

# **NEW ISSUES IN REFUGEE RESEARCH**

**Working Paper No. 48**

## **Arguing about asylum: the complexity of refugee debates in Europe**

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October 2001

These working papers provide a means for UNHCR staff, consultants, interns and associates to publish the preliminary results of their research on refugee-related issues. The papers, which are produced by the Evaluation and Policy Analysis Unit, do not represent the official views of UNHCR. They are also available online at <http://www.unhcr.org>

ISSN 1020-7473

## Introduction

Few issues in Europe today are as controversial as the granting of asylum. While the general idea that politically persecuted people ought to receive asylum is widely accepted, the source of the controversy lies in the details. What precisely constitutes “political persecution?” How can an asylum application be judged fairly? To what extent should domestic constraints influence asylum decisions? These are all difficult questions that bring to light the complex mix of political, cultural, moral, legal, economic, and ideological motives that shape asylum policies in Europe.

Asylum in Europe has not always been this way. Until the late 1970s, the issue caused little controversy because few people applied for asylum. Those who did were usually well-educated Eastern Europeans who were economically and ideologically useful. Asylum in Europe changed dramatically from the late 1970s to the mid 1990s as the world’s refugee population soared from two million to 15 million.<sup>1</sup> Better communication and transportation links helped people from all over the world reach Europe where they have been applying for asylum in unprecedented numbers. Within a decade, annual asylum applicants in Europe increased ten-fold, from 60,000 to 600,000, with the majority of these applicants coming from countries as diverse as the former Yugoslavia, Romania, Turkey, Sri Lanka, Iran, Lebanon, Zaire, Pakistan, and India. This rise in the number of asylum-seekers, their diverse countries of origin, and the decline of communism have all led to making asylum such a highly controversial issue in Europe today.

Yet, despite being at the forefront of contemporary European politics, asylum has received only scant attention from political scientists. This oversight is regrettable because asylum is intimately linked to other controversial European issues including the rise of far-right parties, the restructuring of the welfare state, and the integration of Europe into the European Union. Not only has political science in general overlooked asylum in Europe, but so has its sub-field of international relations, despite the obvious links between asylum and issues that are integral to the field such as sovereignty, foreign policy, and legitimacy. This gap in the literature must be filled because, as Weiner writes,

Migration and refugee issues, no longer the sole concern of ministries of labor or of immigration, are now matters of high international politics, engaging the attention of heads of states, cabinets, and key ministries involved in defense, internal security, and external relations.<sup>2</sup>

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<sup>1</sup> This figure of 15 million refugees does not include “Other People of Concern to UNHCR”, internally displaced people, returnees, war-affected populations, and others groups benefiting from UNHCR’s protection and assistance activities. Together, “refugees” and “other people of concern to UNHCR” totaled 27.4 million in 1995. See United Nations High Commissioner for Refugees. *The State of the World’s Refugees: In Search of Solutions* (Oxford: Oxford University Press, 1995) and United Nations High Commissioner for Refugees. *The State of the World’s Refugees: A Humanitarian Agenda* (Oxford: Oxford University Press, 1997).

<sup>2</sup> Myron Weiner, “Introduction: Security, Stability and International Migration,” in *International Migration and Security*, ed. Myron Weiner (Boulder, CO: Westview Press, 1993), p. 1. He notes that asylum and migration is overlooked by such standard international relations works such as: Robert Gilpin, *The Political*

Studying asylum also demonstrates weaknesses in the dominant international relations paradigms that seek to explain state behavior on the basis of their rational pursuit of assumed national interests.<sup>3</sup> While it is of course uncontroversial to argue that states consider their interests when setting asylum policies, this issue demonstrates the difficulty of objectifying national interests. In his discussion of asylum, Shacknove subdivides “national interests” shaping asylum into *political stability*, *economic stability*, and *foreign policy concerns*.<sup>4</sup> While it may be tempting to assume that asylum policies are simply the outcome of a rational cost/benefit analysis of these three interests, objectively determining refugees’ effects on a country’s politics, economy, and foreign policy is not easy.

Regarding political stability, one might argue for a restrictive asylum policy because cultural homogeneity promotes political stability or alternatively for an open policy because foreigners contribute to political stability.<sup>5</sup> Regarding culture, does cultural heterogeneity enrich a society, as Dowty argues, or does it dilute national culture and identity, as Patrick Buchanan, Jean-Marie Le Pen, and Jörg Heider argue?<sup>6</sup>

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*Economy of International Relations* (Princeton: Princeton University Press, 1987); Robert O. Keohane and Joseph Nye, *Power and Interdependence: World Politics in Transition* (Boston: Little, Brown, 1977); Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984); Stephen D. Krasner, *Defending the National Interest: Raw Materials Investment and U.S. Foreign Policy* (Princeton: Princeton University Press, 1978); Kenneth Waltz, *Theory of International Politics* (Reading, MA: Addison-Wesley, 1979).

<sup>3</sup> For more on this critique of neoliberalism and neorealism, see a new set of literature known variously as “constructivist,” “reflectivist,” “post-modernist,” “interpretivist,” “structuralist,” “post-structuralist,” and “sociological institutionalist.” This literature shares the basic belief that interests are not exogenous to the political process and that norms are not merely intervening variables between interests and behavior. Instead, interests, norms, and behavior are all part of a dynamic environment in which each component affects the others, and each is constantly being interpreted and reinterpreted by actors who are themselves part of this environment. These claims, which are a significant departure from those of neoliberalism and neorealism, have been fueled by the failures of these conventional theories to explain the dramatic transformation of the international system brought by the end of the Cold War. See, for example, Alexander Wendt, “Anarchy Is What States Make of It: The Social Construction of Power Politics,” *International Organization* 46, 2 (Spring 1992): 391-426; Peter Katzenstein, ed., *The Culture of National Security: Norms and Identity in World Politics*, (New York: Columbia University Press, 1996); Audie Klotz, *Norms in International Relations: The Struggle against Apartheid* (Ithaca: Cornell University Press, 1995); Cecelia Lynch, *Beyond Appeasement: Interpreting Inter-War Peace Movements in World Politics* (Ithaca, NY: Cornell University Press, 1999); Rey Koslowski and Friedrich Kratochwil, “Understanding Change in International Politics: The Soviet Empire’s Demise and the International System,” *International Organization* 48, 2 (Spring 1994): 215-48; Martha Finnemore, *National Interests in International Society* (Ithaca: Cornell University Press, 1996); Friedrich Kratochwil and John Gerard Ruggie, “International Organization: A State of the Art on an Art of the State,” *International Organization* 40, 4 (Autumn 1986): 753-76; Friedrich Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge: Cambridge University Press, 1989).

<sup>4</sup> Andrew E. Shacknove, “American Duties to Refugees: Their Scope and Limits,” in *Open Borders? Closed Societies?*, ed. Mark Gibney (New York: Greenwood Press, 1988).

<sup>5</sup> Samuel P. Huntington, *Political Order in Changing Societies* (New Haven: Yale University Press, 1968); John C. Harles, *Politics in the Lifeboat: Immigrants and the American Democratic Order* (Boulder, CO: Westview Press, 1993).

<sup>6</sup> Alan Dowty, *Closed Borders: The Contemporary Assault on Freedom of Movement* (New Haven: Yale University Press, 1989).

