider with impartiality the claims of strangers and members with the same weight. The central unit of analysis is the individual not the state, and states are obliged not to pursue specific national interests but to promote and ensure universal values are realised (Lavenex, 2001, p. 13). Therefore, refugees are individual carriers of rights, as opposed to being primarily considered within the context of territoriality or state sovereignty. The human rights violations they have experienced are a concern for the cosmopolitan community (Lavenex, 2001, p. 15). Liberal notions of distributive justice and interdependence assert that interdependence breeds cooperation with a common responsibility to protect the rights of all individuals (Lavenex, 2001, pp. 14-15). As Gibney (2004, p. 59) argues, the claims that impartialist perspectives make represent a “radical challenge” to well-entrenched state practices and the partialist view concerning asylum.

The two central tenets of impartialism, equality and liberty, support asylum. Liberty defends an individual's right to move and constrains state power, while equality promotes universalism (Steiner, 2000, p. 12). The impartialist argument advocates free movement between states, not only within states. Entrance restrictions, Carens (1987), Dummett (2001) and other prominent scholars contend, grossly violate human liberty. The belief, as argued by Carens (1987) a liberal, is that entrance restrictions violate freedom and enforce a system of citizenship that ties a person to the state in which they were born, for better or worse in an increasingly unequal world. Goodin (1992, pp. 12-13), another liberal, points to a contradiction he describes as hypocritical in liberal democratic states where there is support for free movement of goods and services internationally but restriction of the movement of people and labour. Singer and Singer (1988), utilitarians, argue that entrance policy should consider the interests of all of those affected. There is agreement across the spectrum that the "requirements of morality are universal, owed to human beings *qua* human beings" (Gibney, 2004, p. 63). These arguments support unrestrictive entrance policies concerning asylum. However, although the theorists above and others have advocated these positions from a liberal or a utilitarian perspective, very few argue in absolutes. Caveats exist to justify some control over borders or restrictions on movement. Carens (1992), for example, contends that restrictions may be defensible if they promote long term liberty or equality. Kant (1970) justifies some border control to protect against external threat. Entrance constraints are legitimate, in the view of utilitarians, if the cost to the state of allowing one more individual is greater than the benefit to that individual (Gibney, 2004, p. 63).

As with the partialist perspective, complications exist with the moral and ethical arguments voiced by impartialists. Steiner (2009, p. 84), making use of parliamentary debates on asylum in selected European countries, notes that while no parliamentarian "rejected the abstract moral principle of helping refugees", there was no consensus on how to action this moral principle. As will be discussed in the following chapter, the weight of morality does not sit clearly with one direction of policy. Gibney (2004) asks a number of key questions. He questions, as do Singer and Singer (1988), whether physical proximity of an asylum seeker or refugee justifies differing priority (Gibney, 2004, p. 10). Bringing state interdependence and the norm of 'burden-sharing' into the argument complicates whether responsibility only lies with those on a state's territory or whether it also lies with those further away. Gibney (2004, pp. 48-51) also questions whether states are responsible for the harm they cause or fail to prevent within the global community. Where refugees or asylum seekers are victims of this harm, do states complicit in the harm, bear responsibility to the individuals? Finally, do the ethical dilemmas surrounding border divisions suggest a responsibility to reduce the hardships borne from arbitrary borders by allowing admission of refugees and asylum seekers on a greater measure (Gibney, 2004, p. 48)? When considering the individual as an actor with rights as the impartialist perspective

does, the scope of moral responsibility invites a number of questions which complicate asylum policy and practice.

There is a fairly widespread consensus around the world of the “unacceptability of ruthless policies devoid of any moral justification” (Joly, 1996, p. 33). However, leaders often underestimate the extent to which citizens of a state find asylum morally compelling (Shacknove, 1993, p. 517). Widely held systems of belief influencing moral concern for asylum seekers and refugees have at times, played a significant role in how governments have approached asylum policy. As Joly (1996, p. 36) argues, a government would have a difficult time in leadership if it decided to move against the values shared by the majority of the population. Governments have to build strong cases to counter deeply held moral values in a society if they decide to enact restrictive asylum policy. Religious and moral authorities will always counter with arguments stressing that any opposing national interest is superseded by moral concern. Although recognition of this moral concern is important, its influence on policy and practice is perhaps not as strong as Joly (1996) suggests. Roxstrom and Gibney (2003, p. 45) argue there is a decided tendency by politicians and those in the human rights community to take into serious consideration the “hostile sentiments against ‘foreigners’”. This results in a pragmatic approach to human rights, including acceptable tighter border control, regardless of voiced moral concern or the pronounced European commitment to multicultural societies.

Although states have enacted restrictive asylum policies, perhaps increasingly so, no state has dared to renege on international conventions which outline inalienable human rights, including the rights of asylum seekers and refugees. Joly (1996, p. 42) argues that there seems to be a “bottom line to selfish and pragmatic interest which cannot be transgressed in violation of human rights”. The plight of the needy and vulnerable carries a considerable weight that is impossible to ignore. This is especially the case in liberal democratic states where awareness and respect of human rights is high. Simultaneously however, it cannot be denied that states, including liberal democracies continue to enact policies that not only restrict entrance and rights of asylum seekers but also undermine the principle of asylum. The following chapter considers the academic conceptualisations of the tension influencing asylum policy and practice, before turning to the German case study in the following chapters.

Chapter Five: The Tension (Part Two)

As outlined in the previous chapter, there is an entanglement of elements placing pressure on the trajectory of asylum policy and practice. Although I considered these elements in relative separation, asylum policy and practice cannot be understood by isolating one element from another or even with the pitting of one against another. The tension within this entanglement requires exploration to better understand and improve such policy and practice. Without this exploration, we remain with an oversimplified view of asylum (Steiner, 2000, p. 10). This tension influences the policy decisions made by governments in regards to asylum. It also affects the practical outworking of these policies within and between states. A significant amount of resources, both human and monetary, have been and continue to be expended by liberal democratic states in response to this tension. Simultaneously, this tension determines the movement of hundreds of thousands of asylum seekers.

On a practical level, a fairly consistent standard underlies the processes taken by liberal democratic states to determine whether an asylum seeker should receive asylum (Steiner, 2009, p. 66). The asylum seeker applies for asylum and after a review by a government official, looking in particular for inconsistencies, the individual will either be granted asylum and generally put on a path to citizenship or asylum will be rejected. In the case of a rejection, an appeals process is usually available, although a successful appeal is unlikely. Final rejection is faced with deportation. This seemingly simple process is complicated in practice, especially by the principle of non-refoulement in Article 33 of the Refugee Convention. Although significant moral weight is carried by the Refugee Convention, scholars have increasingly argued that the Convention definition does not sufficiently cover a large proportion of asylum seekers today (Gorlick, 2003; Betts, 2013). There remains, as highlighted above, a discrepancy between different populations as defined by the Convention; those who are designated refugees and those who fall within the grey area of non-refoulement. The recognition of non-refoulement has led to widespread inconsistency whereby governments, hesitant to deport failed asylum seekers back to dangerous states, allow them to remain in the country but without the full array of rights or status enjoyed by those who receive asylum (Steiner, 2009, pp. 66-67). Protection for this population of asylum seekers has resulted in an assorted collection of alternative statuses with varying services and rights. This untenable position is not only controversial but provides a concrete example of the way asylum policy and practice is an uncomfortable and inconsistent outcome of the tension between human rights and the interests and rights of states. This group of failed asylum seekers are literally caught in this tension rendering them in a protection limbo with very limited rights.

Academic Conceptualisations

As briefly outlined in Chapter Three, there are a number of scholars who have studied and theorised about the tension I am exploring in this thesis. Collinson (1993) addresses the tension influencing asylum policy. She explains that the tension results from the necessity of balancing political and economic interests and the concerns of a state with humanitarian or moral obligations. Lavenex (2001) argues, that although moral and humanitarian principles exist based upon the universality of human rights, it is incumbent upon states to uphold and safeguard these principles and rights. The universality of human rights comes into contradiction with the bounded concept of sovereignty, thus forming a tension between the “particularism of the social order” and the universalism of human rights (Lavenex, 2001, p. 9). Refugees, she continues, searching for protection outside of their country of origin, are “an anomaly in the nation state system”, and “a transnational phenomenon which conflicts with the territorial organisation of states and rights” (Lavenex, 2001, p. 10). Shacknove (1993, p. 517) explains the tension as “one part State interest and at most one part compassion”. He argues that appeals on the sole basis of compassion or rights are very seldom successful. The bottom line for Shacknove (1993) is the discourse of national interest. He does not dismiss the role and importance of human rights and compassion within state decisions but believes that while it is necessary to hold governments to a high human rights standard it is in isolation, an insufficient strategy for protecting refugees. Plaut (1995) studies what he calls a fundamental dilemma: a clash between the needs of refugees and the real or perceived interests of the state. The “internal and external realpolitik of the state” he contends, “confronts the basic desire of human beings for a decent life” (Plaut, 1995, p. 3). Within this clash is an asymmetry of power disadvantaging the refugee but Plaut (1995, p. 142) argues, the “moral impulse” to help others “is not without resonance” and can propel governments towards more generous policy concerning refugees and asylum seekers. Finally, Joly (1996) discusses the influence of national interest, comprised of domestic and foreign policy considerations, in asylum policy. She concludes that while national interest features prominently, it does not hold exclusive sway in the shaping of asylum policy. Ethical factors play a “modest role” in the formulation of policy concerning asylum seekers and refugees (Joly, 1996, p. 33). These factors she contends, rest however on “an inherent tension between the sovereign state and its universalist obligations” (Joly, 1996, p. 33). This tension lessens the weight of the moral claim of the asylum applicant but she maintains, as discussed in the previous chapter, there seems to be a “bottom line to selfish and pragmatic interest which cannot be transgressed in violation of human rights” (Joly, 1996, p. 42).

Principal scholars in this area, Gibney (2004) and Steiner (2000; 2009) have been seminal in their contributions to asylum research. The above scholars while writing about the tension influencing asylum have tended to compartmentalise these influences and oppose one against the other. Some, as

in the case of Plaut (1995) in particular, have also had a strong normative agenda. These approaches, as demonstrated in the analysis from Gibney (2004) and Steiner (2000; 2009), do not adequately explain the noted tension. When considering the tension influencing asylum policy and practice, Steiner (2000, p. 7) writes about the tension as an assumed tug-of-war. He explains that asylum policies result from “a tug-of-war between international norms and morality loosening asylum on the one hand and national interests tightening it on the other” (Steiner, 2000, p. 7). But, he goes on, this image fails to wrestle with the complexity of the influences shaping asylum policy and practice (Steiner, 2009, pp. 84-86; Steiner, 2000, pp.133-134). Through his research studying parliamentary debates in Germany, the United Kingdom and Switzerland, he demonstrates that at times this tug-of-war does appear. However, the debates reveal a “far more entangled and counterintuitive mix of motives” that shape asylum than a straightforward tug-of-war (Steiner, 2000, p. 133).

Gibney (2004, p. 2) writes of a “kind of schizophrenia” that appears to pervade the responses of liberal democratic states to asylum seekers and refugees. He argues that enormous importance is placed on the principle of asylum but concurrently significant effort is taken to guarantee that asylum seekers and refugees never reach territories where protection could be granted. Importantly, Gibney (2004, p. 17) considers political feasibility rather than concentrating exclusively on the ethical and theoretical influences shaping asylum policy. He also argues that the tension influencing asylum in liberal democratic states needs to be understood within the broader international problem of mass displacement and movement of asylum seekers and refugees (Gibney, 2004, p. 5). The varying questions and issues illuminated by Steiner (2000; 2009) and Gibney (2004), with contributions from other scholars, have led both academics to argue the existence of an entanglement of influences and for understanding of a broader context. I endeavour in the remainder of this chapter to demonstrate how the elements of tension discussed in the previous chapter come together to produce a complex set of influences upon asylum policy and practice. I also argue the importance of considering political feasibility and the context exterior to the state itself.

Political Feasibility and Context

The need to balance normative theory with political possibility is key to understanding how asylum policy and practice is shaped and implemented. To thoroughly scrutinise the asylum policies of a state there has to be some degree of normative consideration. However, Gibney (2004, p. 16) criticises normative theorists for disengaging from the “actual capabilities of the state”. There has to be both ethical force and practical relevance. Practical relevance takes into account “the character and capabilities of the agents...and the probable consequences of their actions” (Gibney, 2004, p. 15). He advocates for bringing together “concerns of value” with the “challenges of agency” and argues there

are real risks in failing to do so (Gibney, 2004, p. 16). Asylum is both politically controversial and morally important, therefore, the interconnections between agency and values have to be considered. There has to be engagement with the agendas, claims and interests of a government along with attention to the legitimate dilemmas faced by politicians and policy makers. As alluded to at the end of the last chapter with Joly's (1996) argument concerning a government's consideration of the values and opinion held by their constituents when framing and justifying asylum policy, there are "distinct social and political hazards involved in asylum policy" (Gibney, 2004, p. 16). Should a government implement an agenda far in advance of citizen support and acceptability, there will likely be a backlash. It is problematic and fruitless to ignore the effect limited abilities may have on even the best intentions in politics and policy (Gibney, 2004, p. 17). States differ widely in their ability to provide asylum including in liberal democratic states. There is also extensive variation across the economic, social and political consequences of asylum for a state, although as Steiner (2000) points out these consequences are difficult to predict. Gibney (2004, p. 19) attributes this unpredictability to the propensity of refugee and asylum seeker movements to "snowball" and the difficulty of predicting the impact of the varying factors that will determine reception and implementation of policy.

