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Policy Dilemmas of Migration Control:

Liberal Democracies and Migrants with
Precarious Legal Status

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List of Abbreviations

BA	Federal Employment Agency
BAMF	Federal Office for Migration and Refugees
BKA	Federal Criminal Police Office
BMAS	Federal Ministry of Labour and Social Affairs
BMI	Federal Ministry of the Interior
DEMIG	Determinants of International Migration
Econ	Economic welfare logic (Article 3)
EMN	European Migration Network
EU	European Union
Eurostat	Statistical office of the EU within the European Commission
FRA	European Union Agency for Fundamental Rights
Frontex	European Border and Coast Guard Agency
IMPIC	Immigration Policies in Comparison
OECD	Organisation for Economic Co-operation and Development
Reg	Regulatory control logic (Article 3)

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Chapter 1. Framework Chapter

This dissertation investigates salient policy dilemmas of migration control in liberal democracies¹, thereby offering novel perspectives on the study of immigration policies in political science and beyond. In this framework chapter, I outline the research questions, key results, and contributions of the dissertation as a whole, as well as of the three articles that constitute it. On the following pages, I situate my research on the policy dilemmas of migration control in the broader scholarly and societal context.

1.1 Introduction and research questions

In the wake of the asylum reception crisis in 2015/16, the deficiencies of national asylum systems throughout the European Union have come to the fore anew. The reality seemed far from the idea of how an asylum system should ideally work. Arguably, a well-functioning system would produce quick and fair decisions on asylum applications followed by immediate action regarding the applicants' future: *societal inclusion* for those who receive a protection status, and *exclusion*, i.e. return to the country of origin or transit, for those who do not. Governments repeatedly emphasize this dualism of their political strategy on asylum. For instance, former German Minister of the Interior Thomas de Maizière proclaimed that “[r]eturn and integration are two sides of one and the same coin” (BMI 2017, my translation). However, it has proven difficult to translate this formula into policies and practice, as asylum procedures remain lengthy and deportation rates low. Which rights should the state grant those whose asylum application it rejects, but whose return it cannot enforce? Who should have access to integration measures? Who is to receive a work permit, and maybe an opportunity to regularize their residence status? While these questions are not new, they have gained in importance with rising numbers of asylum applicants, sparking both public debate and a range of policy reforms in Europe overall and Germany in particular (Laubenthal 2015; Will 2018). State authorities, i.e. policy-makers, as well as national and local administration, were quickly seen to struggle with the attempt to achieve both integration and migration control objectives simultaneously.

¹ A liberal democracy is understood to be a constitutional state built on the core principles of liberty and equality (cf. Hampshire 2013).

No doubt, migration is a contentious political issue. Across the globe, questions of whom to admit to a country, and which rights to grant those allowed in, divide parties, parliaments and cabinets at all political levels; and they also shape the context in which street-level bureaucrats implement respective policies on the ground. Some categories of migration seem more contentious than others: scholars often differentiate between migrants that liberal states actively recruit, primarily for the purpose of filling domestic labour shortages, and those that they rather grudgingly admit, mainly for humanitarian reasons or because of an inability to enforce strict migration control (Boräng 2018; Joppke 1998b; Slominski and Trauner 2018). Regarding especially the latter category, state actors in liberal democracies find themselves confronted with policy dilemmas, i.e. decisional situations in which they have to choose between two options that are equally unattractive from the state perspective: inclusion or exclusion. Both may involve considerable costs, as I will explain in detail in sub-chapter 1.2.