Regarding foreign policy, granting asylum to a refugee is an explicit critique of another state's treatment of its citizens, so states are often quick to accept refugees from foes, but hesitant to accept them from friends. Such an asylum policy was common during the Cold War, but in many cases outside of the Cold War context asylum policies cannot simply be explained as the result of relations between sending and receiving countries.<sup>7</sup> Many sending countries such as Sri Lanka, Ghana, or Nigeria are difficult to categorize as either friends or foes. Even more perplexing from a foreign policy viewpoint is that a country such as Germany accepts significant numbers of Kurds from Turkey, a NATO ally. Clearly in the last two decades (and especially since the end of the Cold War), the distinction between "good" refugees and "bad" refugees has virtually disappeared, and Europe now simply faces people who seek its protection.

Regarding economic stability, I have found little work that considers the economic impact of refugees on receiving countries. The debate over the economic impact of immigrants, however, is still unresolved. Furthermore, there are conflicting opinions about whether economic stagnation causes resentment toward foreigners (whether refugees or immigrants). On the one hand, Joly and Layton-Henry stress the importance of economic hardships to explain the tension over asylum in Europe. On the other hand, in her study of Germany, Britain, Canada, and the United States, Hoskin found that, except in the United States, public opinion toward immigrants was weakly related or unrelated to economic variables of any kind, and she concludes that immigration, like many issues, stirs up both rational and irrational sentiments that defy easy prediction.<sup>8</sup> Theories that are fixated on rational states pursuing objective national interests are clearly insufficient for understanding asylum in Europe today and we must broaden our lens to consider other motives.

The limited number of scholars who do focus on asylum generally agree that asylum is shaped by a complex configuration of national interests, international norms, and morality. Loescher, for example, believes:

The formulation of refugee policy involves a complex interplay of domestic and international factors at the policy-making level and illustrates the conflict between international humanitarian norms and the sometimes narrow self-interest calculations of sovereign nation states.

Collinson writes:

A moral, legal or humanitarian obligation to offer protection to refugees will, in practice, always be balanced against the political and economic interests and concerns of potential asylum states.

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<sup>7</sup> For more on asylum in the Cold War see, for example, Gil Loescher and John A. Scanlan, *Calculated Kindness: Refugees and America's Half-Open Door, 1945 to the Present* (New York: Free Press, 1986); Kim Salomon, *Refugees in the Cold War* (Lund: Lund University Press, 1991).

<sup>8</sup> Danièle Joly, *Haven or Hell?: Asylum Policies and Refugees in Europe* (New York: St. Martin's Press, 1996); Zig Layton-Henry, *The Politics of Immigration: Immigration, 'Race' and 'Race' Relations in Post-War Britain* (Oxford: Blackwell, 1992); Marilyn B. Hoskin, *New Immigrants and Democratic Society: Minority Integration in Western Democracies* (New York: Praeger, 1991).

Similarly, Shacknove argues:

Refugee policy has always been at least one part State interest and at most one part compassion. Appeals based solely upon compassion, solidarity or rights are only occasionally successful.

And Joly concludes:

[Ethical factors] generally play some part when supranational values are accorded sufficient importance or when a particular conjuncture allows the refugees' interest to coincide with other interests at stake in the variegated fabric of national and international factors at play.<sup>9</sup>

This literature then generally assumes that asylum policies are the result of a tug-of-war between international norms and morality loosening asylum on the one hand and national interests tightening it on the other. While intuitively sound, I have found little work that systematically explores this struggle, so this paper is a step toward exploring this alleged tug-of-war that shapes asylum in Europe.

It must be clear that this paper deals with refugees not immigrants, and this distinction is crucial to make.<sup>10</sup> While both may be considered a subset of international migration, an immigrant is an individual who voluntarily migrates from one country to another, usually for economic betterment. The difficulty of defining a refugee has long been a focus of refugee scholars and needs not detain us here. Instead, it is important to understand how

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<sup>9</sup> Gil Loescher, "Introduction," in Gil Loescher and Laila Monahan, eds., *Refugees and International Relations* (Oxford: Oxford University Press, 1989); Sarah Collinson, *Beyond Borders: West European Migration Policy Towards the 21st Century* (London: Royal Institute of International Affairs, 1993); Andrew Shacknove, "From Asylum to Containment," *International Journal of Refugee Law* 5, 4 (1993): 516-33; Danièle Joly and Robin Cohen, eds., *Reluctant Hosts: Europe and Its Refugees* (Aldershot, England: Avebury, 1989); Danièle Joly, *Haven Or Hell?: Asylum Policies and Refugees in Europe* (New York: St. Martin's Press, 1996).

<sup>10</sup> While relatively little has been written on refugees in Europe, much good work has dealt with immigrants and guest workers in Europe. See, for example, James Hollifield, *Immigrants, Markets, and States: The Political Economy of Postwar Europe* (Cambridge, MA: Harvard University Press, 1992); Mark Miller, *Foreign Workers in Western Europe: An Emerging Political Force* (New York: Praeger, 1981); Tomas Hammar, ed., *European Immigration Policy: A Comparative Study* (Cambridge: Cambridge University Press, 1985); Zig Layton-Henry, *The Political Rights of Migrant Workers in Western Europe* (London: Sage Publications, 1990); Rosemarie Rogers, ed., *Guests Come to Stay* (Boulder, CO: Westview Press, 1985); Rogers Brubaker, ed., *Immigration and the Politics of Citizenship in Europe and North America* (Lanham, MD: University Press for America, 1989); Hans-Joachim Hoffmann-Nowotny, *Soziologie des Fremdarbeiterproblems: Eine Theoretische und Empirische Analyse am Beispiel der Schweiz* (Stuttgart: Ferdinand Enke Verlag, 1973); Daniel Kubat, ed., *The Politics of Migration Policies*, 2nd ed. (New York: Center for Migration Studies, 1993); Stephen Castles and Godula Kosack, *Immigrant Workers and Class Structure in Western Europe*, 2nd ed. (Oxford: Oxford University Press, 1985). On making the distinction between refugees and immigrants, see Gil Loescher, ed., *Refugees and the Asylum Dilemma in the West* (University Park, PA: Pennsylvania State University Press, 1992); Elizabeth, G. Ferris, *Beyond Borders: Refugees, Migrants and Human Rights in the Post - Cold War Era* (Geneva: WCC Publications, 1993); Mary M. Kritz, Lin Lean Lim, and Hania Zlotnik, eds., *International Migration Systems: A Global Approach* (Oxford: Clarendon Press, 1992); Sarah Collinson, *Beyond Borders: West European Migration Policy towards the 21st Century* (London: Royal Institute of International Affairs, 1993).

the three states under consideration define a refugee. In assessing whether an individual is a refugee and therefore deserves asylum, Switzerland, Germany, and Britain all use the criteria laid down by Article 1 of the 1951 UNHCR Refugee Convention. Accordingly, all three states consider refugees to be individuals who face persecution because of their race, religion, nationality, or their membership of a particular social group, or political opinion. The asylum controversy in Europe revolves around the fact that economic hardship is *not* a criterion for being recognized as a refugee. The crux of the matter is that European states claim that the vast majority of those seeking asylum today are in fact not persecuted refugees but are opportunistic immigrants who abuse the asylum process with illegitimate claims. This charge is vehemently denied by those who believe Europe is becoming a fortress and turning its back on people who deserve protection.<sup>11</sup>

While I separate *national interests*, *international norms*, and *morality* for analytical purposes, I am fully aware that in practice these motives are significantly entangled because we tend to design our actions so that our self-interests and our non-self-interests coincide. Such an entanglement of motives is quite common in asylum where accepting refugees can grant legitimacy, strengthen democracy, express humanitarian sentiments, mollify religious concerns, grow the economy, enhance security, bolster international law, and satisfy public demands. Explaining away this complexity as mere reflections of national interests is dubious at best.