The importance of understanding the agendas, interests and dilemmas of politicians and policy makers is not limited to the domestic context of a state. Gibney (2004, p. 5) argues that it is essential to understand the tension influencing asylum policy and practice in liberal democratic states within the much broader international context. Within this context, asylum seekers and refugees are "merely the vanguard of a world" where there is an uneven distribution of security and welfare giving rise to increasing movement from state to state (Gibney, 2004, p. 5). It is difficult to separate the plight of asylum seekers and refugees from the bigger problem of deep inequality across the world. In addition if we are to understand, as Lavenex (2001), Brubaker (1992) and Goodwin-Gill (1996) do, that the production of refugees is a problem of international interdependence then it is essential to understand the broader context within which asylum and refugee movements are occurring. To further this argument beyond the hypothetical, Chapter Seven will place Germany's contemporary asylum policy and practice in the wider regional and international context.

This complicated international context affects the tension influencing asylum and this combination leaves governments in the Western world faced with complex questions. Particular questions that arise include: which asylum claimants deserve priority to enter and receive refugee status? And can generous asylum policies be created that are not overwhelmed by applicants motivated by economic reasons? (Gibney, 2004). Steiner (2000, p. 1) asks, "to what extent should domestic constraints influence asylum?" As will be demonstrated in later chapters with the German case study, asylum

policy and practice cannot be understood without consideration of the way in which the government has sought to answer these questions along with regard for the international context.

Morality and International Norms

Further questions illustrating the complexity of the tension shaping asylum policy and practice are raised by Steiner (2009). He argues, that the monopoly on morality is contested. As Chapter Four illustrated there is a complicated moral argument within the tension influencing asylum policy and it is not clear how to balance the moral obligations towards refugees and asylum seekers with the moral obligations towards citizens. While there is general agreement of an “abstract moral responsibility” towards refugees and asylum seekers, there is disagreement over the nature of this responsibility and how to implement it (Steiner, 2009, p. 86). Plaut (1995, p. 3) similarly argues that solutions regarding asylum issues are few as “high moral ground” is claimed by both sides. Drawing from his research studying parliamentary debates, Steiner (2009) identifies the existence of limitations which impact the effectiveness of moral arguments concerning asylum.

Morality and the moral principle to help asylum seekers is abstract. Steiner (2000, p. 139) writes that there is a “great distance between this abstract principle and its practical implementation”. This raises a number of questions which draw from Gibney’s (2004) argument above concerning political feasibility. One prominent question when considering the moral obligation to accept asylum seekers is: does this mean that every asylum seeker deemed to be a refugee must be accepted? Most people generally answer no, as blanket acceptance would be overwhelming for any state (Steiner, 2009). It follows therefore, that an upper limit has to be set, but as Steiner (2009, p. 85) argues it is “difficult to quantify morality”. This adds the complication of morality to the already complex issue of political feasibility for a government. Further, the acknowledgement of fraudulent asylum claims and disagreement over how best to help asylum seekers and refugees complicates the moral framework of asylum. Supporters of tighter asylum laws argue such laws help ‘real’ refugees by preventing asylum abuse. They also raise questions regarding whether granting asylum in European countries is the most moral way to help refugees, rather than providing assistance to refugees in their own regions of the world (Steiner, 2009, p. 85). These arguments demonstrate the problem with the tug-of-war image in asylum research where morality is generally considered to influence the loosening of asylum policy (Steiner, 2000, p. 140). Opponents to tighter asylum policy and practice make moral claims also, arguing that the majority of asylum seekers are genuine and must be given protection. The moral obligation to listen to the opinions of the public, whom politicians are elected to represent, is also presented as a moral dilemma (Steiner, 2009, p. 85). No matter their policy, governments will insist on the ethical basis of their actions and justify the ways they are accounting for the needs of asylum

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seekers and their citizens (Plaut, 1995, p. 3). This justification will often contain contradictions and complicated interpretations of morality.

Evidence shows that international norms play a role in restricting a state's capacity to tighten asylum policy. However as Steiner (2000) contends, this is not as straightforward as it may seem. He argues from his research that no parliamentarian ever proposed changing the international norms concerning asylum. Instead, international norms had multifarious roles with politicians employing varying arguments across the spectrum (Steiner, 2000, pp. 143-145). Some of those proposing tighter asylum laws argued that such laws conformed to international norms and that both these laws and norms were good. Others proposing similar laws argued that international norms were wrong, annoyingly constraining and should be ignored. Conversely, opponents of tighter asylum laws argued that international norms were good because they constrained state behaviour and prevented laws were violated these norms. Lastly, others opposing the tightening of asylum law argued that international norms enabled the tightening of asylum law and were therefore flawed and should be ignored by politicians. He concludes that understanding the more complex role international norms play in asylum policy and practice leads to a correction of the misleading tug-of-war image.

In summary, Steiner (2000, pp. 146-147) argues that international norms and morality which are built into an international human rights regime can constrain state asylum policy and practice, as evidenced in particular by the reluctance to deport asylum seekers who fail to receive refugee status. Importantly however, morality and international norms can also enable more restrictive asylum policy and practice. This speaks to the entanglement of factors influencing the trajectory of asylum policy and practice. Steiner (2000) specifically points to morality, international norms and national interests as the three overarching factors building the tension which then influences asylum policy and practice but identity encompasses this configuration of factors. The way politicians view themselves, their country and the way others view them is a “function of what they want (interests), fulfilling expectations (norms), and doing good (morality)” (Steiner, 2000, p. 149). Steiner (2000) believes that identity is what sustains the principle of asylum in Europe. This speaks to, as mentioned in Chapter Two, the integral links between the principle of asylum and the values deeply associated with the identity of liberal democratic states.

‘Future’ Predictions and Recommendations

A great majority of the literature analysing the tension influencing asylum policy emerged during the 1990s. It is worth briefly considering the interpretations of the situation and predictions of the future in recognition of this tension that also emerged from this literature. These interpretations and

predictions will be considered in the following chapters, particularly Chapter 9 when I discuss the second research question.

As mentioned above, Steiner (2000) concluded his research studying parliamentary debates from the early 1990s in Europe with the argument that identity is sustaining the principle of asylum in Europe. He predicted that states will “almost certainly” keep tightening asylum laws, narrowing the refugee definition and coordinating norms to decrease accessibility to the asylum process but will not disregard the principle of asylum and their declared willingness to grant asylum (Steiner, 2000, pp. 149-150). The maintenance of this principle is connected to the way in which politicians view themselves and the way the identity of a state, particularly a liberal democratic state, is constructed.

Joly (1996, pp. 187-188) pointed to the discrepancies between the “social reality of refugees” and the legal instruments and policies related to them. These discrepancies are, she argued, compounded by the ideological and political trends which are in opposition to the acceptance of asylum seekers. Writing from the context of the mid-1990s, Joly (1996) argued that domestic factors in European states and the rest of the industrial world have predominately favoured restrictive asylum policy, with little space left for ethical considerations. European initiatives on asylum have consequently “moved from human rights to intergovernmental fora”. In 1993 Shacknove (1993, p. 516) argued that the exceptional status of refugees within immigration was now in doubt. He noted the increasing trend of states to “force asylum seekers into the mould of routine patterns of immigration, pre-empt their arrival, or contain them within countries or regions of origin” (Shacknove, 1993, p. 516). However, he recognised that asylum was crucial to ‘good governance’ in a state and a necessary foreign policy instrument. It is essential to allow victims of human rights abuses to exit danger. He predicted that asylum and refugee policy may move further in the direction of human rights, but that this movement will only be on state terms, primarily, he argued, in the discourse of national interest. Plaut (1995, p. 6), in 1995, took a more optimistic approach arguing that there is increasing recognition that power is not everything and “moral forces are standing their ground”. His belief was that although there was an asymmetry between individual rights and state rights, the compromise between the two gave a context for moral action (Plaut, 1995, p. 77). In contrast to Steiner (2000; 2009), Plaut (1995) did not recognise the contestability of morality. For Plaut, the only moral force was the one pushing for the loosening of asylum policy and practice. These observations and predictions from Joly (1996), Steiner (2000), Plaut (1995) and Shacknove (1993) will be considered in reference to the German case study in the following chapters, as the continuity and/or departure from previous asylum policy and practice is studied.

Considering the future of asylum policy and practice, Gibney (2004) builds on his arguments explained above. He argues that any recommendations made to governments must take into account “real world constraints (electoral, economic and international)” (Gibney, 2004, pp. 259-260). Conflicts of value and the challenges of policy making cannot be brushed over. He puts forward his own argument for adherence to humanitarianism which he defines as the principle that “states have an obligation to assist refugees when the costs of doing so are low” (Gibney, 2004, p. 231). He proposes that this principle will move states closer to actually realising the values they profess to observe.

As this and the previous chapter have shown, the influences upon asylum policy and practice are many and when considered with depth, are complex and without simple remedy. However, despite this complexity, it is imperative that the reality of asylum policy and practice is contemplated and studied. While the tension itself will not diminish, understanding and grappling with it can produce better policy, even in small increments, particularly in avoiding inconsistencies where possible. The study of asylum is best completed within the context of actual asylum policy and practice, allowing for understanding that moves beyond the theory and into the practicalities of asylum. The following chapters seek to place what has been discussed into the context of Germany to better understand asylum policy and practice, especially in light of ongoing global displacement and the European Migrant Crisis. Chapter Six gives background to Germany’s asylum policy and practice before Chapter Seven explores the current situation in Germany in the context of the European migrant crisis and Chapter Eight synthesises the theory and literature discussed above with the German context.

Chapter Six: German Asylum Policy Background

German asylum policy leading up to the current migrant crisis in Europe has been strongly influenced by two key movements of asylum seekers and refugees into Germany. The first being the resettlement of refugees and evacuees at the end of World War Two into the Federal Republic of Germany (West Germany) and the second, the collapse of communism and the conflict in the Balkan region from the late 1980s to 1993 both of which gave rise to large increases in asylum applications in Germany. Underlying these significant movements has been the influence of law, most prominently the constitution on which West Germany and then reunified Germany has been governed. For many decades Germany was an exceptional state which answered affirmatively through its national law a primary question of political practice and theory: “whether necessitous people should be entitled to gain refuge in states in which they are not members” (Gibney, 2004, p. 86). This context is essential to understanding the trajectory of German asylum policy and practice in the last three years.

I will provide background to Germany’s current asylum policy by first outlining the role of Germany’s Basic Law or Constitution and then considering the progression of policy from the end of the Second World War until the beginning of the most recent movement of asylum seekers and migrants into Germany.

The Basic Law and Asylum

Germany was defeated and devastated at the end of the Second World War, suffering enormous structural damage and the division of the country into two, separated by the Iron Curtain. The impact of World War Two and the reality of the geopolitical position of Germany during the Cold War influenced asylum policy and practice in the country. However, as Schuster (2003, p. 182) argues, the structure and formation of the Federal Republic of Germany had a significant role in the state response to outsiders. A key aspect of the formation of the new Republic was the recognition that future stability relied upon a state based on the rule of law. As a result, considerable thought and debate went into the writing of the constitution or the Basic Law.

Drawn up in 1949 by a parliamentary council of German leaders and inspected by the occupying Western powers, the Federal Republic of Germany’s Basic Law was a response to the failures of the Weimer Republic and the Nazi dictatorship. The Basic Law constituted the most rigid rule of law of any liberal democratic state in the world (Gibney, 2004, p. 88). The power of a government to act unilaterally was deliberately and seriously curtailed, including in matters of asylum and immigration (Schuster, 2003, p. 183). Constitutional reform was made impossible in some cases or exceedingly

difficult with agreement from two thirds of both houses of Parliament required to enact change. The Law protected against the centralisation of authority and human rights were given a prominent position making up the first 19 articles categorised according to those with and those without German citizenship. (Devine, 1993, p. 797; Joppke, 1998).

Article 16(2), addressed the right to asylum: ‘The politically persecuted shall enjoy the right of asylum’ (Basic Law of the Federal Republic of Germany 23 May 1949, 2015). This right in the Basic Law had no precedence in German history and went further to recognise the claims of refugees than any other liberal democracy (Schuster, 2003). Along with Article 16(2), Article 19(4) ensured that anyone, including asylum seekers, had access to the courts to claim their right to asylum. Agreement from two-thirds of both houses of Parliament was required to change either Article. Consequently, asylum policy and practice was not as responsive to political pressure and expedience or the capriciousness of the public in Germany as it was in other European states (Schuster, 2003, p. 183; Gibney, 2004, p. 89). Lavenex (2001, pp. 35-36) argues that the implementation of the right to asylum in Article 16(2) must be understood within the moral re-orientation of the new Germany, the desire to make amends and as a reaction to the experience of national socialism. She also refers to the influence of the experiences of many of the members of the Parliamentary Council as political refugees during the Third Reich (Lavenex, 2001, p. 36).