The societal relevance of liberal democracies' struggles with enacting and implementing migration policies is evident. Certainly, it is an ongoing debate to what extent migration policies meet their stated objectives (Bhagwati 2003; Czaika and de Haas 2013; Helbling and Leblang 2019). Yet, there is no doubt that the state remains "the body that controls the distribution of the vast portion of benefits that can render our lives better (and less precarious)" (Banki 2013, 452). Migration policies are hence acutely consequential for people's lives, but their impact on migrants is not uniform (Anderson 2019). Rather, differential in- and exclusion into various spheres of society have become the norm in countries of immigration, as they incrementally adjust their migration policies according to state interests and constraints (Bosniak 2007; Meissner 2018; Mezzadra and Neilson 2012). The resulting plethora of legal statuses contributes to the many layers of political and socio-economic hierarchies in today's societies (Shachar 2014). One variant of this proliferation of statuses is legal precariousness, i.e. the existence of insecure, unstable residence statuses that make their holders subject to potential deportation (Eule et al. 2019; Gibney 2009). Significant numbers of migrants with precarious legal status live in Western democracies (Nicholls, Maussen, and de Mesquita 2016; Nimführ and Sesay 2019). This includes i.a. asylum seekers pending a decision on their asylum application and those whose application has been rejected, but who for various reasons cannot be deported.² Given liberal and practical constraints to enact and implement efficient asylum systems and rigorous deportation policies, the phenomenon of legal precariousness is unlikely to disappear anytime

² Note that many other migration statuses may be legally precarious to various degrees, including e.g. all non-permanent residence statuses (for details, see subchapters 1.2 and 1.3).

soon. The consequences for individuals concerned, as well as for societies are substantial. For instance, it is well documented that prolonged waiting times for asylum application determination have negative repercussions on health and economic outcomes of those concerned (Hainmueller, Hangartner, and Lawrence 2016; Hvidtfeldt, Petersen, and Norredam 2019). Access restrictions to health care or the labour market have been found to be costly for receiving societies at large (Bozorgmehr and Razum 2015; Marbach, Hainmueller, and Hangartner 2018). Therefore, the societal relevance of the topic this dissertation deals with – processes of differential in- and exclusion of migrants in liberal democracies – is considerable.

In terms of scholarly relevance, this dissertation tackles several questions that remain underexplored in the relevant academic literature on migration policies. Migration policies denote all laws, regulations and orders in regards to the entry and stay of immigrants (cf. Helbling et al. 2017). I build on Zolberg (1999) in arguing that researching the role of the state in migration is imperative for understanding the reasons for and implications of the policies that are formulated and implemented. The regulation of international migration is a by-product of the historical emergence of nation-states and key to the concept of state sovereignty (Mau et al. 2012; Torpey 2000). However, liberal states face severe challenges in regulating migration. This is due to what Hollifield (1992) famously called the liberal paradox of migration: the fact that distinct facets of liberal statehood drive liberal democracies both towards openness and towards closure – while representative democracy and nationhood tend towards restricting migration, constitutionalism and capitalism tend towards liberalizing migration (Hampshire 2013). Depending on historical contingencies and specific aspects of a state's democratic system, different facets of liberal statehood may predominate migration policies. While client politics presumably play a bigger role in the US, judicial constraints limit legislators' leeway in European democracies (Freeman 1998; Joppke 1998b; but see Ellermann 2013). Another reason for liberal states' apparent incapability to enforce strict migration regulations is the fact that this partly requires cooperation from often-reluctant countries of origin (Ellermann 2008). The challenges of liberal states to regulate migration have also been investigated empirically by scholars who highlighted unintended consequences of such policies, such as reduced return migration, and potentially devastating impacts on migrants' lives and safety (e.g. Czaika and de Haas 2017; Massey, Durand, and Pren 2016). Taken together, these studies provide compelling accounts of the challenges that liberal states encounter in the regulation of migration. However, to my knowledge there is no convincing, in-depth account of the specific policy dilemmas that migration policy-makers and implementers in liberal democracies face especially regarding unsolicited migration, i.e. migrants whom the country of destination had not actively recruited.