When referring to international norms, the asylum literature cites numerous explicit international and regional agreements that prescribe the establishment of an asylum process, the definition of a refugee, the principle of *non-refoulement*,<sup>12</sup> and the link between asylum and human rights. For Germany, Switzerland and Britain, the most important international refugee norms are the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol, the 1948 Universal Declaration of Human Rights, and the European Human Rights Convention. As of 1995, 128 states were party to the 1951 Convention and/or 1967 Protocol, including Britain, Germany and Switzerland.<sup>13</sup>

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<sup>11</sup> Alasdair Mackenzie represents this anti-government position when he argues in *New Statesman and Society* (12/8/1995), "Refugee advisers agree that the overwhelming majority of asylum-seekers is sincere. If anyone is abusing the system, it is not refugees, but the government."

<sup>12</sup> Article 33 of the 1951 Refugee Convention states: No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

<sup>13</sup> For more on these international asylum norms, see, for example, Guy S. Goodwin-Gill, *The Refugee in International Law* (Oxford: Clarendon Press, 1983); Atle Grahl-Madsen, *The Emergent International Law Relating To Refugees: Past, Present, Future* (Bergen: University of Bergen Law Faculty, 1985); Richard Plender, *The Right Of Asylum* (Dordrecht, NL: Martinus Nijhoff, 1990); Jack Donnelly, *International Human Rights* (Boulder, CO: Westview Press, 1993); Erika Feller, 'Carrier Sanctions and International Law,' *International Journal of Refugee Law* 1, 1 (1989): 48-66; Kay Hailbronner, 'Nonrefoulement and 'Humanitarian' Refugees: Customary International Law or Wishful Legal Thinking?,' in *The New Asylum Seekers*, ed. David A. Martin (Dordrecht, NL: Martinus Nijhoff Publishers, 1988); Kay Hailbronner, 'The Right to Asylum and the Future of Asylum Procedures in the European Community,' *International Journal of Refugee Law* 2, 3 (1990): 341-60; James C. Hathaway, 'International Refugee Law: Humanitarian Standard or Protectionist Ploy,' in *Human Rights and the Protection of Refugees Under International Law*, ed. Alan E. Nash (Halifax, Nova Scotia: Institute for Research on Public Policy, 1988); James C.

I use the term morality to mean the capacity to distinguish between right and wrong and the willingness to act upon what is right. In other words, a moral argument has a reflective and an active component.<sup>14</sup> In asylum debates, moral arguments not only claim to know what is right, but they also claim to actively promote it. In pointing out moral obligations to grant asylum, the asylum literature most often stresses either religious or philosophical foundations, specifically Judeo-Christian ideals or the central tenets of Liberalism.<sup>15</sup> We must be careful to differentiate between *norms* and *morality*. Certainly there is a great deal of confluence between norms and morality; respecting the principle of *non-refoulement*, for example, conforms not only to an international norm but also satisfies moral principles. Yet, it is a mistake to use norms and morality interchangeably because norms can also be amoral or immoral, i.e., they may either not involve moral principles or they may contradict them.

To probe the struggle between national interests, international norms, and morality in asylum, I explore the arguments made by Swiss, German, and British parliamentarians when drawing up asylum legislation over the past two decades. As a source of analysis, parliamentary debates offer the most accessible and clear articulation of politicians' arguments within a formal political institution. Members of parliament use this forum to argue their positions, to shape the political discourse, and to impress the public. The public, in turn, evaluates these arguments and reacts to them in the next election. Parliamentary debates, then, play an important role in the open exchange of ideas between representatives and the public, and this exchange is fundamental to liberal democracies.

This research covers the period from the late 1970s, when asylum was just beginning to cause political ripples, to the mid 1990s, when it had become one of the dominant issues in Europe. Germany, Britain, and Switzerland offer a wide variation in European asylum policies: Germany's policy has been among the most generous, Britain's has been among the most restrictive, and Switzerland's has been in between. Given the spatial and temporal variation in the asylum policies of these three countries, parliamentary debates

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Hathaway, *The Law Of Refugee Status* (Toronto: Butterworths, 1991); Claudena M. Skran, *Refugees in Inter-War Europe: The Emergence of a Regime* (New York: Oxford University Press, 1995).

<sup>14</sup> For more on this conception of morality, see Hans-Balz Peter, 'Die Internationale Sozialpolitik und der Weltsozialgipfel 1995 – Sozialethische Perspektive,' Referat im Rahmen der Tagung *Weltsozialgipfel 1995: Gute Nachrichten für die Armen?* gemeinsam veranstaltet von der Kammer für Kirchlichen Entwicklungsdienst der Evangelischen Kirche in Deutschland und der Wissenschaftlichen Arbeitsgruppe für weltkirchliche Aufgaben der Deutschen Bischofskonferenz, Bonn, Januar 1995.

<sup>15</sup> For more on morality and asylum, see for example Elizabeth Ferris, *Beyond Borders: Refugees, Migrants and Human Rights in the Post - Cold War Era* (Geneva: WCC Publications, 1993); Robert F. Gorman, *Mitigating Misery: An Inquiry into the Political and Humanitarian Aspects of U.S. and Global Refugee Policy* (Lanham, MD: University Press of America, 1993); John H. Elliott, 'The Bible from the Perspective of the Refugee,' in *Sanctuary*, ed. Gary MacEoin (San Francisco: Harper & Row, 1985); Joseph H. Carens, 'Migration And Morality: A Liberal Egalitarian Perspective,' in *Free Movement*, ed. Brian Barry, and Robert E. Goodin (University Park, PA: Pennsylvania State University Press, 1992); Francis X. Sutton, 'Refugees and Mass Exoduses: The Search for a Humane, Effective Policy,' in *Population in an Interacting World*, ed. William Alonso (Cambridge: Harvard University Press, 1987); Peter Singer and Renata Singer, 'The Ethics of Refugee Policy,' in *Open Borders? Closed Societies?*, ed. Mark Gibney (NY: Greenwood Press, 1988).

capture a whole range of arguments built upon concerns for national interests, international norms, and morality, and this range nicely demonstrates the complexity of asylum.

I should finally note that my intention is not to offer a causal explanation for the variation in asylum policy outcomes. Instead, I offer a better understanding of asylum by considering the complex interaction of national interests, international norms, and morality in asylum debates.<sup>16</sup> By offering a better understanding of asylum, I hope to lay the groundwork for future research that can offer causal explanations, but such research is currently hampered by our over-simplified view of asylum.

### **Parliamentary asylum debates in Germany, Switzerland, and Britain**

This research reveals that the arguments of parliamentarians differ significantly from what the literature had predicted.<sup>17</sup> Their choices are often counter-intuitive and they represent a complex interplay of national interests, international norms, and morality. While I keep these three categories of arguments separate for analytical purposes, in practice they are quite entangled as parliamentarians on both sides of the issue usually work hard to combine them by arguing that their position serves national interests, conforms to international norms and fulfills a moral good.