Written with the desire for Germany to become a haven for the politically persecuted, the authors deliberately allowed for a wide interpretation of ‘political persecution’ (Schuster, 2003). Several more restrictive proposals concerning asylum were consciously rejected (Bosswick, 2000, p. 44). Unlike other states with a subjective right to asylum, the Basic Law did not include limitations or conditions to the right to asylum clause. Schuster (2003, pp. 183-185) considers the intentions of those writing the Law and the circumstances in which this right came to pass into law in Germany. She argues that this Article “was not a gesture by a strong and wealthy state towards a few victims from less liberal states” it was a decision that received considerable deliberation and was introduced under very challenging economic, political and social conditions (Schuster, 2003, p. 184). It was a promise to provide a safe haven to anyone who was persecuted on the basis of their needs not their suitability, regardless of the cost to the state. Schuster (2003, p. 186) goes on to argue that Article 16(2) was a “brief moment when universal values were given precedence over other considerations”, for example state security or material interests. It was an expression of an ideal but as she continues, the demands of the state came into prominence as circumstances changed and time moved forward (Schuster, 2003).

As a number of scholars have pointed out, the humanitarianism demonstrated in Article 16 (2) is countered by a specific national and exclusive conception of citizenship and the prevailing belief that

Germany is a non-immigration country (Plaut, 1995; Lavenex, 2001; Schuster, 2003; Collinson, 1994). The German conception of citizenship is based ‘on blood’: if your ancestors are German, you are German (Steiner, 2000, pp. 59-60). As Diez and Squire (2008, p. 568) write, “citizenship is awarded on hereditary grounds”. It was not tied to a geographical area defined by borders. As a consequence of this conception of citizenship foreigners and their children, asylum seekers, workers, or refugees, could not become German. Gibney (2004, p. 91) explains that the German nation has been “conceived of as a kind of ‘biological’ entity, into which membership is gained at birth rather than acquired by non-citizens through accession”. The idea of nation was never therefore linked to the idea of citizenship; nationhood was seen as ethnocultural unity. The primary loyalty of foreigners, refugees and asylum seekers, would and should always be to their country of origin and once return became possible they would and should return (Schuster, 2003, p. 188). These ideas and the legal conception of citizenship on the basis of descent, enshrined in the Basic Law Article 116 (concerning the full citizenship rights of every ethnic German), heavily influenced attitudes towards asylum seekers and the language used in relation to asylum seekers (Schuster, 2003). Language such as ‘host’ or ‘guest’ emphasised the dependence of asylum seeker (guest) on the German state (host), the presumed temporary stay of the asylum seeker, and the belief that the asylum seeker does not belong. With this context, the implications and contradictions underlying the right to asylum can be understood. It was a right to safety and hospitality but not to long-term residence or belonging in Germany. While there have been changes to citizenship law in Germany as will be discussed below, the idea of a community “linked ‘by blood’” continues to be the dominant concept of citizenship in legislation and discourse (Diez & Squire, 2008, p. 568).

It is also important to give background to Germany’s role in the broader European state, particularly as a member of the European Economic Community (EEC). As a founding member of the ECC formed in 1957, the German leaders were motivated not only by trade privileges and stability but also by the constraints placed on the power of the state through the transfer of a degree of sovereignty to the supranational institution and through interdependence with other states (Gibney, 2004, pp. 92-93). Germany could never be completely closed so long as it was a signatory to the Treaty of Rome, the foundational document of the EEC. The continued commitment to the free movement of capital, goods and labour within the ECC later the EU, especially after the signing of the Schengen Agreement ensured that each members’ entrance and citizenship policies had influence beyond their own borders (Collinson, 1994, pp. 122-124). Closer cooperation on issues of migration became a necessity as the suppression of internal borders extended each state’s borders to the external borders of the whole grouping. Further detail concerning Germany and the European Union will be provided in Chapter Seven.

Following the close of World War Two and the East-West separation of Germany, the Federal Republic of Germany was faced with the challenge of settling 8 million German national refugees who were expelled from Eastern European countries along with 3.5 million evacuees from Soviet-controlled East Germany (Schneider, 2012, p. 26). Due to the German conception of citizenship as considered above, the vast majority of these refugees were granted German citizenship under the constitution. Despite the large numbers of new arrivals, successful integration into German society was achieved by the 1960s, helped not only by this notion of citizenship but also by the rapidly growing economy (Steiner, 2000). During this time the expanding economy also necessitated the importing of foreign workers from southern European countries, Turkey and North Africa. These workers were brought into Germany on the assumption that they would settle temporarily and return home when their work was no longer required thus maintaining the belief that the country was not an immigration country.

Asylum-seekers, predominately from Eastern European countries, sought asylum throughout the post-war era and up until the mid-1970s. The Federal Republic maintained a generous attitude towards those moving from communist countries. Refugee policies during this time were motivated by humanitarianism alongside the foreign policy objectives at the time which were influenced by the ideological context of the Cold War (Lavenex, 2001, p. 44). Until the mid-1970s the numbers of asylum-seekers were not large (approximately 5000 annually) and the granting of asylum occurred with little controversy or discussion (Bosswick, 2000, p. 45). Steiner (2000, p. 61) argues that the lack of anxiety and political debate engendered by the significant movement of ethnic Germans, asylum-seekers and foreign workers into Germany until the mid-1970s is striking. The combination of the successful integration of millions of refugees and asylum-seekers in the post-war period and the exclusively broad constitutional right to asylum elevated Germany to become a model for the handling of refugees and asylum seekers (Steiner, 2000; Gibney, 2004). Schuster (2003, p. 192) cautions against viewing the post-war decades as an unqualified success, pointing out the contention and the differing practices and levels of acceptance across the states of Germany. Despite this caveat, it is difficult to deny the success of Germany's balance of the competing pressures for closure and entrance (Gibney, 2004, p. 93).

German political discourse began to encounter the ‘asylum problem’ in the mid-1970s. The numbers of people claiming asylum in the country started to increase and the origins of asylum seekers shifted from Eastern Europe to the Middle East and Asia. The first major increase in 1977 took application numbers to approximately 14,000 (Bosswick, 2000, p. 45). By 1980 applications increased to 92,000, partly as a consequence of the military coup d’etat in Turkey (Bosswick, 2000, p. 45). The majority of applicants were fleeing non-communist states that violated human rights or they were fleeing armed conflict. They were not only culturally and ethnically different but also from developing countries with widespread poverty, causing their motivations for entrance to be a complex mixture of political, social and economic aspirations (Gibney, 2004, p. 96). With increased frequency and accessibility to international flights, geographical location was becoming less of an insulating factor from refugee outflow across the world, particularly to safe and wealthy countries. As Gibney (2004, p. 96) argues, these changes transformed the implications of Germany’s broad right to asylum. Within the same time frame, labour laws for foreigners in Germany were altered reducing legal opportunities to immigrate to Germany and giving Germany’s asylum provisions added attraction. Foreign guest worker initiatives were halted as the economy slowed, although family reunification and high birth rates among foreign populations continued to increase the foreign population in Germany.

In the late 1970s, a series of attempts at administrative and asylum procedural reform began, aimed predominately at filtering the ‘real’ refugees from those with unfounded asylum claims and economic motivations (Bosswick, 2000). These reforms, both those successfully and unsuccessfully enacted, while not yet questioning the basic asylum right, did increasingly politicise discourse concerning asylum and slowly began to dissolve the normative consensus on asylum in the Federal Republic (Lavenex, 2001, pp. 46-47). Bosswick (2000, p. 45) notes the appearance of new terms in political discourse from 1977 such as *Scheinasylanten* (bogus asylum seekers) and *Asylantenflut* (flood of asylum seekers). The tighter legislation put into place in 1978, focused on reducing appeal opportunities and quickening the asylum process to reduce the opening to abuse the system, did not decrease the rising numbers of people seeking asylum in Germany with 108,000 arriving in 1980 (Steiner, 2000, p. 61). Further legislation adopted in 1980 withheld work permits from asylum seekers for one year, this was increased to five years in 1986. Each new law brought about a drop in asylum applications however, this was always temporary. During this time and following the collapse of communism, the arrival of ethnic Germans was never considered to be problematic due to the conception of citizenship in Germany (Steiner, 2000, p. 62).

From the lead up to the 1987 federal elections and onwards, the call for a revision to the Basic Law regarding the asylum right intensified. The dominant arguments for revision firstly centred on a desire for harmonisation with the ECC and as a necessary response to the Schengen Agreement. Advocates argued that Germany needed to come into alignment with lower European asylum standards (Lavenex, 2001, p. 193). A second argument grew from the securitisation of asylum discourse and the reasoning that asylum numbers must be decreased in Germany to protect the security and stability of the country (Lavenex, 2001, p. 49). The framing of the asylum issue by politicians began to alter as the arguments for change grew. The criminal statistics of asylum seekers and allegations of fraudulent asylum applications entered political discourse. The declining rate of refugee status recognition from 29% in 1985 to 9% in 1989 was used to bolster allegations of fraud with the motives of asylum seekers questioned and concern of their burden on the German public funds raised (Bosswick, 2000, p. 45). Additional laws brought into effect in 1991 contributed to a further erosion of the normative values upholding the constitutional right to asylum. Although work restrictions were somewhat loosened, a 'tolerated status' for asylum seekers was introduced for those who were not granted asylum status but could not be deported due to a threat in their home state. By the beginning of the 1990s there was a stark contrast between the liberal constitutional provision for asylum and German asylum practice which was increasingly restrictive (Schuster, 2003, p. 204). Attempts by Germany at the beginning of the 1990s to encourage the harmonising of EU asylum policy to a level similar to that of Germany did not receive support. The profits of the status quo were irresistible to the other EU states. Gibney (1993) argues that Germany was always going to receive a disproportionate number of asylum seekers so long as other European countries continued to tighten their asylum laws and Germany remained unable to share the pressure on its generous asylum entitlement.

The new measures in Germany failed to achieve a permanent reduction in asylum numbers. Between 1992 and 1993, largely due to its unmatched standing right to asylum and its generous welfare support for asylum seekers, Germany received more asylum-seekers than all other EU countries combined (Steiner, 2000, p. 63). A record 438,000 asylum seekers, more than 75 percent of the EU total, arrived into Germany in 1992 alone (Bosswick, 2000, p. 48). The number of asylum applicants increased by almost 8000 percent between 1980 and 1993 (Gibney, 2004, p. 86). Media and political discourse concerning asylum was framed as an image of emergency (Bosswick, 2000, p. 48). The origin of the majority of asylum seekers had shifted by 1993, with over 70 percent being European, in comparison to 1986 when 25 percent were European (Steiner, 2000, p. 63). The disintegration of Yugoslavia contributed significantly to the substantial increase in asylum seekers up until 1993. Gibney (2004, p. 97) observes that the integration of those who actually received refugee status could have been achieved despite the anti-immigrant ethos in Germany. Pressure built as a result of the significant backlog in asylum claims and because most unsuccessful applicants were not

deported or failed to leave. Widespread hostility was directed at a refugee system that was increasingly unable to effectively and efficiently distinguish between those entitled to protection and those who were not (Collinson, 1994, p. 62). Anti-foreign sentiment grew from 1990 and encouraged waves of extreme right-wing violence directed at asylum seekers and foreigners, particularly between the months of August and November in 1992. The government responded by accepting the legitimacy of the violence and therefore focus attention on the constitution as the source of the problems faced by the state and the public (Schuster, 2003, p. 181).

In 1992 Helmut Kohl's Christian Democrat government, with widespread public support began to push for an amendment to the constitution. Although the Social Democrat opposition initially argued against any change, the political pressure built as violent xenophobic attacks continued. Despite party dissension enough support was garnered within the Social Democrat party to begin negotiations with the government. An agreement was achieved at the end of 1992, with the Social Democrats agreeing to support constitutional change in return for concessions regarding integration and migration and the easing of citizenship requirements. This agreement from the Social Democrats reversed a previous position they had fiercely defended for years. Bosswick (2000, p. 49) argues that along with the concessions the party received to influence this change in position, there was massive pressure within the party from local communities who were having to cope with large numbers of asylum seekers and inadequate resources. While support was found across the political spectrum for an amendment to the constitutional asylum right, such an amendment was inevitably in conflict with the normative values of Article 16(2) (Lavenex, 2001, p. 154). Lavenex (2001, pp. 154-155) draws attention to the compromise provided by the argument of an "European need" to reform German asylum policy. She argues that the desire to build a common European approach to asylum gave normative compensation for restrictions on domestic humanitarian values to a shared goal across the German political spectrum to establish this European integration.