Building on existing literature, this dissertation thus departs from the assumption that for our understanding of the determinants and impacts of migration policies, it is crucial to look more closely at the specific policy dilemmas faced by state actors seeking to regulate migration. I argue that in migration politics, policy dilemmas result from the liberal paradox of migration, i.e. the competing demands regarding migration control in liberal democracies. I use the term ‘migration control’ in a broad sense here, referring to state responses to unsolicited migration (cf. Eule 2018). To improve our understanding of the determinants and consequences of migration policies, it may be fruitful to connect investigations of migration policy-making with analyses of policy implementation. However, this connection has remained surprisingly under-researched in the study of migration policies.³ This dissertation aims at filling this gap, investigating policy dilemmas of migration control from various angles, with complementary research methodologies, and following their path from the logics of policy-making to policy outputs and finally outcomes.

The overarching research question of this dissertation is this: how do policy dilemmas shape processes of differential in- and exclusion of migrants in liberal democracies? Each of the three articles that this paper-based dissertation is comprised of addresses a related sub-question:

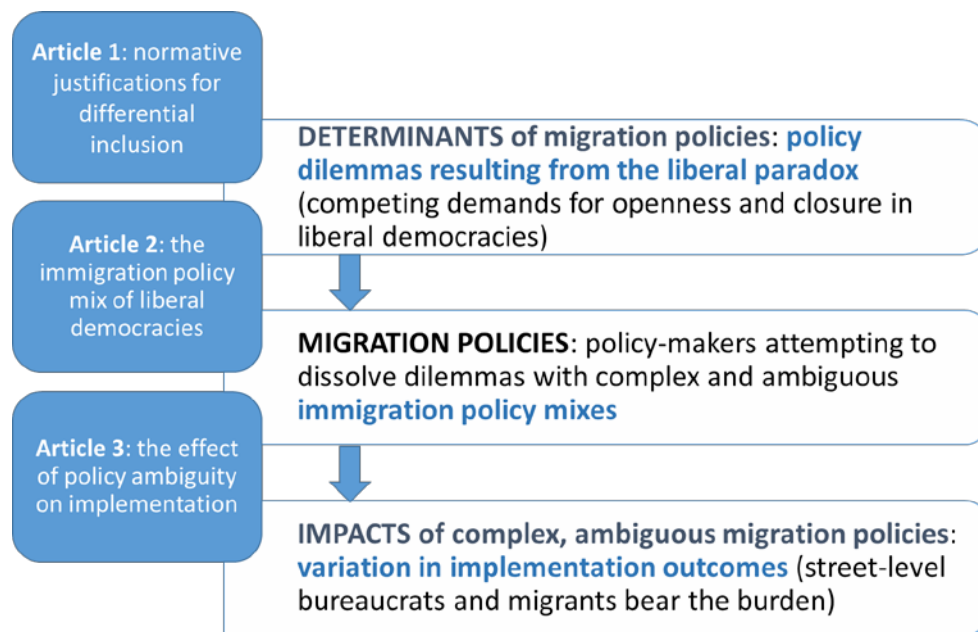
- 1) Are differential inclusion policies consistent with normative liberal principles?
- 2) How do liberal democracies combine asylum and labour migration policies and what explains the variation in immigration policy mixes?
- 3) How does the ambiguity of policy goals shape policy implementation on the ground?

The three articles interlink with each other and taken together allow me to answer the overall research question. Figure 1 below visualizes the overall structure and main argument of this dissertation. The conflicting dynamics in liberal democracies imply that policy-makers face policy dilemmas especially regarding unsolicited migration such as the arrival of asylum seekers. Article 1 illustrates this and scrutinizes an attempt to dissolve the dilemma, finding that it may come into conflict with normative liberal principles. Article 2 then moves to the macro-level to analyse how states combine policies towards unsolicited migration such as asylum with policies towards solicited migration such as labour migration. Its quantitative-comparative analysis

³ This holds notwithstanding the fact that policy implementation scholars understand street-level bureaucrats to act themselves as policy-makers in a broader sense (cf. Lipsky 2010, 13ff).

supports the claim that competing pressures resulting from the liberal paradox constrain governments' room to manoeuvre in this field. Article 3 then focuses more in detail on the resulting ambiguity and complexity of migration policies, finding that these shape the implementation of such policies by street-level bureaucrats on the ground. Briefly, policy-makers leave the liberal paradox of migration to street-level bureaucrats.