Regarding the national interests addressed earlier by Shacknove, parliamentarians rarely defended their positions on the grounds of foreign policy interests. This was true even during the Cold War. Only in the 1993 German debate did foreign policy arise to any significant extent: supporters of that tighter asylum legislation argued that it would further Germany's foreign policy goal of European unity by promoting the harmonization of European asylum laws, while opponents of the tighter legislation complained that it would dump Germany's asylum problems on its newly democratized eastern neighbors and thereby strain relations.

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<sup>16</sup> For more on the difference between explaining and understanding, see Martin Hollis and Steve Smith, *Explaining and Understanding International Relations* (Oxford: Clarendon Press, 1990).

<sup>17</sup> In the German case, I read the debates surrounding the 1978 *Gesetz zur Beschleunigung des Asylverfahrens*, the 1980 *Zweites Gesetz zur Beschleunigung des Asylverfahrens*, the 1986 *Gesetz zur Aenderung asylverfahrensrechtlicher, arbeitserlaubnisrechtlicher und ausländerrechtlicher Vorschriften*, and the 1993 *Gesetz zur Aenderung des Grundgesetzes (Artikel 16 und 18)* as transcribed in *Verhandlungen des Deutschen Bundestages, Stenographische Berichte* (Bonn: Bonner Universitaets-Buchdruckerei, various years) and *Verhandlungen des Deutschen Bundesrates, Stenographische Berichte* (Bonn: Bonner Universitaets-Buchdruckerei, various years). In the Swiss case, I read the debates over the 1979 *Asylgesetz*, the 1986 *Asylgesetz Revision*, and the 1994 *Zwangsmassnahmen im Ausländerrecht*, as transcribed in *Amtliches Bulletin der Bundesversammlung, Nationalrat*, (Bern: Sekretariat der Bundesversammlung, various years) and *Amtliches Bulletin der Bundesversammlung, Ständerat*, (Bern: Sekretariat der Bundesversammlung, various years). In the British case, there were no significant asylum debates until the mid 1980s, so I read the debates surrounding the 1987 *Immigration (Carriers' Liability) Act* and the 1993 *Asylum and Immigration Appeal Act*, as transcribed in *Parliamentary Debates (Hansard), House of Commons Official Report*, (London: H. M. Stationary Office, various years). Each of these parliamentary debates resulted in tighter asylum legislation, except for the 1979 Swiss debate, which loosened asylum.



Even more remarkable was the near absence of arguments over economic interests. Not a single supporter of tighter asylum in any of these debates argued that asylum should be tightened because of threats to labor markets or to the economy as a whole. At most, some complained of the financial burden that a loose policy placed on the asylum process and (especially in Germany) of housing shortages brought on by the rising number of asylum-seekers. Meanwhile, opponents of tighter asylum were completely silent about the positive economic impact of asylum-seekers and refugees.

Furthermore, neither side addressed to any significant extent the effect asylum-seekers and refugees had on the host society's cultural interests. Only in the 1979 Swiss debate that loosened asylum did supporters of looser asylum refer to their positive cultural impact, but even then they spoke only of refugees of the distant past, not of those coming presently. And only in the 1994 Swiss debate did supporters of tighter asylum refer to any significant extent to a negative cultural impact, namely the increased drug trade in Zürich that they largely attributed to asylum-seekers.

Instead, when relying on national interests, parliamentarians on both sides appealed mainly to the political interests of internal harmony and effective governance. Cross-nationally and cross-temporally, parliamentarians remained remarkably consistent in focusing on these two national interests, but they differed sharply in their interpretations of how to further these interests. Supporters of tighter asylum consistently made the following argument: tighter legislation is needed to fight asylum abuse that is increasingly irritating citizens who demand such legislation. In the 1987 British debate, Stokes (Conservative) asked Home Secretary Hurd (Conservative):

Is my right hon. Friend aware that the vast majority of people in this country are thankful for the steps that he is taking to deal with bogus immigration? Is he further aware that the attitude that we have heard from the Opposition is quite untypical of the vast majority of all classes of people living in this country?<sup>18</sup>

This argument was especially stressed in the 1993 German debate that followed a year of significant far-right wing violence against foreigners. Schäuble (Christian Democrat) argued that by fighting abuse, this tighter asylum legislation would “provide the necessary foundation for tolerance and harmony between Germans and foreigners.”<sup>19</sup> Solms (Free Democrat) pointed out that 90% of the Germans supported the tighter legislation and he warned:

A failure [to pass it] would have dramatic consequences. The trust in politics would be severely damaged. The trust in the democratic parties would be further weakened. Not only the democratic parties but the entire democratic system would begin to teeter.<sup>20</sup>

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<sup>18</sup> *House of Commons*, v111, p. 740.

<sup>19</sup> *Bundestag*, 1993, p. 13506.

<sup>20</sup> *Bundestag*, 1993, p. 13512.

Likewise, Klose (Social Democrat) warned that inaction on this matter,

threatens the stability of our democracy, especially because the temptation is great to exploit politically these problems and fears. We democratic parties have nothing to gain from this situation that only helps the pied-pipers of the right [*Rattenfängern von rechts*].<sup>21</sup>

Marschewski (Christian Democrat) made this argument most dramatically by drawing a historical parallel:

If history can teach us anything, then the 1920s and the early 1930s are revealing: Weimar failed because the democrats could not agree. We must prove ourselves by demonstrating that we are capable of resolving these problems.<sup>22</sup>

In other words, supporters of tighter asylum legislation argued that such legislation would effectively fight abuse, combat racism, and carry out the will of the people.

Opponents of tighter asylum tended simply to reverse this main argument of the supporters: tighter legislation was ineffective in fighting abuse, it fueled racism, and it violated democratic principles. In the 1993 German debate, for example, Weiß (Bündnis 90/Die Grünen) warned of the “oppressive madness of the nationalists” and said “It is a shame that such a proposal is even being discussed in the German parliament, because this proposal was negotiated in the back-rooms among political tacticians who sought to cater to the lowest populist sentiment.”<sup>23</sup> Similarly, in the 1987 British debate, Meadowcroft (Liberal) complained that the Government was not fulfilling its democratic role because “the Government are seeking to follow their Back Benchers instead of endeavouring to lead and initiate.”<sup>24</sup> The Shadow Home Secretary Kaufman (Labour) argued “The Bill is about having a shoddy little debate in which racism can be stirred up in hope of winning a few votes. At every general election, Tory Members cannot resist playing the race card.”<sup>25</sup> In the 1994 Swiss debate, Goll (Social Democrat) complained that the government was scapegoating foreigners for deep societal problems and she argued “This legislation will simply bring new problems instead of solving old ones. So, [Federal Councilor] Koller, quit constantly shifting problems around, which only brings an escalation on all fronts.”<sup>26</sup>

With regard to national interests, then, both sides avoided foreign policy, economic and cultural arguments and instead consistently stressed that asylum legislation had to satisfy the political interest of being effective, anti-racist, and democratic. That legislation should be effective, anti-racist, and democratic is, of course, a rather bland and

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<sup>21</sup> *Bundestag*, 1993, p. 13509.