1993-1999

The combination of the strong normative appeal of European integration, the securitisation of asylum and the growing numbers of asylum seekers gave rise to enough agreement to pass an amendment to the constitutional right to asylum in 1993. Although according to public opinion polls the majority of people were in support of the change, 10,000 people protested against any change outside the parliament building in Bonn as the German parliament voted to approve the change in May 1993 (Steiner, 2000). The constitutional change came into affect on July 1, 1993 and was upheld in 1996. The general right to asylum was retained however, two new limitations were brought into effect. The first introduced a new streamlined recognition procedure allowing authorities to immediately

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reject asylum applicants from countries that were deemed to not persecute their citizens. The second allowed for the forced return of any asylum seeker who on their way to Germany had passed through a safe third country (Schuster, 2003, pp. 214-215; Goolam, 2001). Paragraph 2 of Article 16a, the constitutional amendment, set the foundation in German asylum law for the application of the safe third country concept. The criteria of a safe country encompasses EU member states or any other state where the application of the Refugee Convention and the European Convention on Human Rights is guaranteed (Goolam, 2001, p. 56). The limitations on the right to asylum in Germany were predominately aimed at those coming from 'safe countries' and those with 'manifestly unfounded' asylum claims.

With the change to Article 16(2) the number of asylum applicants in Germany significantly fell. By 1996, there were 116,400 asylum applicants and by 2000, 78,000 (Gibney, 2004, p. 86). The amendment was demonstrative of the politicisation of immigration and asylum flows and came along with invigorated debate about the integration of immigrants, refugees and asylum seekers included. Collinson (1994, p. 62) noted in 1994 that the xenophobic attitudes and increasing nationalism in Germany in the wake of the 1990s influx of asylum seekers was perceived by some to be partly the result of a failure to integrate immigrant communities into Germany. Discussion and policy change concerning integration and multiculturalism has continued to be central to migration policy and consequently to asylum and refugee policy in Germany. The final section of this background chapter will briefly outline two fundamental reforms.

2000-2013

Brubaker (1992) notes that a political-cultural national consensus led to the longevity of the notion that Germany is not a country of immigration. The persistence of this idea was not based on social or demographic facts as there was a large permanent migrant population in Germany. Recognition through discourse and policy of immigrants and their permanence in Germany has become more widespread since the late 1990s. There has been increased emphasis on the integration of immigrants into German society. As asylum and refugee policy falls under immigration policy and because asylum seekers and refugees are deemed foreigners, changes have inevitably impacted on asylum seekers and refugees in Germany.

The first major reform took effect on the 1st January 2000 when perhaps the most radical change to citizenship since 1913, the new Nationality Act came into law. The reforms made it possible for migrants meeting the correct criteria to obtain German citizenship, thus bringing the country more in line with countries defining citizenship according to place of birth within a bordered geographical area

(Diez & Squire, 2008, p. 569). The 2000 reforms have since been further incrementally revised. However, there continues to be an unease concerning dual citizenship and as mentioned above the link between blood and citizenship remains which resigns migrants to the ‘foreigner’ category long after they acquire German citizenship (Diez & Squire, 2008, p. 569). The second significant reform has been the introduction of formal integration policies. A new Immigration Act came into force on the 1st January 2005 introducing a two-part integration course consisting of language and orientation to German history, politics and culture. There were 997,234 participants across Germany from 2005 to the end of 2013 (Hubschmann, 2015). 600 hours, out of the total average 660 hours to complete the course, are dedicated to learning the German language thus demonstrating the key goal of the course. The ability to speak German is seen as the most important part of integration (Hubschmann, 2015, p. 17). Depending on the circumstances of foreigners who entered Germany prior to 2005, there were varying rights and obligations to complete or to forgo participating in the course. Non-EU migrants, including asylum seekers, who have arrived since 2005 with a residency permit for more than one-year have the right to participate in the nationally standardised integration course. In many cases, this participation is mandatory particularly if the migrant or asylum seeker cannot speak German. Schneider (2012, p. 71) argues that the Immigration Act in 2005 “marked a paradigm shift in integration policy and integration offers received a legal basis for the first time”. There has been continuous expansion of integration policy in Germany since 2005, notably a supplementary online course was created in 2012 (Schneider, 2012).

As was stated in the first sentence of this chapter, German asylum policy and practice has been strongly influenced by two key movements of asylum seekers and refugees. The most recent movement which will be covered in the following chapters has arguably become the third key movement to further shape German asylum policy and practice. I have sought in this chapter to provide background to this third movement by explaining German asylum history and the evolution of significant policy. I now turn to the contemporary situation in Germany and this third key movement of asylum seekers and refugees into Germany.

Chapter Seven: The Current Asylum Influx

The recent and ongoing asylum influx into Germany has been within the broader European migrant crisis. Asylum applications in the EU began to rise in 2014 before exponentially increasing in 2015. The numbers of displaced migrants arriving in Europe have decreased in 2016 but the crisis remains. This chapter will provide the setting for the analysis in the following chapters where the German policy and practice concerning asylum seekers in the last three years will be considered in regard to the academic literature discussed in Chapter Four and Five. In support of Gibney's (2004, p. 5) argument outlined in Chapter Five, I begin Chapter Seven by explaining the international and regional context of the European migrant crisis. I will then summarise the situation in Germany and the asylum policy enacted by the German government from 2014 to 2016.

International and Regional Context

As argued in Chapters Four and Five, the nature of asylum movements necessarily involves two states: the state of origin and the state where asylum is claimed. A defining element of the European migrant crisis however, has been the involvement of multiple states. For example, the average Syrian migrant who claimed asylum in Germany in 2015, crossed through at least six other states to reach Germany. The policies and practices employed by each state in Europe along with those outside of Europe have been influential to the way the crisis has progressed. This includes those states who have actively facilitated the movement of migrants by opening their borders, those who have done the opposite and those who have remained indifferent by virtue of geographical location. It is therefore essential to understand the international and regional context of this crisis in order to better analyse the German response. Before continuing it is important to note the varying statistics measuring the extent of the numbers entering Europe, where possible I have used official UN statistics or statistics from Eurostat and FRONTEX. I have also predominately made use of first-time asylum application statistics rather than including those who are repeat applicants. This enables a clearer reflection of the numbers of newly arrived persons. I also acknowledge that the inconsistency across the media, agencies and governments when defining the groups of people moving through Europe is problematic. For example, a Syrian citizen who fled to Turkey is likely to have been designated as a refugee by the UNHCR and the Turkish government. As this individual moves from Turkey across into Greece and begins the journey to Germany, he or she will be defined as a migrant by the media and the majority of European governments until he or she claims asylum in Germany thus becoming an asylum seeker. Should refugee status be granted by the German government, the Syrian citizen is again termed a refugee. I endeavour to remain consistent with the definitions I outlined in Chapter Three.

The statistics calculating the numbers of irregular migrants entering Europe during the migrant crisis continue to fluctuate widely. Irregular migration is the term used to differentiate from those migrants arriving through conventional measures into a country with correct documentation but it is a term that by definition is hard to measure as many migrants go undetected. To estimate the numbers of asylum seekers within the broader movement of migrants, a more reliable statistic has been the number of first-time asylum claims made in Europe. Eurostat (2016a) puts the total number of first-time asylum claims in the EU at 563,000 in 2014. This number increased to 1.2 million in 2015. Most irregular migrants have entered Europe over the last three years by crossing the Mediterranean Sea. Both the UNHCR (2016a) and IOM (2016a) put arrivals by sea into Europe at just over one million in 2015. As of the beginning of November 2016, there had been 339,980 sea arrivals to Europe (UNHCR, 2016a). Although migrants have arrived in Europe via land routes, these numbers have been significantly smaller, for example in 2015 just under 35,000 and 22,500 in 2016 arrived by land (IOM, 2016a; IOM, 2016b). Two primary routes across the Mediterranean Sea have accounted for the majority of irregular migrant arrivals during the European Migrant Crisis. The first route (the Central Mediterranean route) from Libya in North Africa to Italy has been the more longstanding route of the two (FRONTEX, 2016a). Although used prior to 2011, a bilateral deal between Italy and Libya in 2009 had almost stopped migration between the two countries. The outbreak of the Arab Spring in 2011 increased numbers for a short time before the collapse of the Gaddafi regime stopped the flow of migrants again. However, from 2013 as the security situation deteriorated in Libya and people smugglers reorganised themselves, migrants again began travelling to Europe via the Central Mediterranean route. FRONTEX, the European Border and Coast Guard Agency, detected 40,000 arrivals into the EU (primarily into Italian territory) from this route in 2013 (FRONTEX, 2016a). This number exponentially increased in 2014 to 170,760 before dropping slightly to 153,946 in 2015 and rising again to 164,636 as of the beginning of November 2016 (FRONTEX, 2016a; UNHCR, 2016b). In comparison to other Mediterranean Sea routes, migrant deaths and disappearances on the Central route are disproportionately high. In the period from January 2014 to May 2016, 9,492 people are estimated to have died or are missing (IOM, 2016c). As attention shifted to the Eastern Mediterranean route in mid 2015, the numbers decreased but by May 2016 there had been a drastic worsening of the death toll. In April and May 2016 one in every 17 migrants died while attempting the crossing from Libya to Italy. This has been of considerable concern to agencies and governments in Europe, particularly those charged with border control, and search and rescue operations (IOM, 2016c; FRONTEX, 2016a).

It was the major and sudden shift to the second primary route (the Eastern Mediterranean route) into Europe from Turkey to Greece in 2015 that substantially increased migrant numbers and asylum claims across Europe and created the peak of the European Migrant Crisis (IOM, 2015a). Prior to

2015, the Eastern Mediterranean route was used to reach Europe principally via the land border between Turkey and Greece or Bulgaria. The increased strength of the people smuggling industry, the continued deterioration in Syria and the pressure of refugee numbers in Turkey contributed to the exponential growth in migrant use of the Eastern route via the sea in 2015. 885,000 migrants used this route in 2015, a dramatic increase from the 50,830 who arrived in 2014 (FRONTEX, 2016b). Although the Eastern Mediterranean route is a safer and shorter route to Europe than the Central Mediterranean route, an estimated 805 migrants died or went missing in 2015 while attempting to cross from Turkey to Greece (IOM, 2015b). Most of those who safely arrived in Europe landed on various Greek islands, predominately Lesbos, before ferrying to the mainland of Greece and making their way north through Macedonia, Serbia, Hungary, Austria and into Germany by any means of transport possible, including by foot. Germany was not the only final destination for migrants in the EU in 2015, but the country received the highest amount of asylum claims in Europe (BBC, 2016b). As migrant numbers increased, countries throughout Europe began implementing varying policies and practices to manage or subvert the flow of people through their borders. Most notably, Hungary put up a fence along the border with Serbia in June 2015 and later along the border with Croatia pushing migrants west and through Croatia and Slovenia to Austria and then Germany (AFP, 2015). Fences were built along the entirety or parts of the borders between Slovenia and Croatia, Slovenia and Austria, Bulgaria and Turkey, and crucially, Greece and Macedonia (Thorpe, 2016). Border controls were put into place by a number of other countries including Germany (Traynor & Smith, 2016). With the route north blocked tens of thousands of migrants were left stranded in Greece by the early months of 2016.

In March 2016 after months of negotiations, a deal was reached between Turkey and the EU that substantially decreased the appeal of the Eastern Mediterranean route into Europe. Germany, under the leadership of Chancellor Angela Merkel, took a lead role in the negotiations. The deal allowed Greece from March 20, 2016 to return all new irregular migrants to Turkey. In return the EU agreed to increase resettlement of Syrian refugees living in Turkish refugee camps, increase and accelerate financial support for Turkey's refugee population, reduce visa restrictions for Turkish nationals entering the EU and to "re-energise" talks concerning Turkey's bid to join the EU (Collett, 2016; BBC, 2016a). The deal has received considerable criticism, particularly from human rights groups (BBC, 2016a). In theory this deal meant the closure of the Eastern Mediterranean route. While it has not been 100 percent successful, the flow of migrants dramatically decreased. As of the beginning of November 2016, 170,373 migrants arrived by sea to Greece in 2016 but the vast majority of those arrived before March (UNHCR, 2016c). In the last week of October 2016, 377 people arrived in Greece, a substantial decline from 2015 October figures (IOM, 2016b). Fatalities and disappearances have proportionally decreased with 416 migrants recorded as dead or missing as of the beginning of

November 2016 (IOM, 2016d). However, the durability of the deal remains questionable which I will discuss this further below.

The origin of the migrants seeking asylum in Europe is telling of the broader international context to the European Migrant Crisis. The conflict in Syria has been the biggest driver of migration while ongoing violence in Afghanistan and Iraq, human rights abuses in Eritrea and poverty in Kosovo and Albania have also contributed (BBC, 2016b). At the beginning of November 2016, there were 4,799,042 Syrian refugees registered with the UNHCR (2016d). While the majority of these individuals are hosted in the neighbouring countries to Syria, Turkey (2.7 million), Lebanon (1 million), and Jordan (650,000), a significant number have sought asylum further afield. Prior to the Syrian conflict Afghanistan was the top refugee producing state in the world as a consequence of conflict, unrest and instability. The population of Afghan refugees has remained high with 2.6 million registered with the UNHCR in 2015 (Jeong, 2016). The majority of Afghans are hosted by neighbouring Pakistan and Iran, however as with Syrian refugees there have been increasing numbers moving outside the immediate region. There were 363,000 first-time asylum applications from Syrians and 178,000 from Afghans in the EU in 2015 (Eurostat, 2016a; Jeong, 2016). Migrants from Syria and Afghanistan have been the most numerous in number to arrive in Europe through the migrant crisis. To a lesser extent, citizens from Iraq fleeing war, persecution and violence have also followed similar routes into the European continent. Migrants from these three countries have predominately entered Europe via the Eastern Mediterranean route and travelled north through the Balkan countries peaking in number in 2015. As will be explored below, the numbers of Syrians in particular were substantially increased after asylum policy shifts in Germany (BBC, 2015a). The stemming of this route with the deal between the EU and Turkey has significantly reduced the numbers of Syrians, Afghans and Iraqis entering Europe.