Figure 1: Visualization of the dissertation project



Summary of Article 1

The first article analyses the policy dilemma that liberal democracies face upon the reception of asylum seekers. Specifically, it scrutinizes a policy tool implemented by the German government in the wake of the asylum reception crisis in 2015. The so-called prospect of staying stipulates that asylum seekers have differentiated access to measures of integration depending on their country of origin. Using this case study, the article links policy analysis with normative analysis, seeking to illustrate the underexplored potential of normative analysis for (migration) policy research. Combining two distinct theoretical approaches, it finds that the policy tool under scrutiny violates obligations of the liberal state both towards its own citizens and towards asylum seekers. The article thus highlights how policy dilemmas result from the liberal paradox, i.e. the competing demands that liberal democracies need to balance when designing migration policies.

Summary of Article 2

The second article delves deeper into the impact of the liberal paradox on migration policy design. My co-authors and I propose the immigration policy mix as an innovative way to study how states combine policies targeting different migrant groups, and link this novel conceptual perspective with in-depth quantitative-comparative analysis. Specifically, we investigate the relative openness of states towards asylum and labour migration, and expand existing theories of immigration policies to test explanations for variation across time and space empirically. We find that the immigration policy mixes of OECD countries have strongly converged over the period of our investigation, from 1980 to 2010. It is neither welfare institutions nor government ideology that explain the immigration policy mix, but the limited room to manoeuvre of governments facing competing political pressures – the liberal paradox.

Summary of Article 3

How do street-level bureaucrats implement the complex policy mix? We still know comparatively little about what explains variation in implementation processes and outcomes. Policy goal ambiguity is one of the explanatory factors under-researched in the literature on policy implementation. The third article addresses this lacuna, investigating how policy goal ambiguity shapes the implementation of internal migration control in German immigration offices. Based on qualitative fieldwork conducted in 2017 and 2018, it finds evidence for the claim that policy-makers leave the liberal paradox to bureaucrats on the ground. This leads to high variation in implementation outcomes and begs the question whether liberal principles can be upheld in migration policy implementation.

The remainder of this framework chapter is organized as follows: subchapter 1.2 provides the essential background, giving an overview of German asylum policies and statistics, against the backdrop of European developments, and spells out the selected policy dilemmas in detail. Subchapter 1.3 reviews the relevant literature and outlines the contributions of the three articles and the dissertation as a whole. Subchapter 1.4 concludes.

1.2 Current policy dilemmas in migration

To specify the policy dilemmas of migration control that this dissertation is principally concerned with, this subchapter starts with an account of the migration policy context in Europe and Germany, where the asylum reception crisis peaking in 2015 put a spotlight on liberal states' struggles to respond to unsolicited migration.

1.2.1 The asylum reception crisis in Europe and Germany

To better understand the policy dilemmas of liberal states vis-à-vis migrants with precarious legal status living on their territory, I provide here some background on the European and German migration policy context. Germany serves as a case study for the first and third article of this dissertation. While the country was in the spotlight due to having received the highest number of asylum applications in the EU in absolute terms every year since 2012 (Eurostat 2019a), Germany is by no means an exceptional case. Its experiences with hosting migrants with precarious legal status are not unique, but paralleled in other EU countries and elsewhere in the world (FRA 2019a; Gibney 2009). The focus here, however, will be on European and German developments, as they present an opportunity to study the migration policy dilemmas resulting from competing demands on liberal democracies.