<sup>22</sup> *Bundestag*, 1993, p. 13534.

<sup>23</sup> *Bundestag*, 1993, p. 13519; p. 11603.

<sup>24</sup> *House of Commons*, v112, p. 729.

<sup>25</sup> *House of Commons*, v112, p. 723.

<sup>26</sup> *Nationalrat*, 1994, p. 89.

unrevealing assertion about national interests. The controversy is not *what* the interests are, but *how* to achieve them. Supporters of tighter asylum legislation argued that such legislation would effectively fight the abuse that had come to irritate citizens who demanded action. Opponents argued that such legislation was an ineffective way to fight the abuse and that it merely pandered to xenophobic pressures from citizens and thus violated democratic principles. These contradictory arguments raise nagging questions. Can tighter asylum legislation effectively fight abuse or do the problems lie elsewhere? Does tighter asylum legislation reassure citizens and reduce their racism or does it cater to the existing racism and justify it? Is it in the national interest for parliamentarians to follow the will of the people or to lead it? These are difficult questions and they illustrate that national interests are not objective truths that are discoverable, but are in fact subjective claims that are contestable and that can pull asylum in opposite directions.

These asylum debates further reveal that international norms, too, can pull in opposite directions. International asylum norms have been explicitly expressed and supported in scores of national, regional, and international agreements. The two most important international refugee norms put forth by international conventions are the definition of a refugee and the principle of *non-refoulement*. It is crucial to note that none of the tighter asylum legislation introduced in any of these debates proposed changing either of these two international norms. In fact, many supporters of tighter asylum legislation, especially cabinet representatives, stressed that such legislation conformed to international norms and that international norms in fact enabled them to tighten asylum. Essentially, they argued that international norms are good and that their tighter legislation conformed to international norms and therefore they, too, were good.

Some supporters of tighter legislation, especially members of the far right, however, wanted to tighten asylum even further and complained that international norms constrained them from doing so. In the 1994 Swiss debate, Keller (Swiss Democrat), for example, scorned the European Human Rights Convention for protecting foreigners whom he accused of dealing drugs in Switzerland. He said:

Ladies and gentlemen of the Left, try telling the many schoolchildren in the plagued neighborhoods of Zürich that these few hundred criminal foreigners are entitled to human rights. You argue that this so-called Human Rights Convention should protect such people. That brings tears to my eyes!<sup>27</sup>

Such supporters of tighter asylum thus argued that international norms were wrong and that parliamentarians should ignore them and tighten asylum as they please.

It was precisely this constraining role of international norms that some opponents of tighter asylum also stressed, but for the exact opposite reason. They argued that tighter legislation had to be rejected because it violated international norms. Weder (Independent) argued in the 1994 Swiss debate that this tighter legislation violated not only the European Human Rights Convention and the 1951 Refugee Convention, but also the Anti-Racism Convention and the UN Children's Convention. In the 1993 German

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<sup>27</sup> *Nationalrat*, 1994, p. 87.

debate, Hirsch (Free Democrat) argued that the tighter legislation was not compatible with Germany's obligation to international law that stems from the UNHCR Convention, and in the 1986 British debate the Shadow Home Secretary Kaufman (Labour) argued that the tighter legislation irrefutably violated Article 31 of the 1951 Convention. And if not violating the letter of international norms, some opponents of tighter asylum legislation argued that such legislation certainly violated the spirit of these norms. Rechsteiner (Social Democrat), for example, complained that the deliberate effort made by the tighter 1986 legislation to treat asylum-seekers who entered Switzerland illegally worse than those who came legally violated "the sense and spirit of our asylum law and the Refugee Convention."<sup>28</sup> Similarly, Meadowcroft (Liberal) said:

To say that we shall take unilateral action despite what might happen elsewhere, and to excuse doing so on the ground that someone can travel on properly with documents, seems to go against the spirit of the international attitude that we should advance. If we do not play our part in coping with the problems of the world's refugees, how can we expect others to do so?<sup>29</sup>

In other words, these opponents of tighter asylum argued that international norms are good and should be upheld, that tighter asylum legislation violated at least the spirit of these norms, and therefore such legislation should be rejected.

Finally, other opponents of tighter asylum legislation conceded that such legislation conformed to international norms and complained that these norms enabled parliament to pass them. In the 1994 Swiss debate Plattner (Social Democrat) said:

I know that this legislation conforms to the European Human Rights Convention. That, however, does not speak for the legislation, but rather against the Convention. This legislation contradicts my moral sensitivity [*Rechtsempfinden*].<sup>30</sup>

While this argument rejected international norms because they violated ethical concerns, another argument claimed that international norms violated sovereignty. Allen (Labour), for example, argued against EU norms that he feared would enable Britain to tighten asylum. He warned of delivering the British parliament to the Schengen and Trevi groups and to a "Masonic college of European committees."<sup>31</sup> These opponents of tighter asylum, then, argued that international norms were flawed and that parliamentarians should ignore them and reject tighter asylum legislation for other reasons, including sovereignty and morality.

From this complex role that international norms played in these asylum debates, we derive Table 1 taken from the 1994 Swiss debate.

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<sup>28</sup> *Nationalrat*, 1986, p. 724.

<sup>29</sup> *House of Commons*, v112, p. 730.

<sup>30</sup> *Ständerat*, 1994, p. 112.

<sup>31</sup> *House of Commons*, v213, p. 106.

**Table 1**  
**The Multifarious Roles of International Norms in Asylum Debates**

		Attitude Toward International Norms	
		Positive	Negative
Attitude Toward Asylum	Tighter	Koller	Keller
	Looser	Weder	Plattner

Koller stressed international norms because he believed they enabled Switzerland to tighten asylum. Weder stressed that international norms constrained Switzerland from tightening asylum. Plattner complained that international norms enabled Switzerland to tighten asylum. Keller complained that international norms constrained Switzerland from tightening asylum further. Table 1 clearly belies the simplistic assumption in much of the asylum literature.

With regard to morality, parliamentarians on both sides of the issue stressed the moral obligation to grant asylum to refugees. Contrary to expectations stemming from the asylum literature, however, these moral arguments were rarely religiously-based. And when religious arguments were made at all, they tended to be made by opponents of tighter asylum who argued not so much that a Judeo-Christian obligation exists to grant asylum, but rather that members of Christian-based parties who supported tighter asylum were not living up to their parties' ideals. In other words, the argument was not *I am a Christian and therefore I support looser asylum* but rather *You claim to be a Christian and yet you support tighter asylum*.