Migrants from various countries in Africa have also sought asylum in Europe although there have been fluctuations across time according to the situation in different countries. Over the last three years, persecution and human rights abuses in Eritrea and Sudan have pushed migrants to travel north and into Europe via either the Central or Eastern Mediterranean route. Somalia has also produced significant numbers of refugees over the last few decades. With the relative closure of the Eastern Mediterranean route and the strength of people smuggling networks in Northern Africa, increased numbers of migrants from African countries have been attempting the Central route. In 2016 Nigerian migrants have become the most numerous to arrive in Italy, accounting for 25% of all irregular arrivals into Italy (UNHCR, 2016b). The final group of migrants to discuss are those from Western Balkan countries, especially Kosovo and Albania, who joined the flows of migrants moving from Greece through the Balkan route to the north while it remained open. This group was not insignificant in

number with four in ten asylum applicants in Germany throughout the first seven months of 2015 originating from a Western Balkan country (Delauney, 2015). The majority of these migrants have been driven to move by the lack of economic prospects throughout the region. In Kosovo youth unemployment was around 60% in 2015 and visa restrictions on most individuals prevent legitimate travel to the EU (Delauney, 2015). As will be explained further below in reference to Germany, asylum applicants from these Balkan countries have been the least successful in receiving refugee status in EU countries. Citizens from the countries mentioned above continue to shape the irregular migrant flows into Europe throughout the European Migrant Crisis. Not all have been or will be successful in receiving refugee status, many will be deported or will remain in the grey protection area created by states' responses to the principle of nonrefoulement. The success of each application is determined by a myriad of factors, particularly the timing of their arrival in Europe, the country in which they have claimed asylum, and the situation in their state of origin.

Although the numbers of migrants peaked in 2015, as of the end of 2016 the regional and international context remains complex. Firstly, the EU Turkey agreement has been tentatively deemed a success as it has stopped large flows of migrants entering the EU (Pop, 2016). However, there is danger of the deal unravelling on a number of fronts. Most notably, the unsustainable burden on Greece, the lack of adequate redistribution efforts among the EU countries to reduce the pressure in Greece (and Italy), and deepening cracks in the EU's relationship with Turkey especially after the failed coup in July 2016 (Somaskanda, 2016; BBC, 2016c; Rankin & Shaheen, 2016). Turkey's fulfilment of the conditions required for visa liberalisation and EU membership are a particular point of contention. In November 2016 the European Parliament held a non-binding vote to freeze talks on Turkey's path to EU membership. In reaction to the 471 to 37 vote to halt talks, Turkey's President Erdogan threatened to tear up the EU Turkey deal and allow hundreds of thousands of migrants to leave Turkey for Europe (Rankin & Shaheen, 2016; BBC, 2016d; Aljazeera, 2016a). Secondly, worries that the EU Turkey deal will not hold have prompted further fences to be built or existing fences to be strengthened along the Balkan migration route. Hungary's prime minister, Viktor Orban, said in August 2016 that "technical planning is under way to erect a more massive defence system next to the existing line of defence" (Dearden, 2016a). In September 2016 Hungary also began recruiting 3000 new border guards to patrol the borders of the country (Thorpe, 2016). Austria started laying the foundations for further fences along its border at the end of September 2016. These new developments on top of the existing border controls and fences that still remain in place across the EU continue to question the viability of the free movement agreement within the Schengen area of the Union.

A recent deal, signed in October between Afghanistan and the EU has added to another dimension to the European situation. It was designed as another EU measure to alleviate the weight of asylum

seekers in the Union. Afghanistan agreed to readmit “any Afghan citizen who has not been granted asylum in Europe, and who refuses to return to Afghanistan voluntarily” (Rasmussen, 2016). Leaked memos from the EU suggested that Afghan development aid was conditional on Afghan participation with the agreement although, European officials have denied this (Nordland & Mashel, 2016). This agreement has been heavily criticised, especially because of concerns about safety in Afghanistan. Germany began deporting rejected Afghan asylum seekers to Afghanistan in December 2016 under the October 2016 EU deal with Afghanistan (Aljazeera, 2016b). The final complexity I will discuss is the increase in migrant deaths and demand on the Central Mediterranean route. There have been more migrant arrivals by boat to Italy in 2016 than in any past year on record (Kingsley, 2016). This has been marked in light of the vacuum of leadership and instability in Libya, the relative closure of the Eastern Mediterranean route and the strength of people smuggling and human trafficking networks in North Africa (Ardittis, 2016). It is not possible to make a deal with Libya similar to that with Turkey (Bershidsky, 2016). EU-backed policies and border security in northern countries have meant the majority of arrivals remain in Italy in overcrowded reception centres (AFP, 2016). This situation is adding pressure to Italy and as with Greece, intensifies the logistical, financial and resource shortages in these two South European countries who form the outer border of the EU. The construction of EU asylum and migration policy and the interaction by Member States’ with such policy has been influential to how the crisis has manifested.

Asylum in the European Union

Although touched on in the previous chapter, it is worth briefly outlining the major EU regulations and policies regulating asylum across the Union. Since 1999 there has been a focus on creating consistency across states within the EU through the harmonising of asylum policy in accordance with the 1951 Convention and other relevant international instruments. There are four primary legal instruments on asylum. The Qualification Directive, the Procedures Directive and the Conditions Directive set out the standards for the qualification for protection, the granting and withdrawing of protection and the reception of applicants for protection. The fourth instrument, the Dublin Regulation, establishes “the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States” (Eurostat, 2016a). In general, the first country in the EU that an asylum seeker enters is responsible for registering the asylum application. The system created by the Dublin Regulation had been under strain before the onset of the European Migrant Crisis due to the pressure on the countries acting as migrant entry points to the EU (Ardittis, 2016; European Commission, 2016). The crisis further exposed the weaknesses of EU asylum and migration policy and the system effectively fell apart as migrant numbers swelled and some countries, particularly Germany, unilaterally disregarded the Regulation.

Attempts to solve the problems produced by the system in times of crisis, such as the redistribution of asylum seekers from Italy and Greece, have had little success. Various proposals have been put forward by the European Commission to amend the Regulation this year mostly involving a corrective allocation scheme similar to that trialled earlier in the crisis (Rankin & Kingsley, 2016; European Commission, 2016). The points of contention generally hinge on how to re-allocate asylum seekers, whether such a scheme should be mandatory and on the penalties to be applied should countries decide to not accept their designated allocation (Lee, 2016).

The deepening interdependence and increasing membership of the EU has notably changed the impact of EU asylum policy and regulations across the Union. The Schengen Area now encompasses 26 countries, including four non-EU members. The all important external borders of the free movement zone have extended eastwards to Slovenia, Hungary, Slovakia and Poland. Four countries, Romania, Croatia, Cyprus and Bulgaria, are obliged to join the Schengen Area upon approval by the European Parliament. A lack of consensus regarding each country's fulfilment of the accession criteria and concerns about further enlargement of the Schengen Area in light of the migrant crisis have prevented the membership of these four countries. Hungary in particular, was vocal in its disapproval of Croatia's handling of the crisis. The Hungarian government threatened to block Croatia's accession to the passport-free Schengen Area as Croatia allowed thousands of migrants to move across its border into Hungary (Escritt, 2015). This challenge along with the unilateral decisions by countries to build fences and reintroduce border controls has complicated the future of the Schengen Area.

As I have outlined above, the international and regional context of the European Migrant Crisis is multifaceted. It is essential to understand the origin and movement of the migrants arriving in Europe, and the dynamics between countries both in and out of Europe. As will be seen below and in the next chapter, Germany's asylum policy and practice during the crisis cannot be isolated from the broader context. This is particularly pertinent to the case of Germany due to the influential role Germany's policy and leadership in the EU has had within Germany and in the EU.

Germany (2014-2016)

In this last section I will give a concise overview of German asylum policy and practice from 2014-2016 before in Chapter Eight I analyse the German case study with greater depth. Rather than giving a detailed outline of every asylum policy the German government implemented throughout these two years, I will highlight those policies and practices that are most relevant to answering my research question.

The European migrant crisis began in 2015, but the numbers of migrants entering Germany had begun to increase in 2014. There were 173,000 first time asylum applications in Germany in 2014, the highest number in two decades (Eurostat, 2016a; Spiegel Online, 2014). 25 percent of applicants processed in 2014 were granted a form of protection allowing them to stay in Germany (Abe et al., 2014). Concerns were being raised by mid-2014 that Germany was ill-prepared and over-strained by the numbers seeking assistance, with regional politicians expressing surprise that the influx was exceeding forecasts (Spiegel Online, 2014). Providing acceptable accommodation in the eastern states of Germany in particular, was becoming problematic. Despite these logistical issues, the German public were generally in consensus that refugees should be provided with protection in Germany (Spiegel Online, 2014). The new political party, Alternative for Germany (AfD), founded in 2013 as a Eurosceptic and right-wing populist party was however, unexpectedly successful in the 2014 state elections. Originally formed as an anti-euro party, it turned its attention to Islam and immigration in 2014 (BBC, 2016e). The rising popularity of the party demonstrated that there was disagreement with Germany's migration policies, including those related to asylum. As a bureaucratic backlog began to grow as migrant numbers increased, the German government began seeking policy solutions. In an attempt to quicken the asylum process and deter migrants from the Balkan countries, Serbia, Macedonia and Bosnia-Herzegovina, these countries were added to the safe countries of origin list in November 2014. The German Interior Minister, Thomas de Mazière, also began advocating for the redistribution of the refugee burden across European countries (Abe et al. 2014). This was not met with enough support and as the international and regional context changed, the numbers of migrants entering Europe continued to grow.

In 2015 Germany had 442,000 first time asylum applications, becoming the “largest single recipient of first-time individual asylum claims globally” (IOM, 2015a). Applicants from Syria were by far the most numerous in 2015 with 159,000 Syrians applying for asylum followed by 31,000 Afghans (Eurostat, 2016a). Although just under 500,000 people claimed asylum, almost one million migrants entered Germany in 2015 (Bender, 2016). A proportion of these continued traveling into other countries, particularly Sweden, but the majority stayed within Germany's borders. The greatest increases in migrant numbers crossing the German borders occurred following the German government's decision on September 4 2015 to suspend the Dublin Regulation for Syrian asylum applicants and process their applications regardless of where they first arrived in the EU (BBC, 2015a; Connolly, 2016a). The decision, fronted by Chancellor Merkel became known as Germany's ‘open door policy’. As tens of thousands of migrants entered Germany, the German public response was lauded as a “beacon of humanitarian generosity” (BBC, 2015a; Horn, 2015). Merkel personally received international admiration, including being named TIME Person of the Year for 2015 with the magazine praising her “steadfast moral leadership in a world where it is in short supply” (Chu, 2015; 50

Hill, 2015; Vick & Shuster, 2015; Gibbs, 2015). However, as she declared her go-to mantra, 'we can manage this', the voices questioning her motives and her government's ability to control the consequences increased (Hill, 2015; Walker & Troianovski, 2015; BBC, 2015b).

With public opinion threatening to turn and large numbers continuing to enter Germany, Merkel's government began trying to slow the flow of migrants into Germany and Europe without reversing the message of openness and tolerance. In mid-September Germany implemented emergency measures to reduce the pressure on Germany's federal states, especially those along the border with Austria. The main train station in Munich was a particular focal arrival point for migrants, with 13,015 arriving on trains from Austria on September 12 2015 alone, the day before the measures were introduced (Harding, 2015). Border controls on roads and trains between Germany and Austria were reinstated with only EU citizens and those with valid documents allowed to enter Germany. To further relieve the logistical and financial challenges in the eastern federal states, policies were used to distribute asylum seekers across all 16 federal states according to the tax revenue and population of each state (BBC, 2015b; IOM, 2016d). Albania, Kosovo and Montenegro were added to the safe countries of origin list in October 2015 in a bid to accelerate the procedures relating to asylum claims from citizens of these countries (Informationsverbund Asyl und Migration, 2016). In addition, from October 24, 2015 asylum seekers from safe countries of origin are required to stay in initial reception centres while their claim is processed. These measures along with the transfer of the cash benefit system to a voucher system, are directed at discouraging economic migrants and quickening the deportation process of those without legitimate claim to asylum (Huggler, 2015).