How did the asylum reception crisis materialize?⁴ In 2015, following an exacerbation of the Syria crisis, the numbers of asylum applications in EU countries reached new heights: of the 1,332,845 asylum applications lodged in the EU in 2015 (2014: 626,960), Germany recorded 476,510, which constituted a 135 per cent increase from 2014. Due to a high backlog, many of those who arrived in Germany in 2015 could only apply for asylum in 2016: of the 1,260,910 applications received in the EU in 2016, 745,155 were lodged in Germany (Eurostat 2019a). As the administration was struggling with processing claims, applicants had to wait longer for a decision. At the end of May 2019, although numbers of asylum claims had been decreasing to pre-'crisis' levels (Eurostat 2019a), there were still 877,075 asylum applications pending in the EU, 357,275 of which in Germany (Eurostat 2019b). Here, when backlogs finally started to drop after staff increases in the German asylum determination administration, the bottleneck

⁴ In 2015, the term 'refugee crisis' quickly emerged. However, the 'crisis' label fits better for the chaos that this movement was met with in Europe, a result of systemic deficiencies of the Common European Asylum System and a lack of solidarity among EU Member States (Baldwin-Edwards, Blitz, and Crawley 2019; Niemann and Zaun 2018; Scipioni 2018). Therefore, the terms 'asylum reception crisis' or 'refugee policy crisis' seem to describe the developments more accurately than 'refugee crisis' (Rosenberger and Müller 2020).

shifted to the courts. While the average waiting time until a final decision was taken amounted to 12,6 months in the first half of 2017, it varied a lot according to the countries of origin of claimants (Schultz 2020a). Prolonged waiting times have been found to be associated with adverse health and employment outcomes among asylum seekers (Hainmueller, Hangartner, and Lawrence 2016; Hvidtfeldt, Petersen, and Norredam 2019).

Germany used to have a relatively generous asylum policy until the so-called ‘asylum compromise’ of 1993, when the introduction of a third-country clause severely restricted the constitutional right to apply for asylum. Since then, Germany’s asylum policy remained generally rather restrictive (Laubenthal 2019). During the crisis years, the German government issued a considerable amount of policy reforms in an attempt to regain (the appearance of) control. Between May 2014 and April 2017, 12 legal changes were enacted in the field of humanitarian migration alone at federal level, with measures tightening existing provisions outweighing liberalizations (Will 2019). Several measures were meant to make procedures faster and more efficient; a policy trend described also for other European countries such as Switzerland (Bernhard and Kaufmann 2018).⁵ The crisis also showcased the systemic deficiencies of the Common European Asylum System that the EU had developed in several steps since 1999. In 2015 and onwards, the EU introduced new measures with the aim of supporting those member states most struggling with the reception of asylum seekers and preventing further arrivals. A onetime relocation mechanism was agreed on by the Council in September 2015, against the sharp opposition of the Visègrad-countries (Trauner 2020). ‘Hotspots’ were instituted in Greece and Italy (Baldwin-Edwards, Blitz, and Crawley 2019), and the budget of relevant EU agencies increased substantially and is supposed to increase further in the next EU long term budget (Knoll and Veron 2019). The reform of the Dublin III Regulation including a binding solidarity mechanism as proposed by the Commission, however, failed to gain necessary support and is currently on hold (Zaun 2019).

Policy reforms – whether successfully introduced or merely proposed – were discussed against the backdrop of a polarized public and political debate on asylum, migration, return and integration policies in Europe and Germany (Holmes and Castañeda 2016; Holzberg, Kolbe,

⁵ Multiple policy reforms in the face of crisis can lead to increasing chaos rather than more efficient outcomes, which is documented in the case of Greece (Carlson, Jakli, and Linos 2018). Yet, Greece was one of the EU member states whose asylum systems had already been dysfunctional before 2015. The Dublin mechanism had been suspended for asylum seekers entering the EU via Greece from 2011, when the European Court of Human Rights attested the failing Greek asylum system incompatibility with European human rights law (Baldwin-Edwards, Blitz, and Crawley 2019).