The best example of this back-handed religious argument came in the 1993 German debate when Gysi (Party of Democratic Socialism) leveled it against the Christian Democrats. He began "A glance at the Bible makes it perfectly clear that the Christian Democratic Union and the Christian Social Union should renounce the term 'Christian'." He then quoted several Bible passages and reminded the chamber that Jesus considers only those people just who feed the hungry and accept strangers. His sermon caused an extraordinary commotion in Parliament, partly because of the irony of Gysi citing the Bible. Marschewski (Christian Democrat) yelled "It also says 'The sanctimonious go to hell'" and "The fifth commandment says 'Thou shall not lie'." Other Christian Democrats called, "It also says 'You shall not bear false witness'" and "A misuse of the Bible." At this point Gysi asked President Süßmuth to restore order and she said, "The speaker asks for silence although he demands a great deal of us" which is applauded by the Christian Democrats, Free Democrats and Social Democrats. Gysi answered "It is news to me, Ms. President, that the Bible is considered impudent in the German Parliament" to which

Rüttgers (Christian Democrat) shouted “What a prankster!” and Feilcke (Christian Democrat) responded “He’s not a prankster! He’s crazy! (*Das ist keine Witzfigur! Der spinnt!*)”<sup>32</sup>

Moral arguments based on the central tenets of Liberalism also did not pan out as expected. While Liberals in the literature stress that equality promotes cosmopolitanism and a (more) open world and that liberty demands free(er) movement of people and less state power, most opponents of tighter asylum were unwilling to argue their case so strongly. Instead, they limited themselves to arguing that the concept of liberty had to protect their own citizens from poorly conceived and unjust legislation. In other words, this liberal argument was less concerned with granting asylum to refugees and more concerned with protecting citizens from an intrusive state. This argument was most extensively made in the 1994 Swiss debate in the aftermath of numerous government scandals in the previous years. Fankhauser (Social Democrat) said the tighter legislation was “absolutely out of proportion and irresponsible. Our constitutional state, which protects every citizen from unnecessary state interference, may not be toyed with so lightly.”<sup>33</sup> Tschäppät (Social Democrat) warned:

The mere suspicion that you are hiding asylum-seekers who received an initial negative decision would now be grounds enough for your house to be searched. Be aware: this measure is not aimed at foreigners, this measure is aimed at Swiss houses, churches and parsonages – that is hard to believe.<sup>34</sup>

Less prominent in the asylum literature is a third moral position that claims events of the World War Two era now pose a moral obligation to grant asylum to refugees. This argument had a noteworthy resonance in these debates, although it varied significantly across time and place. In Britain, supporters of tighter asylum explicitly rejected any suggestion that Britain’s poor refugee policy during that era now posed a moral obligation.<sup>35</sup> British opponents of tighter asylum also did not stress the faults of that policy, but instead claimed that if the tighter legislation currently being debated had been in place during the war, then fewer refugees would have been able to enter Britain. In other words, British opponents of tighter asylum did not argue that Britain’s poor refugee policy during that era now posed an obligation, but rather that Britain’s policy had been relatively good and that tighter legislation would now betray that record.

This World War Two argument played out differently in Switzerland. In the first Swiss debate that loosened asylum, numerous parliamentarians stressed the moral obligation stemming from Switzerland’s abysmal refugee policy during the war. This argument,

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<sup>32</sup> *Bundestag*, 1993, p. 13516.

<sup>33</sup> *Nationalrat*, 1994, p. 150.

<sup>34</sup> *Nationalrat*, 1994, p. 81.

<sup>35</sup> On Britain’s poor wartime refugee policy, see for example Bernard Wasserstein, *Britain and the Jews of Europe 1939-1945* (Oxford: Clarendon Press, 1979); Michael R. Marrus, *The Unwanted: European Refugees in the Twentieth Century* (Oxford: Oxford University Press, 1985); Colin Holmes, *A Tolerant Country? Immigrants, Refugees and Minorities in Britain* (London: Faber and Faber, 1991); Tony Kushner, *The Persistence of Prejudice: Anti-Semitism in British Society during the Second World War* (Manchester: Manchester University Press, 1989).

however, faded over the years and played almost no role in either the 1986 or the 1994 debates, as if some kind of statute of limitations on moral guilt had run out. One might have expected the opposite to happen: as the war generation was replaced by a younger, more critical generation, Switzerland's role during the war would be increasingly questioned. However, that was not the case. In fact, only in the past two years has Switzerland's role during the war come under heavy attack and only because of pressure from abroad regarding Swiss banks still holding Nazi gold and accounts of Jews who perished in the Holocaust.

In Germany, not surprisingly, World War Two played a prominent role in each of the debates, and numerous parliamentarians on both sides of the issue spoke of an obligation toward today's refugees because of the Nazi era. Böhling (Social Democrat), for example, spoke of Germany's liberal policy stemming from "the bitter experiences of the Nazi time, during which many Germans had to flee abroad and could consider themselves lucky if they found asylum there."<sup>36</sup> Olderog (Christian Democrat) opened the 1986 debate in the Bundestag by declaring:

During the Nazi period, many thousands of politically persecuted Germans received asylum in other countries. Therefore, today and in the future, we vigorously emphasizes not only the legal but also the moral obligation to offer protection to the politically persecuted from other countries.<sup>37</sup>

Ströbele (Greens) explained "For us, this past represents an obligation. We think that since 600,000 Germans were accepted by other countries during the Nazi period, then that means we have an obligation today to do all that we can to pay humanity back."<sup>38</sup>

If read carefully, all these statements reveal a curious twist. The focus is on "Nazi" persecution and on how "Germans" suffered under it. In other words, the argument was not (as might be expected): *We Germans made others suffer during that period so we now have an obligation to grant asylum to those who suffer*. Instead, the argument was consistently: *We Germans suffered during that period so we now have an obligation to grant asylum to those who suffer*. In all of these German debates, in fact, only a single parliamentarian, Ulrich Briefs (unaffiliated, formerly of the Party of Democratic Socialism, successor to the old Communist Party of East Germany), spoke of "German crimes" and of "monstrous historical German guilt."<sup>39</sup>

While not a single parliamentarian in any of these debates rejected the abstract moral principle of "helping refugees," putting this principle into practice was highly contentious. How, for example, does one best fight asylum abuse, which most parliamentarians agreed was a problem? It is important to note that many supporters of *tighter* asylum argued that tighter legislation was, in fact, moral because they helped "real" refugees by weeding out asylum abuse committed by "undeserving" ones. If

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<sup>36</sup> *Bundestag*, 1978, p. 7371.

<sup>37</sup> *Bundestag*, 1985, p. 12213.

<sup>38</sup> *Bundestag*, 1985, p. 12220-1.

<sup>39</sup> *Bundestag*, 1993, p. 13600.

sincere, this moral argument belies the simple tug-of-war image often presented in the asylum literature that has morality only pulling for looser asylum. The Swiss Justice Minister Koller (Christian Democrat) was typical in making this moral argument when, in 1994, he said “Only if we succeed in tackling the obvious asylum abuses efficiently ... do we have a chance to uphold our humanitarian tradition of granting asylum to persecuted people.”<sup>40</sup> While such apparent concern for refugees was widely denounced as hypocritical and self-serving by opponents of tighter asylum, one must wonder what the best way is to fight asylum abuse whose existence is widely acknowledged.

Another difficult moral issue is the obligation parliamentarians have toward their own citizens. Ward (Conservative), who supported tightening British asylum, spoke of the “duty to maintain the way of life which people already living in this country want and to provide the social and welfare services for which they have paid and which they expect to receive. We should be failing in our duty if we allowed an overload of new people to destroy that way of life.”<sup>41</sup> These moral obligations toward citizens can be at odds with moral obligations toward refugees and it is not always clear how to balance the two.