Alongside policies introduced to relieve pressure internally within Germany, Merkel, who is often called the de facto leader of the EU, sought to use her considerable clout to rectify the imbalances caused by EU immigration policies and to stem the flow of migrants entering Europe. Her long-stated belief has been that migration is a European problem not a German one (Hewitt, 2016). The German government continued lobbying for mandatory quotas on EU countries to redistribute asylum seekers from Italy and Greece (BBC, 2015b). While a majority vote of interior ministers did eventually impose quotas, the agreement was unpopular, particularly in Eastern European countries who resisted accepting Muslim migrants, and little has been done since to implement any form of redistribution (Walker & Troianovski, 2015). Merkel and the German government also began to court Turkey in a move to reduce the flow of migrants leaving Turkey for Europe. The German Chancellor travelled to Turkey in October 2015 meeting with President Erdogan to revitalise EU and German relations with Turkey and begin negotiations on a deal (Walker & Troianovski, 2015). Merkel continued to take a prominent role in the negotiations with Turkey to secure the EU-Turkey deal. It took until March 2016 for the eventuating deal to be signed but as mentioned above, although long awaited it has tentatively

been deemed successful thus far in discouraging migrants from leaving Turkey for Greece (BBC, 2016a). As relations have deteriorated between the EU and Turkey throughout 2016, Merkel has advocated for agreement on both sides, saying the deal is in the interest of all parties (BBC, 2016d).

Germany's intake of migrants has placed a significant financial burden on the country. The government is expecting to spend €77.6 billion from the year 2017 to the year 2020 housing, training and feeding refugees alongside helping origin countries to stem the flow of migrants (Bender, 2016). A significant portion of that amount (€24 billion) will cover welfare benefits paid to asylum seekers and refugees (Bender, 2016). There is optimism that with Germany's dynamic economy and aging population, the influx of asylum seekers will contribute to the country's economic performance, increase the labour supply and boost demand for goods and services (Horn, 2015; IOM, 2016d). The realisation of this is however, dependent on the extent to which the new arrivals can be integrated into German society (IOM, 2016d). Chancellor Merkel and her government introduced new policies in April 2016, comprising what she called a "German national law on integration" (Huggler, 2016a). The reforms stipulated mandatory attendance for asylum seekers at German language courses and integration classes and gave authorities the power to allocate a compulsory place of residence to asylum seekers for their first three years in the country (Huggler, 2016b). Those failing to fulfil any requirements would lose their benefits. Changes to permanent residency policies tightened the requirements needed to apply to remain in Germany long-term, but offered a fast-track process for individuals with exceptional German language skills (Huggler, 2016b).

On top of financial and logistical challenges in Germany, concerns about the security of Germany and Europe more broadly have been vocalised by intelligence and law enforcement agencies, governments and the public. The open door policy has been repeatedly and strongly criticised in the wake of attacks, security threats and violence perpetrated by migrants and asylum seekers in Germany and other European countries. I will highlight the most destructive and publicised events.

The November 2015 attacks in France by three teams of so-called 'Islamic State' militants left 130 people dead (Gopalakrishnan, 2016). The ensuing investigations found that all nine of the attackers had entered Europe via the migrant routes used by thousands of asylum seekers. The sexual assault of hundreds of women and robbery of other individuals by men of predominately North African or Middle Eastern descent at the central train station in Cologne, Germany on New Years Eve 2015 provoked outrage across the country and the world (Spiegel Online, 2016; Rothwell, 2016). Perhaps motivated by a desire to avoid backlash against the migrant influx, authorities and German public service broadcasters took days to acknowledge that asylum seekers were among the suspects. This lag fuelled suspicion that crimes involving refugees and asylum seekers were not being reported to the

public (Hewitt, 2016). Public support for Merkel and the open door policy dropped significantly and hysteria and anger spread as Germans questioned whether the country could handle and integrate the influx of migrants (Spiegel Online, 2016). Merkel's own political party, the CDU, was not spared the national unease and division with 40 CDU politicians signing a petition to close the borders of the country to asylum seekers (Huggler, 2016c). When it emerged that some of the suspects were rejected asylum seekers who had not or could not be deported, the complications of asylum law became apparent (Huggler, 2016c). As a result of the events on New Years Eve and further similar incidents, security was increased in Cologne and in July, the German parliament passed an overhaul of the rape laws in the country broadening the definition of sex crimes and making it easier to deport foreign nationals convicted of committing crimes (Connolly, 2016b; BBC, 2016f). Even with these changes, Germany continues to face problems regarding the deportation of failed asylum seekers.

In March 2016 32 people were killed in Belgium in terror attacks while in July 2016, four violent attacks in the space of a week, three carried out by asylum seekers, occurred across Germany killing ten and wounding over twenty people (BBC, 2016g). Although the attacks were unrelated and one was carried out by a German born national, the wider threat brought about by the influx of new arrivals was the focus of public attention (McKenzie, 2016). Merkel defended her open-door policy and argued that the country could manage this and should not reject its "humanitarian stance" (Connolly, 2016a). She sought to reassure the public with a nine-point plan to increase security including a national register monitoring people entering and leaving the country (Connolly, 2016a). The German Parliament further responded by reforming the main intelligence service in the country, the BND. These reforms strengthened government monitoring of intelligence activities and allowed the BND to carry out surveillance activities, gather information and cooperate with foreign intelligence services (Chase, 2016). Thousands more national security and police jobs were created along with a new police cyber defence unit and increased video surveillance in urban areas. (BBC, 2016h) Critics have questioned the legality of such reforms and criticised the intrusion of privacy and violations of human rights that the changes allow (Chase, 2016; Hill, 2016a). On December 19, 2016 a Tunisian man, whose asylum application had been rejected, drove a truck into crowds of people at a Christmas market in Berlin killing 12 people (Associated Press, 2016). Responsibility for the attack was claimed by the Islamic State prompting debate about the links between migration and terrorism. Renewed criticism was levelled at Merkel's decision to permit the entrance of large numbers of migrants in 2015 and the failure of authorities to deport rejected asylum seekers (Oltermann, 2016a). The German government responded with promises to re-examine Germany's security apparatus and to introduce measures to improve the deportation of rejected asylum seekers (Oltermann, 2017). Merkel and her government have thus far refused to implement a cap on migrant numbers, but agreed in early 2017 to tighten migration rules (Buergin & Donahue, 2017). Each major attack or security threat involving a migrant

or asylum seeker, particularly those outlined above, has compelled the government to reassure the public through rhetoric and through policy change. Such events also further fuelled a backlash, not only against the German government's asylum policies but against migrants and those of foreign origin, whether asylum seeker or not, across Germany.

While this backlash has predominately manifested in protests or in voting and polling, there have also been acts of violence directed at migrants and at opposing protesters or law enforcement (Rothwell, 2016; McKenzie, 2016). This has been particularly attributed to the unprecedented increase in violence by left-wing and right-wing extremist groups (Dearden, 2016b). Ensuring the security of migrants in Germany has been a challenge for the government. Arson attacks on migrant shelters, verbal and physical abuse, bomb threats and other incidents of hate crime have had a constant presence throughout Germany both before and after the open doors policy was implemented (Shubert, 2015; BBC, 2015c; Hill, 2016b). Following highly publicised attacks involving asylum seekers and migrants, protests and violence directed at migrants and asylum seekers or related property and the asylum policies have tended to spike (Connolly, Refugee crisis: Germany creaks under strain of open door policy, 2015). For example after the events in Cologne at the beginning of 2016, there were a number of angry and violent protests and rallies especially by far-right groups such as Pegida (Patriotic Europeans Against the Islamisation of the West) and assaults to asylum seekers and migrants (Rothwell, 2016).

The public backlash against Chancellor Merkel's asylum policies has been capitalised on politically by AfD, who made mass immigration the focus of its party platform as numbers of migrants surged into Germany in late 2015. An explicitly anti-Islam policy was adopted in May 2016 and the party policies include the rejection of the EU-Turkey deal, banning the Muslim call to prayer and the burka, stricter asylum rules, and permanent border controls (BBC, 2016e). As of September 2016, the party had MPs in 10 of Germany's 16 state parliaments and aims to win its first seats nationally in the 2017 federal elections (Chazan, 2016). There are concerns, both inside and outside of the party, that there is an ever strengthening nationalist and xenophobic faction connected to the party.

The gains made by AfD were often at the expense of CDU, Merkel's party, and the Chancellor's own approval rating fell to 45% in September 2016 (Kirschbaum & Shalal, 2016; Oltermann, 2016b). This situation prompted a frank speech from Merkel acknowledging the mistakes of her government's asylum policies of the previous 18 months (Osborne, 2016). Importantly, she did not apologise for the open door policy arguing that the government did what was morally and legally obliged, but did admit that the government lost control of the situation for some time and could have been better prepared (Petzinger, 2016). She also spoke of her regret for the mantra she adopted, 'we can manage this',

saying that it was “an empty formula” (Petzinger, 2016). Merkel’s approval rose in the later months of 2016 and in November she announced she would run for a fourth term as chancellor in the September 2017 national elections. Polling showed that 55% of Germans supported her decision to stand again (Connolly, 2016c). In December 2016 at the CDU party conference she was re-elected as party leader. During her speech to the gathered delegates she said the 2015 influx of migrants could and should not happen again and endorsed a ban on the burka “wherever it is legally possible” (Aljazeera, 2016c; BBC, 2016i). With the rise of AfD and great polarisation in Germany, along with a number of significant challenges facing Germany and the EU, the election campaign will be difficult. The way in which Merkel and her government develop and implement asylum policy in response to the previous influx and the ongoing challenges will be a crucial element to the success or failure of her re-election.

Chapter Eight: Case Study Analysis

Chapter Eight has a double purpose, firstly to provide practical context to the theoretical breakdown and analysis of the identified tension influencing asylum policy and practice and secondly, to answer the research question: *Is this identified tension and the argued influence it has on asylum policy and practice evident in the German case study, specifically in 2014-2016 during the European migrant crisis?*

I argue that the tension influencing asylum policy and practice is not composed of a simple binary: partialism versus impartialism. It is a complex tension involving national interests, rights and obligations of a state, and moral and normative standards. The asylum policy and practice that is implemented in Germany and other liberal democratic states has been and continues to be influenced and shaped by this tension producing a non-linear, often contradictory path of policy and practice. I find evidence within the Germany case study to support the arguments made in Chapter 5 but take those arguments further to suggest that the complexity of the tension and the breadth of its influence has changed and increased as the broader context in which Germany sits has altered. In order to expand and explain my argument I have structured the following according to areas of policy and practice where the tension and its complexity has been evident in Germany. In the final section of the chapter I argue my expanded argument beyond the current literature by considering the regional and international context.

Open Door Policy

The implementation of the open door policy occurred at what became the climatic point in the European migrant crisis. This decision in the context of Germany's history and position in Europe was not necessarily unusual or a dramatic break from a tested trajectory of asylum policy. As outlined in Chapter Six, Germany has had a historically generous reputation regarding its entrance policies and its treatment of asylum seekers since the end of World War Two. This reputation was formed on the basis of comparison to other countries and the unique allowances for asylum seekers in the German Basic Law. While these allowances were amended in 1993 after the second large influx of asylum seekers into Germany, the country has retained a relatively liberal approach to asylum and has been a vocal supporter and leader of liberal asylum reform and harmonisation in the EU.

Although labelled the open door policy, the invitation that produced the policy was in fact specific to one group of people: Syrians. It was not a blanket policy for all asylum seekers. Chancellor Merkel defended her government's policy decision saying that Germany was doing what was "morally and

legally obliged” (Petzinger, 2016). These obligations were specific however, on the basis of in part the sheer size of the exodus from Syria but also German national interest and the greater publicity of the Syrian crisis in comparison to movements of asylum seekers from other countries. The wide awareness of the Syrian civil war and the large population of Syrian asylum seekers and refugees particularly in neighbouring countries to Syria, created added obligation and strengthened the influence of international norms around burden sharing for example. German national interest has been to maintain its generous reputation towards asylum seekers. The maintenance of this reputation was channelled in this instance to respond generously to Syrian asylum seekers.

The decision to unilaterally suspend the Dublin Regulation is an apt example of the schizophrenic response that Gibney (2004) argues pervades the responses of liberal democratic states to asylum and refugees. Germany had been one of the more vocal advocates of EU solidarity and the importance of maintaining the integrity of the Schengen Area. Perhaps motivated by frustration at the lack of EU unity and collective action in regard to the European migrant crisis or hoping to lead by example, the open door policy was nevertheless in contrast to the previous actions taken by Germany and the professed desire to ensure EU harmony and solidarity. The inability of Germany and, by virtue of Germany’s policy decision, the rest of the EU to cope with the influx of migrants into the continent was quickly realised. Although perhaps with the added benefit of hindsight, it is difficult to look at the history of large asylum movements into Germany and at the nature of the movement in the European migrant crisis and not see the repercussions of the open door policy. Liberal policies in one country have generally never been contagious influencing others to follow similar paths. The decision by Germany to adopt this policy was not replicated in other countries, nor did it encourage more generous asylum policy decisions across the EU. Sweden is, to a degree, an exception as it has had less restrictive asylum policies in comparison to other European countries and took in the most asylum seekers per capita in Europe in 2015 (Moore, 2016). Sweden too, has encountered struggles in its response to the migrant crisis, many similar to those in Germany (Moore, 2016; Crouch, 2015). The repercussions of the decision to implement the open door policy were immediate as migrant flows increased substantially into Germany and consequently into Europe. A number of citizens from states other than Syria abandoned their documents and posed as Syrians, successfully and unsuccessfully (George, 2015). In response to these consequences, there was only a very brief window where the open door policy was operating to the full extent of its provisions before border controls and entrance restrictions were brought in. These ongoing controls and restrictions continue to challenge the integrity of the Schengen Area.