and Zaborowski 2018; Ilgit and Klotz 2018; Vollmer and Karakayali 2018). In Germany, in line with Chancellor Merkel's famous credo 'Wir schaffen das' (*We can do it*), the strong involvement of individual volunteers and civil society organizations in refugee reception (Hinger 2016; Kirchhoff and Lorenz 2018) was met with enthusiasm also by the business community, which advocated for rapid labour market integration of the newly arrived (Laubenthal 2015). The welcoming narrative of political leadership contrasted with the actual policies enacted in 2015 and beyond, as explained above, which highlights the ambiguity of Germany's migration policy situation at the time. It also contrasted with augmenting instances of hate speech (FRA 2019a) and xenophobic violence: the German Federal Criminal Police Office (BKA 2019) reports that criminal offences against accommodation centres for asylum seekers reached record heights in 2015 and 2016. According to Mader and Schön (2019), the events linked to the reception crisis also triggered a transformation of party competition in Germany. The authors presume that the sudden increase of salience of the immigration/refugee issue and the dominant though misleading image of the CDU as taking up an immigrant-friendly position both contributed to the fact that for the first time since its inception in 1949, a radical right party gained seats in the German Parliament in the 2017 elections.

The European and German situation in the wake of the 2015 asylum reception crisis presents an opportunity to study the policy dilemmas that policy-makers and implementers face resulting from the liberal paradox. Confronted with rising numbers of principally "unwanted immigration" (Joppke 1998b, 266) and amidst competing public demands, policy-makers incrementally adjusted a variety of (asylum) migration regulations, i.e. a complex mix of liberal and restrictive migration policies. The next section introduces two migrant groups most affected by these policies, whom I have therefore selected as focus of my research.

1.2.2 Migrants with precarious legal status in Germany

To denote the two migrant groups this dissertation focuses on (especially Article 1 and 3), I am using the umbrella term "migrants with precarious legal status" (Eule et al. 2019, 25–26; Goldring and Landolt 2013). Two different subgroups of migrants with precarious legal status are most affected by the policy reforms enacted in the wake of the asylum reception crisis. These are first, persons with their asylum application still pending, and second, those who do not have a permit to remain (for instance because their asylum application was finally rejected), but who are for various reasons 'non-removable', or 'non-deportable' (see below). These two subgroups are by no means the only migrants to experience "precarity of place" (Banki 2013, 450) and lead

unstable and insecure lives in consequence. For instance, also recognized refugees (i.e. those granted a protection status) are often limited e.g. in their mobility rights (Brücker, Hauptmann, and Jaschke 2020) and for instance have been found to fall prey to labour exploitation in Germany and other EU countries (FRA 2019b). However, the two groups focused on here arguably find themselves placed even lower in the societal hierarchy.

The corresponding legal categories of German foreigner's law, relevant in the case studies elaborated on in the first and third paper, are a) the asylum seekers' permit (*Aufenthaltsgestattung*) and b) the 'toleration' status (*Duldung*).

Waiting for a decision: asylum seekers

As noted above, at the end of July 2019, 347.075 persons with their asylum application still pending lived in Germany (Eurostat 2019b). During a pending decision, the rights and living conditions of asylum seekers in Germany depend mainly on two factors: their country of origin and their place of residence.

The rights of asylum applicants from a designated 'safe country of origin' are curtailed, i.e. their asylum applications can be processed faster, opportunities of judicial remedy are limited (Will 2019), and they are excluded from integration courses and the labour market (Schultz 2020a).⁶ On the other side of the hierarchy of asylum seekers in Germany are those with a designated 'good prospect of staying', an administrative category enabling privileged access to e.g. integration courses (Schultz 2020a).⁷

Next to country of origin, the other major determinant of living conditions as an asylum seeker in Germany is one's allotted place of residence. This is because of the leeway the *Bundesländer* and municipalities have in co-determining asylum policy (Hörisch 2018; Münch 2017). Upon arrival, a distribution key called the *Königsteiner Schlüssel* allocates asylum seekers to the different *Länder*.⁸ In the federal system, they are responsible for regulating the reception and accommodation of asylum seekers and for implementing the federal Asylum Seekers Benefit

⁶ In 2014 and 2015, Germany expanded the list of 'safe countries of origin' (Will 2019). Apart from the member states of the EU, the list comprises Albania, Bosnia and Herzegovina, Ghana, Kosovo, Macedonia, Montenegro, Senegal and Serbia.