Some supporters of tighter asylum also suggested that it is unclear whether granting asylum to refugees is even the best way to help them. They argued that it might be better to help refugees in their own region rather than granting them asylum in Europe. Aware that such an argument would meet skepticism, Lüchinger (Free Democrat) in the 1986 Swiss debate said:

You may claim that this suggestion is a sign of a guilty conscience. But it is my firm conviction that we can better help refugees (but also economic migrants) from far away countries by supporting them in their own culture instead of trying to accept them at any cost in our culture that to them is strange and unfortunately also sometimes hostile.<sup>42</sup>

So, while all parliamentarians accept the moral obligation to help refugees, they bitterly disagree about both the quantity and the quality of this obligation, and this disagreement pulls asylum in opposite directions.

## Conclusion

Using an historically-based, contextual analysis of German, Swiss, and British parliamentary debates, this paper explored the complex and often counter-intuitive roles national interests, international norms, and morality play in shaping asylum legislation. Contrary to the tug-of-war image commonly found in the literature, my findings expose the subjective nature of national interests by demonstrating that parliamentarians on both sides claim to promote national interests. Furthermore, international norms set a desirable standard for some parliamentarians on both sides, but are rejected by others who find

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<sup>40</sup> *Ständerat*, 1994, p. 123.

<sup>41</sup> *House of Commons*, v213, p. 45

<sup>42</sup> *Nationalrat*, 1986, p. 266.



them either too constraining or too lax. Finally, all parliamentarians (even extremists) accept the moral obligation to help refugees, but they sharply disagree on how to fulfill this obligation. In other words, while parliamentarians are always able to tie national interests and moral obligations into their arguments, they find international norms less flexible and therefore sometimes bothersome.

By focusing on asylum in Europe, this paper engages an intensely controversial issue that has not received enough attention from political scientists. It challenges the central assumptions of conventional International Relations theories that seek to explain a country's behavior on the basis of objective national interests; such an approach inadequately explains asylum policies because such policies are also significantly influenced by international norms and morality. While the limited asylum literature does address this influence, it tends to assume that national interests tighten asylum and international norms and morality loosen it. By studying the complexity of asylum, my paper fills a void in one literature, and challenges the central assumption of another.

When studying these asylum debates, it is intriguing to note not only what parliamentarians say but also what they do not say. When considering this negative, one is struck that parliamentarians did not argue that granting asylum to refugees serves national interests. They only debated whether specific asylum laws served national interests, but none of them claimed that the general principle of asylum promotes such interests. This begs the obvious question: *Why is asylum maintained if no parliamentarian believes it serves national interests?* Put another way: why not simply abolish this principle that has led to so much controversy in each of these three countries over the past two decades?

While this paper is an inadequate format for answering this question, I would like to suggest a possible direction for future research. A number of scholars have also been weighing this question of why states admit “unwanted immigrants,” although much of this work focuses on immigration and not asylum. In both cases, this scholarship addresses the question by focusing either on international or on domestic constraints that states face in controlling such admission.<sup>43</sup>

Those scholars focusing on international constraints generally argue that globalization and the rise of an international human rights regime are constraining states' abilities to control their borders, thereby forcing them to accept unwanted foreigners.<sup>44</sup> They speak of a decline in sovereignty and of a decrease in the capacity of states to keep such foreigners out. In short, states admit unwanted foreigners because there is increasingly little they can do to prevent it. This perspective seems heavily influenced by the situation in Europe in the early 1990s – those of us who were following this issue at the time

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<sup>43</sup> For a good overview of this debate, see Christian Joppke, ed., *Challenge to the Nation-State: Immigration in Western Europe and the United States* (Oxford: Oxford University Press, 1998).

<sup>44</sup> See, for example, David Jacobson, *Rights across Borders* (Baltimore, MD: Johns Hopkins University Press, 1996); Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization* (New York: Columbia University Press, 1996); Yasemin Soysal, *Limits to Citizenship: Migrants and Postnational Membership in Europe* (Chicago: Chicago University Press, 1994); Wayne Cornelius, Philip Martin, and James Hollifield, eds., *Controlling Immigration: A Global Perspective* (Stanford: Stanford University Press, 1994).

certainly remember the stark maps of Europe overlaid with big, bold, arrows pointing from east to west that warned ominously of the potential for millions of people flowing out of the East Bloc and the former Soviet Union.

As the parliamentary asylum debates in this paper show, international norms and moral sensibility that are enmeshed in an international regime can indeed constrain a state's ability to control its asylum process. This constraint is especially evident in the inability or unwillingness of a state to carry out deportations of rejected asylum-seekers if these may violate the principle of *non-refoulement*. What these asylum debates also make clear, however, is that international norms and morality can enable a state to tighten asylum. The calls to harmonize asylum in Europe, to uphold the UNHCR definition of a refugee, and to fight asylum abuse for the sake of "real refugees" are excellent examples of a state's ability to tighten control over asylum and to limit the number of people it accepts as refugees. Scholarship that only sees asylum and human rights regimes as constraints misses a great deal of asylum's complexity.

Regarding the claim that globalization constrains a state's ability to control borders, it is certainly true that economic restructuring has uprooted vast numbers of people across the globe and that this restructuring has forced (or enabled) an increasing number of them to reach Europe. Furthermore, it is true that Switzerland, Germany, and Britain can do very little to control the outflow of people from Sri Lanka, Turkey, Nigeria, Ghana, Lebanon, etc, who arrive at their borders seeking entry. Irrespective of the parliamentarians who argue that more ought to be done to help people in their own countries so they are not compelled to leave in the first place, it is hard to imagine any short - or medium-term actions that European governments (alone or together) can undertake to fundamentally alter the current unequal distribution of wealth, which drives many poor people to migrate. This globalization argument, however, only helps to explain why people are on the move, but not why states continue to accept them. In fact, as Freeman argues convincingly, European states have increased, not decreased, control over their borders.<sup>45</sup> And such control over borders could continue to increase significantly if European states would be willing to make such an expansion of their infrastructure a priority as, for example, the East Bloc did. Now of course, they will not take it so far, and to understand why not, we need to shift our focus away from international constraints to domestic constraints.<sup>46</sup>

In his analysis of border control, Freeman focuses on the domestic constraints imposed by political dynamics.<sup>47</sup> He writes that the primary obstacles to immigration control are

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<sup>45</sup> Gary Freeman, "The Decline of Sovereignty? Politics and Immigration Restrictions in Liberal States," in *Challenge to the Nation-State: Immigration in Western Europe and the United States*, ed. Christian Joppke (Oxford: Oxford University Press, 1998).

<sup>46</sup> For more on domestic constraints see, for example, Christian Joppke, "Asylum and State Sovereignty," *Comparative Political Studies* 30, 3, (June 1997); Christian Joppke, "Why Liberal States Accept Unwanted Immigration," *World Politics* 50 (January 1998); Gary Freeman, "Modes of Immigration Politics in Liberal States," *International Migration Review* 29, 4 (Winter 1995); Gary Freeman, "Can Liberal States Control Unwanted Migration," *Annals of the American Academy of Political and Social Science* 534 (July 1994).

<sup>47</sup> Gary Freeman, "The Decline of Sovereignty? Politics and Immigration Restrictions in Liberal States," in *Challenge to the Nation-State: Immigration in Western Europe and the United States*, ed. Christian Joppke

political, not economic, demographic, or technical, and he specifically focuses on the lobbying process that occurs on behalf of immigrants to counter tighter laws. He argues that this pro-immigration lobby is often successful because those who stand to benefit from admitting foreigners are more concentrated and more easily organized than those who may be harmed by it. While convincing in the case of immigration in the United States and the guest-workers programs in Europe, this explanation is less strong for asylum. For as we see in these asylum debates, parliamentarians do not speak of the benefits that refugees bring to their countries. Indeed, it is rather remarkable that even those parliamentarians most adamantly opposed to tighter asylum laws did not lobby for refugees, but rather lobbied against the laws – a perhaps subtle but crucial distinction.