The entrance restrictions put into place reflect the complexity of the tension influencing asylum policy. As previously discussed, the balance of practical relevance and ethical force is necessary

(Gibney, 2004). The interconnections between agency or the “actual capabilities of the state” and values are particularly stark when considering the open door policy and the policies that have proceeded the September 2015 decision (Gibney, 2004). The open door policy was justified by adherence to an ethical force and moral obligations that needed to be upheld. In the immediate wake of the implementation of the policy the arguable failure to consider the practical relevance of the policy became apparent. The actual capability and political feasibility of Germany to provide asylum with no restrictions to the open door policy while ensuring an adequate standard of living for both migrants and German citizens was quickly exceeded. This will be expanded on further in the case of the entirety of the EU in the last section of this chapter.

Where the ethical force lies however, is complicated (Steiner, 2000). In this instance an ethical force to adhere to moral and legal obligations originally influenced the open door policy, however the moral argument that opened the borders became less defined and influential as the consequences became apparent. Merkel has continued to argue the moral obligations influencing the open door policy in her addresses to the German public even as she has recognised flaws in the policy decision. The continued moral justification of the decision to implement the open door policy does not reflect the trajectory of asylum policy and practice since that decision. This extends to other policy areas illustrating the increased embedding of asylum policy within migration, defence, foreign and economic policy. Morality is contested and contradictorily employed across the political spectrum and policy areas. When looking at this trajectory in Germany, moral arguments have not only been used to explain and justify the open door policy but to also rationalise for example, increased security and surveillance, the reintroduction of border controls and the EU-Turkey deal.

Security

More so than with previous key movements of asylum seekers and migrants into Germany, the most recent influx of asylum seekers in combination with the identified tension have influenced asylum policy and practice by inextricably linking it with security. Asylum, even with its unique obligations, has been subject to the securitisation of migration. However specifically concerning the identified tension, the linking of security with asylum has been reflected in policy and debate demonstrating the evidence of the tension and its influence on asylum policy and practice and broader policy areas. The size, unpredictability and the mixed nature of the migratory flows during the European migrant crisis caused a mass influx of people from a diversity of backgrounds with differing claims to protection.

The security-asylum link has been strengthened by both the threat and the instigation of violence against German and European citizens by foreigners, some of whom entered Europe as asylum seekers. The infiltration of extremists intending to cause harm to the public in Europe, including in Germany, has further complicated asylum policy. This complication demonstrates the influence of the tension. The primary question arising in response to this complex asylum-security link is how to, or even whether to, protect a large population of people when a minority of that mass could cause significant harm to German citizens and others? Where does the moral obligation of protection lie in this instance? Some states, such as Canada, have sought to solve this dilemma by focusing their resources on the resettlement of vetted, status-confirmed refugees directly from refugee camps (Government of Canada, 2016). However, for Europe the geographical proximity to war zones or unstable countries and the values in the EU particularly freedom of movement, have resulted in an environment where, bar extensively enforcing the outer border of the Union, there will be asylum seekers who require protection and by entering a member country come under the purview of the entire Union.

An elaborate and resource intensive process is used to assess the claims of an asylum seeker to prove both that their security will be under threat should they be returned to their state of origin and that they are not a threat to the security of Germany and the EU. The interests and security of citizens are traded off against the security of foreigners including those seeking protection. Gibney (2004, p. 257) argues that the consequences for foreigners rarely cause public debate at times of “high national drama”. Yet, the ethical and moral balance is not satisfied by the dismissal of the interests and security of foreigners. This is evidenced in Germany and in the broader EU in the aftermath of violence and in light of security threats. In public addresses, especially in the aftermath of attacks, Chancellor Merkel has presented an argument for Germany to not abandon its freedoms and generosity in the face of the actions of a minority. The desire to fulfil commitments and retain a generous and morally sound reputation is evident, in rhetoric at the very least. In concert with this however, has come policy increasingly restricting freedoms and reducing previous generosity. The key policy actions in response to national or regional drama have limited the entrance of asylum seekers, placed further expectation and requirement on the integration of asylum seekers and refugees and increased security and surveillance of all people in Germany. Demonstrating the complexity of the tension influencing asylum policy is the contestation of morality where, as mentioned above, moral arguments have been employed to justify an array of measures and rhetoric. The embedding of asylum policy within other policy areas has broadened the influence of the tension beyond policy directly concerned with asylum seekers. The introduction, for example, of further security and surveillance measures requires a value-cost analysis. Any value gain in security has to be balanced against the costs to other values such as

justice and freedom (Gibney, 2004, p. 257). This value-cost analysis is encased in the citizen versus foreigner dichotomy and in the broader tension influencing asylum policy and practice.

Integration

The German government and society has for decades sought through tough naturalisation laws to ensure a reasonable degree of political and cultural homogeneity. This has been bolstered by as mentioned in Chapter Six, a strong perception among Germans that their country is not a country of permanent asylum and immigration. These beliefs fostered the impressive integration of millions of ethnic Germans from throughout Eastern Europe after World War Two and throughout the Cold War. This integration however, did not extend beyond those who fitted into the model of German membership. Changes to citizenship laws in 2000 and the introduction of formal integration policies in 2005 were implemented to improve integration (Diez & Squire, 2008; Hubschmann, 2015). Prior to 2005, integration was not subject to policy or law. Integration policies are inextricably connected to how the right to asylum is legislated and practiced in a state. Policies enabling asylum seekers and refugees to actively contribute to society lend a more favourable attitude towards current and future asylum seekers and refugees entering the state (Joly, 1996, pp. 190-191). Acceptance is aided to a lesser degree when structures and policies in place to ensure reception and integration are perceived to be failing to cope. The creation and implementation of integration policies alone illustrates the influence the tension I have outlined through this thesis has on asylum policy and practice. States not only contend with entrance requirements and decisions related to the protection status of an individual, policies and bureaucratic systems have extended the role of the government and the expectation on an asylum seeker beyond the moment they receive refugee status. This extension has been deemed necessary to ensure the successful integration of an asylum seeker or refugee into German society thus demonstrating how the right of asylum and the rights of a state or political community along with considerations of national interest and political feasibility form a tension that shapes asylum policy and practice.

In regard to asylum seekers in Germany, the two key influxes up until 2015 were from within Europe. This did not guarantee that there was a liberal welcoming atmosphere in Germany, as the events in the early 1990s demonstrate. Nevertheless, the depth of debate and the response through policy and law concerning integration has been stronger with the latest movement of asylum seekers into Germany. As Betts noted in 2015, the third key movement of asylum seekers into the EU represented “the first time in history” that the Union had faced such a large influx from outside of the region (Kofanov, 2015). This influx has been predominately composed of individuals who identify as Muslim from non-democratic, conservatively governed countries. It is also notable the increase in

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unaccompanied minors entering Europe and consequently Germany. 90,000 minors lodged asylum applications in the EU in 2015, in comparison to 23,000 in 2014 (Daugherty-Kelly, 2017). How best to protect and process the asylum claims of unaccompanied children has added a layer of complexity to Germany's response.

With the implementation of the open door policy and an exponential rise in migrants entering Germany, the initial atmosphere was liberal and welcoming however, this was to be relatively brief. As mentioned above, it was not long before policy change and public opinion began to turn and entrance was increasingly restricted. The political and practical feasibility of the German government and society to receive and integrate large numbers of migrants and asylum seekers was a significant factor in the decision to restrict entrance and instigate EU-wide policies in an attempt to decrease the numbers entering Europe. The crucial position of integration within asylum policy and practice demonstrates the influence of the tension on asylum policy and practice. The questions concerning political membership and individual freedoms and human rights are unavoidable when considering an asylum claim and thus the integration of an asylum seeker into German society, or any liberal democratic state. If an individual gains entrance to Germany, there is an expectation placed on the German government to ensure that there are functioning systems and policies in place so that he/she can integrate into German society and become an active contributor to the political community. There is a parallel expectation on the individual to adhere to the cultural and societal norms in Germany and engage with the government systems and policies to become an independent and active member of German society. Should that individual be an asylum seeker there is in some regard an added expectation of gratitude to the host state because of the protection and assistance offered. The perception follows that this gratitude leaves no room for complaint or failure to integrate.

In Germany substantial attention was placed on integration as incidents both inside and outside the state produced unease in different sections of German society regarding the danger asylum seekers may represent to the safety and culture of the German people. The radicalisation of Muslim asylum seekers, refugees or migrants in particular has become a concern in Europe and is often blamed on the failure to adequately integrate individuals into the country. In October 2015, as Germany commemorated 25 years since Germany's reunification Merkel, seeking to reassure the German people, referenced the successful reunification as evidence of her belief that the country could now absorb and integrate the large numbers of migrants. She spoke of her government's willingness "to tackle the responsibility of integration" and continued to channel the debate along positive lines emphasising Germany's need for migrants (Connolly, 2015). While still a feature of the government rhetoric, the emphasis has shifted to the expectations of integration and the impetus on asylum seekers and refugees to successfully and gratefully integrate and contribute to German society. This shift has

occurred in response to public opinion, political competition and situations such as the 2015-2016 New Years violence in Cologne.

A primary point of contention regarding integration concerns Islam and its role in German society. To some, including those in the AfD, Islam is incompatible with the German constitution (BBC, 2016e). The German government and the courts are increasingly being called on to balance religious belief and freedom with the values and rights defined in the German constitution. It is on this balance that the degree of integration required of asylum seekers is particularly illuminated. This requirement has been steadily bolstered by Merkel and her party throughout 2016 to reverse the problems and disapproval of earlier asylum policy and practice. The decision for example, to endorse the burka was directly linked to cultural compatibility with Merkel saying, “Here we say ‘show your face’. So full veiling is not appropriate here” (Aljazeera, 2016c). She argued that it was “right to expect integration from newcomers” (BBC, 2016i). A further example illustrating the role of the courts occurred in December 2016 when Germany’s highest court ruled that ultra-conservative Muslim girls are required to participate in mixed swimming classes at school (Reuters, 2016). The compatibility of some religious practices with German society is contentious and has invoked political and public debate. This debate raises questions that form part of the tension influencing asylum policy and practice. There will always be a cost for every gain that must be weighed and considered. Where a policy seeks to protect German and values and freedoms, there will be a corresponding risk of eroding those values and freedoms. The value of religious freedom has complicated parameters, trading off against freedom of expression, the equality of men and women and the right to privacy, for example.

The distinction between ‘good’ and ‘bad’ refugees was argued by Steiner (2000, p. 4) to be no longer relevant in the post-Cold War world. However, the emphasis on integration and attention given to extremism challenge this argument. The designation of acceptable and non-acceptable asylum seekers is still present in Germany and other liberal democratic states, though arguably more implicit under a glossy façade of non-discrimination. The blanket designation of safe countries of origin along with the formal and informal deals sought between the EU and transition and source refugee countries have created a complex system of distinction between individuals by virtue of their country of origin or the route through which they have attempted to enter Europe. This system of distinction is not only reserved for those who fail to reach Germany or to gain refugee status, the effort and ability of an asylum seeker or refugee to integrate and contribute to German society assigns them with acceptability or non-acceptability in the eyes of the public or a sector of the public. This assignment reflects back to the government and the bureaucracy in place to grant refugee status and ensure integration. The assignment of non-acceptability or acceptability speaks to the political feasibility, the practical relevance and the role of the government in safeguarding the German community and its values. This

is another instance where the tension influencing asylum policy plays out, both the likelihood of an asylum seeker entering Germany and receiving refugee status and in how an asylum seeker or refugee will be perceived by the German public.

Non-refoulement

States have to consider the level and permanency of protection they offer asylum seekers. The desire to integrate an individual is weighed against how permanent that individual's residence in the country is deemed to be. The insistence by states to determine asylum applications on a case-by-case basis has significantly increased the financial and administrative load for states while the designation of different levels of protection and treatment for asylum seekers not granted full refugee status but unable to return home has created an cumbersome and expensive system of status determination in states, including in Germany (Collinson, 1994). The degree and longevity of protection and the level of welfare offered to the different categories of people are contingent on the principle of asylum, the refugee definition and the principle of non-refoulement. The expectations upon an individual by way of integration are also reflective of the protection and treatment he/she receives.

As discussed in previous chapters, one significant problem with the asylum system in Germany, beyond the expense and the backlog of applications, is the group of people whose asylum applications are rejected and deportation is problematic because of the situation in the country of origin. A layer of complication is added by failed asylum seekers with criminal records, either due to a crime committed in Germany or in another state. Is it morally acceptable to deport a criminal to a war zone? Germany currently decides this on a state by state basis grounded in a judgment of the overall security situation in a state. Syrian citizens are for example are not deported to Syria, whether with a criminal record or not. The detention of failed asylum seekers including those who are potentially dangerous or have criminal convictions is controversial but when weighed in a cost-gain analysis is often deemed necessary. Failed asylum seekers are not required nor invested in to integrate into German society and remain literally caught in the tension in a grey area of protection and support for an undefined amount of time. They do not have permission to work legally in Germany and receive limited welfare. The disenfranchisement of this group of people and the psychological effect of the protection limbo is of concern and lends itself to fears of radicalisation and acts of violence against the German population. One of the July 2016 attacks was carried out by a failed Syrian asylum seeker who could not be deported (BBC, 2016g). Whilst his failed status can not be directly attributed to his decision to conduct an act of violence, he had to remain in Germany in an indefinitely precarious situation without the means or the expectation to integrate into German society. This situation presents a complex problem for the German government attempting to balance moral obligations and adherence to international law

and norms with the protection of the German population and the values of the state. An often contradictory and confusing set of policies and practices have been shaped by this tension.

The Regional and International Context

As the above analysis shows, the tension influencing asylum policy and practice can not be simply described as two opposing forces. My argument in response to my research question is that there is a complicated combination of morality, national interest and obligation that has shaped asylum policy and practice in Germany during the European migrant crisis. This final section of Chapter Eight presents my further argument that the complexity of the tension and the breadth of its influence has changed and increased as the broader context in which Germany sits has altered.

The deepening integration of the EU has had wide-reaching influence upon migration policy and practice including with regard to asylum. It still holds that inherent within asylum is state interdependence because, as argued in Chapter Four, for an asylum seeker to exist there has to be movement from one state to at least one other. The instability or governance of state, for example, will have impact beyond its borders insofar as it drives citizens to flee that state for another one to seek protection via the principle of asylum. With the further integration of the EU, the added complexity to this inherent state interdependence within asylum has been the extension of borders and the EU wide asylum policies. This situation did not exist in previous asylum movements in Europe, particularly in the early 1990's where the majority of research on the tension within asylum has been based. The outworking of the complex tension in a state in Europe had some measured impact on neighbouring countries but not to the same degree as in the European migrant crisis. This tension is now one of influence both within individual states and regionally within the borders of the EU. Although the states within the Union retained a level of independence concerning asylum policy, the moves towards harmonisation and the Dublin Regulation had begun to reduce this independence.

This reality broadens the context of the questions grappled with in this thesis and in previous research concerning the tension influencing asylum policy and practice. How does the collective of states in the EU negotiate the entanglement of elements that form the tension? Has the deepening interdependence of the EU created a political community beyond the individual state that invokes the same partialist arguments regarding membership and the protection of that community through the restriction of entrance? It is doubtful whether the tension and its influence on asylum policy can be negotiated on the collective level because while a political community does exist, the EU is made up of individual states composing different political communities. The asylum obligations to the collective political community of the EU have not taken precedence over obligations to the individual

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political community of each state. As the example of Germany shows, states have at times decided to move unilaterally implementing their own asylum policy and practice at the expense of the broader collective community. This is also the case regarding seeming inaction by members and the lack of burden sharing within the Union which is placing unsustainable pressure on the members on the outer borders of the EU. This does not however, negate the new reality of the expanded and multi-levelled influence of this tension and the necessity of the EU as a collective to consider the make-up of this tension and its influence.

As with the balance of practical relevance and values in an individual state, the question of this balance in the wider EU has to be considered. In the same way as Germany's open door policy and proceeding policies represent the complications and influence of this balance and the tension within Germany, the same policies demonstrate the broader influence of this tension throughout the EU. Germany's decision to unilaterally forego the Dublin Regulation contributed to an increase in the numbers of migrants moving into the EU and up through the Balkan migration route, in particular. The proceeding policies implemented in a number of states were influenced by the actual capabilities of those states with varying moral arguments justifying such policies. Specifically considering Germany, the proceeding policies to introduce entrance restrictions and border controls had affect throughout the migration route isolating and stranding migrants especially in Greece. The decision to spearhead the EU-Turkey agreement can also be seen as demonstrative of the broader influence of the tension and the balance of agency and values. The very limited capacity of the Balkan states and Greece, an EU state in the Schengen Area, to process and provide assistance to migrants along with reluctance from most EU states to participate in a quota system were influences beyond Germany's own internal situation motivating such a deal with Turkey. This capacity influenced the moral arguments used to justify an arguably questionable deal with Turkey on human rights and ethical grounds. The EU as a collective has its own balance of practical relevance and ethical force with which to contend and the moral and ethical arguments proffered by politicians, leaders and members of the public are inconsistently applied across the Union.

Beyond the regional level are changes in the international context that have changed the composition of the tension influencing asylum policy and practice. The haphazard and often chaotic flow of mixed migration now dominates the way in which people travel, often lengthy distances, to seek protection or a better life. Increasing inequality and chronic state instability, improved communication and the strength of smuggling and trafficking networks are added factors transforming migratory pathways and systems, informal and formal. In host countries such as Germany, public and political discourse is disseminated and citizens are informed faster and across an array of outlets about unfolding situations both in Germany and across the world. All of these factors alter the configuration

of the tension influencing asylum policy and practice. National interest and international norms are more fluid and stretched across different configurations of trading blocs, military alliances and value-aligned states. This new reality has continued to evolve since the 1990s when Europe absorbed its last major movement of asylum seekers and refugees. The movement, entrance and treatment of asylum seekers is contingent on the way this reality interacts with the regional and domestic contexts of states.

The broader context, regionally and internationally has added complexity and layers to the tension that influences asylum policy and practice in Germany and in other liberal democratic societies. It is impossible to consider a state's policies and practices in isolation of the changing environment in which that state is placed. As the case study of Germany illustrates, the regional and international contexts are complicating and expanding the influence of the tension found to be influencing asylum policy and practice. I now turn to the implications of this analysis and the conclusion of my thesis.

Chapter Nine: Conclusion

I have made the argument throughout my thesis that there is a tension composed not of a simple binary or a tug of war between two opposing forces, but of an entanglement of elements that influences asylum policy and practice in liberal democratic states. In order to give context and evidence to this argument I have explained and analysed the composition of the identified tension and employed this analysis alongside the case study of Germany to provide contemporary evidence and context to the tension. The contemporary setting of the European migrant crisis also illustrates my further argument that the tension influencing asylum policy and practice has become more complex and increased in influence as the regional and international context has changed. The influence of this tension is no longer primarily contained within a state's borders, it sits on multiple layers, domestically, regionally and internationally. The way in which the tension shapes asylum policy in a state or in the case of the EU, a regional entity, has broader repercussions beyond a state's borders as never before. The implications of this argument must be considered if the principle of asylum is to be upheld in a consistent manner and the context in which asylum policy is made and implemented is to be understood more fully.

Implications and Recommendations

The principle of asylum is important to the identity of liberal democratic states beyond the granting of the right to seek asylum. When a liberal democratic state decides to allow the entrance of an asylum seeker, it does not merely consider granting the right to seek asylum, or allowing the asylum seeker to safely reside within the borders. By entering a liberal democratic state an asylum seeker receives an array of rights that are pivotal to the identity of that society. Policies and practices to achieve equality of opportunity and living standards for asylum seekers relatively comparable to citizens of the host state are considered to ensure consistency of the values intrinsic within a liberal democratic state. There are however other elements at play within the prescription of rights and opportunity that influence the likelihood, degree and longevity of protection extended to an asylum seeker and the welfare and reception he or she will receive. The values, obligations, national interests and the moral characteristics of a liberal democratic country influence asylum policy and consequently other areas of policy and practice. There is little doubt that the principle of asylum will continue to be upheld and defended in liberal democratic states. Nevertheless, the nature in which it is upheld is contingent on the way in which states engage with the tension that influences asylum policy and practice.

Gibney (2004, p. 213) argues that Germany's experience with a generous right of asylum prior to 1993 demonstrates the need to be attentive to the "real world forces that are likely to frustrate and

hinder the attempt to implement and maintain morally superior practices”. A similar argument can be made regarding the 2015 open door policy decision. The failure to adequately account for practical relevance and the international and regional context before implementing the policy prompted a backlash and concerns regarding the German government’s judgement and ability to govern and protect German citizens and values. Prior to the implementation of the open door policy, there was a largely generous and liberal public response and reception to asylum seekers. While this response continued in the immediate days following the policy declaration, it was not long before it shifted and the policy and Merkel’s government lost the support of a significant portion of the population. It remains to be seen whether the decision to implement this policy will be seriously detrimental to more generous asylum policy and practice and Germany’s reputation in this area in the future. The history of Germany’s asylum policy trajectory and the decisions during the European migrant crisis demonstrate the need in liberal democratic states to prevent swings in asylum policy and practice that indulge the more extreme views in the state. If Germany, in this case, is to uphold the principle of asylum, morally and ethically, in balance with political feasibility, policy and practice have to be implemented without providing a shock to the system, prompting a backlash and encouraging adverse policy and practice. In order to do this, the tension influencing asylum policy and practice has to be acknowledged and studied, the context Germany sits in has to be recognised and those making policy have to retain flexibility in accordance with changing circumstances. For Germany, the upcoming elections in Germany and in other EU states, the precarious position of the EU-Turkey deal and the ongoing arrivals of migrants into the EU particularly into Italy from Libya will produce new realities which will require negotiation with simultaneous acknowledgment of the identified tension and varying levels of influence it has on Germany’s asylum policy and practice.

Asylum policy has always been embedded in other areas of policy however, it has to be noted and understood how expansively and deeply this entrenchment now is in order to better engage with asylum and its interconnections with other policy areas to produce improved and consistent asylum policy and practice. The link between asylum and security has been particularly prominent through the European migrant crisis and has further complicated the cost-risk analysis of both asylum and intelligence and surveillance policy and the problems surrounding non-refoulement. The current policies that are affected by the principle of non-refoulement require rethought. For the most part, failed asylum seekers who can not be deported are not criminals or dangerous to the public. Leaving these individuals in a state of purposeless limbo by refusing to grant work visas or to provide education is a missed opportunity to recall a portion of the cost of their forced residence in Germany or to further their development for their eventual return to their country of origin. Integrating a failed asylum seeker into German society to a greater degree could also counter concerns of radicalisation through disenfranchisement.

The introduction of formal integration policies just over a decade ago provide evidence of the tension in Germany as they demonstrate the systems and practices the German government has put in place to ensure the protection of German values and the identity of the German state. The nature of those values and this identity are in a perpetual state of flux and negotiation, however this state has been heightened by the external context around Germany, particularly the integration of the EU and the influx of asylum seekers from outside of Europe. There are parallel negotiations of identity and membership taking place that influence the way in which asylum policy is created and implemented. The public debates in Germany concerning the integration of Muslim asylum seekers illustrate an influential aspect of the domestic consideration of German values and the expectations of integration and membership to the German society. This is occurring in parallel to the EU collectively negotiating its membership and the values and expectations attached to that membership. It is clear that the reception and integration of asylum seekers and refugees cannot be disregarded or compartmentalised from entrance and refugee status evaluation policies. Careful consideration of the former ensures consistency in the latter and all-important public support for governments. This approach has to be extended across the EU as the bloc formulates and implements asylum policy individually and collectively. How each individual state in the EU, and the EU collectively acknowledges and understands the tension influencing asylum policy and practice is key to the way in which the principle of asylum is upheld in the future and the values and membership to each state and the EU are shaped and protected.

In summary, the primary recommendations I have drawn from my research are as follows. Firstly, governments and those creating policy have to avoid swings in asylum policy and practice that indulge the more extreme views of the society in their specific state. Secondly, states must re-evaluate the confusing and resource-intensive tiers of protection they assign to different groups of people, particularly those who are directly affected by the principle of non-refoulement. For those people who are not granted refugee status, are not dangerous to the public and can not be deported, there must be allowances for work or study. Finally, reception and integration policies must be consistently recognised alongside entrance and status evaluation policies. Just as with the argument I have made in this thesis concerning the extension and increased complexity of the tension beyond the individual state to the regional level, each of these recommendations also extend beyond the individual state to the collective asylum policy and practice of the EU.

Suggestions for Future Research

While there are parallels between Germany's policy trajectory in the past and its policy during the European migrant crisis, the evolution of the context internally and externally in Germany and the world recommends continual engagement with this area that remains politically controversial and morally significant. The German case study provides recommendations and implications as discussed above, specific to Germany and to liberal democratic states more broadly. Each state has a unique domestic environment and position in the wider context of the world, however it is my proposal that any liberal democratic state could be substituted into my research question and similar lessons could be drawn. This of course, requires further research as although this has been shown in previous research it is now outdated. Additional insight could be found in comparative study between two or more states to better dissect the dimensions of the tension. In light of the argument I have made concerning the EU and the questions this has raised regarding the idea of the tension influencing asylum policy and practice at the regional level, future research is needed to understand this new dimension.

The rights attached to the principle of asylum and the granting of refugee status are inextricably connected to the identity and the reputation of a liberal democratic state. The manner in which a state treats asylum seekers through their asylum policy and practice speaks to the values and the quest for equality within liberal democratic states. Failure to allow the entrance of asylum seekers or to ensure integration and quality of opportunity to asylum seekers and refugees in a liberal democracy threatens the values and morals held in liberal democracies and more broadly in international law. For these reasons governments, politicians and bureaucrats at the state, regional and international level should continue to uphold the principle of asylum and resist its erosion. However, this requires that the controversy and complexity of asylum be analysed and the tension creating this complexity be acknowledged and studied in order to develop and implement consistent, feasible and ethical asylum policy and practice.

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