Also focusing on domestic constraints is Joppke, who generally agrees with Freeman but adds a legal dimension.<sup>48</sup> Joppke argues that the legal process is less prone than the political one to the swings of populist anti-foreigner sentiments, and this stability is an important factor in explaining why European states accept unwanted foreigners. He writes that, especially in Germany, an activist judiciary has aggressively and expansively defended the rights of foreigners, despite the political rhetoric.

The evidence from these parliamentary asylum debates suggests adding to these domestic constraints an ideological dimension, and this proposition dovetails with Freeman's discussion of "anti-populist norms" and Joppke's emphasis on liberal values.<sup>49</sup> It must be remembered that these debates never considered abandoning asylum, and there seems to be an unequivocal acceptance in Switzerland, Germany, and Britain to grant asylum to refugees despite seeing no benefits. The acceptance of this norm, I suggest, is a function of the identity of liberal democracies. In making the argument that liberal democracies maintain asylum because the asylum principle constitutes an important part of their liberal identity, I share Joppke's wariness of stating a tautology.<sup>50</sup> I also stress that identities are malleable constructions that change as the literature on nationalism and national identity reminds us.<sup>51</sup>

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(Oxford: Oxford University Press, 1998).

<sup>48</sup> Christian Joppke, "Why Liberal States Accept Unwanted Immigration," *World Politics*, 50 (January 1998).

<sup>49</sup> Gary Freeman, "Modes of Immigration Politics in Liberal States," *International Migration Review* 29, 4 (Winter 1995); Christian Joppke, "Why Liberal States Accept Unwanted Immigration," *World Politics*, 50 (January 1998).

<sup>50</sup> Christian Joppke, "Why Liberal States Accept Unwanted Immigration," *World Politics*, 50 (January 1998).

<sup>51</sup> Important works on nationalism include Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, 2nd ed. (London: Verso, 1991); John Breuilly, *Nationalism and the State*, 2nd ed. (Manchester: Manchester University Press, 1993); Ernest Gellner, *Nations and Nationalism* (Ithaca, NY: Cornell University Press, 1983); Liah Greenfeld, *Nationalism: Five Roads to Modernity* (Cambridge, MA: Harvard University Press, 1992); Eric J. Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality* (Cambridge: Cambridge University Press, 1991); Anthony D. Smith, *The Ethnic Origins of Nations* (Oxford: Blackwell, 1986); John Armstrong, *Nations before Nationalism* (Chapel Hill, NC: University of North Carolina Press, 1982). Within the international relations literature see, among others, James Mayall, *Nationalism and International Society* (Cambridge: Cambridge University Press, 1990); William Bloom, *Personal Identity, National Identity, and International Relations* (Cambridge: Cambridge University Press, 1990); Ole Waever, et al., *Identity, Migration and the New Security Agenda in Europe* (New York: St. Martin's Press, 1993); Yosef Lapid and Friedrich Kratochwil, eds., *The Return of*

To understand this link between identity and asylum, we turn to the distinction between constitutive and regulative norms. In some situations, norms are constitutive in that they help define an actor's identity by providing the proper behavior for assuming that identity, while in other situations norms are regulative in that they prescribe the proper behavior for an actor's established identity. A norm can therefore either shape identity or prescribe behavior, or it can do both simultaneously. In analyzing these parliamentary asylum debates, the focus was on regulative norms, but to understand this identity-asylum link, we need to shift our attention to the constitutive norm of granting asylum to refugees.

For in all of these debates, parliamentarians, regardless of country, party or position, claimed that granting asylum to refugees constitutes an important part of the identity of a liberal democracy. Swiss and British parliamentarians argued that, as democracies, their countries have been granting asylum for centuries, and German parliamentarians argued that asylum has been fundamental to the rebirth of Germany after 1945. All these parliamentarians would agree with Wolfgramm (Free Democrat) who said, "It is one of the noblest humanitarian duties of liberal democracies to grant asylum to the politically persecuted," with Wheeler (Conservative) who said that maintaining the tradition of asylum "must remain an important part of our government and culture," and with Federal Councilor Furgler (Christian Democrat) who argued that granting asylum was essential to Switzerland's national character (*Wesensgehalt dieses Staatsvolkes*).

Importantly, both supporters and opponents of tighter asylum stressed the role of identity, as exemplified by the following remarks from the 1987 British debate. Lawler (Conservative) argued that passing a tighter asylum law would strengthen Britain's tradition of granting asylum:

Many speakers have pointed out that the country has had a long history of accepting genuine political asylum seekers. I hope that that tradition will continue. It will continue as long as the threat of abuse is minimised and prevented. For that reason I give the Bill my strong support.

Dubs (Labour) opposed the tighter asylum law and said:

I regret that we could not continue with our normal tradition of tolerance and welcome for all asylum seekers who seek refuge here. That tradition is many centuries old, and tonight the Government have closed the door on it.

Having concluded my analysis that asylum is shaped by a complex configuration of national interests, international norms, and morality, it is worth noting that *identity* encompasses this entire configuration. For how parliamentarians see themselves and their countries and how others see them is a function of what they want (interests), fulfilling expectations (norms), and doing good (morality). Because political debates are

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*Culture and Identity in IR Theory* (Boulder, CO: Lynne Rienner, 1996). For an excellent introduction to nationalism, see John Hutchinson and Anthony D. Smith, eds. *Nationalism* (Oxford: Oxford University Press, 1994).

expressions of identity, parliamentarians usually work hard to combine all three types of arguments in defense of their position. This tripartite configuration is especially evident in the argument that asylum laws must be effective, democratic, and anti-racist. For analytical purposes, I labeled these goals as national interests because of the standard use of this term. However, if we loosen the analytical restraints, we see that in fact these goals are also norms that democracies abide by, and they do so in large part because they believe these goals serve moral ends. This entanglement is seen in Solms' (Free Democrat) summary of why the tighter 1993 German asylum law is needed:

We do this out of responsibility to the politically persecuted. We do this out of responsibility to the security of the constitution state. We do this out of responsibility to the stability of the democratic order. Last but not least, we do it out of responsibility to the coalescence of Europe.

More than just expressing concern for national interests, international norms and morality, Solms is expressing how he sees himself, his party, and his country, and he is inviting others to see this identity as well. Arguing about asylum is more than just arguing about interests, norms, or morality. It is arguing about identity.

Ultimately, it is identity that maintains asylum in Europe today. Not a single parliamentarian, not even those of the far-right, argued that asylum should be abolished. And it will not be. Despite the controversy, none of these countries will abandon this principle.

While they will almost certainly continue to tighten their asylum laws, interpret their refugee definitions more narrowly, and coordinate new international norms to make access to the asylum process tougher, they will not declare themselves unwilling to grant asylum to refugees. They will maintain this principle because of the way they see themselves and the way others see them. Parliamentarians in Switzerland, Germany, and Britain cling to this identity, however controversial it may be.