⁷ Whom this category includes is subject to change. While it used to apply to asylum seekers from Syria, Iran, Iraq, Eritrea and Somalia (Schultz 2020a), since August 2019 it only applies to Syrians and Eritreans (BAMF 2020b). It should generally be noted that such protection hierarchies are not unique to Germany (see e.g. Wettergren and Wikström 2014 for the case of Sweden).

⁸ The *Königsteiner Schlüssel* is calculated by the tax revenue (2/3) and the population size (1/3) of the *Länder* and determines how many asylum seekers each *Land* shall receive. It is updated annually (BAMF 2020a).

Act (*Asylbewerberleistungsgesetz*), i.e. the granting of basic supplies. The *Länder* usually delegate these tasks to the municipal level (Aumüller, Daphi, and Biesenkamp 2015). As there are no nationwide or even *Länder*-wide standards for accommodation centres, “the living conditions of [asylum seekers and] refugees depend strongly on the benevolence of the respective state authorities responsible” (Cremer 2014, 6, my translation). Moreover, procedures regarding access to the health system and to other benefits according to the Asylum Seekers Benefit Act may differ between *Länder* and also between municipalities within the same *Land* (Günther, Kurrek, and Töller 2019; Schammann 2015). There are also different perspectives across *Länder* on when compulsory schooling starts for children of asylum seekers, and different concepts on how they should be schooled (i.e. separately or in regular classes) (Bogumil, Hafner, and Kastilan 2017). Regarding work, except those from a designated ‘safe country of origin’, asylum seekers may apply for a work permit at their local immigration office three months after having submitted their asylum application at the earliest. Employers’ associations and other stakeholders have repeatedly reported regional variation in how leniently municipal authorities handle work permit applications (e.g. OECD 2017), and my own research corroborates this to some extent (Schultz 2020b).⁹

The German approach is in line with that of many receiving countries, which usually grant limited rights to asylum seekers. For instance, they usually restrict the right to work for asylum seekers pending decision and for those whose application has been rejected (Valenta and Thorshaug 2013; Zetter and Ruaudel 2018), despite the negative societal consequences of such restrictions (Marbach, Hainmueller, and Hangartner 2018).¹⁰

Non-deportability: persons with a toleration status

Non-deportability can be defined as “the absence of a realistic prospect that removal can be carried out successfully within the foreseeable future” (F. Lutz 2018, 18). About 47 per cent of asylum applications were unsuccessful in Germany in 2017 (adjusted recognition rates,

⁹ One could be apt to continue this list with a study by Riedel and Schneider (2017), who find discriminatory effects of decentralized asylum procedures in Germany. However, their approach received substantial criticism (e.g. Bogumil, Hafner, and Kastilan 2017), as it largely disregards the institutional structure of BAMF branch offices, which do not report to the *Länder* administration, but to the federal office. Moreover, asylum seekers are not distributed randomly to the *Länder* and the BAMF branch offices. This may lead to clusters of persons with differentiated risk profiles housed in specific areas, e.g. those from a more dangerous region within a country of origin or those with a specific religious affiliation. These clusters may explain regional differences in asylum rates.

¹⁰ States use access to the labour market not only as a labour market management instrument, but also as an asylum policy tool. Conditioning access to work permits is meant to deter potential asylum seekers, incentivize those who arrived to obtain identity documents and unsuccessful claimants to return (Valenta and Thorshaug 2013).

publication of the German Parliament 19/1371)¹¹, and with asylum applicants turning into *rejected* asylum applicants, removal becomes an issue. Removal or deportation means forcibly returning migrants without legal rights to remain to countries of origin or transit. Liberal states face a number of legal, moral, and practical constraints in their efforts to enforce deportation (Ellermann 2009; Gibney 2008). A working group on deportation obstacles in Germany identified medical reasons, lack of travel documents, and resistance from societal actors as key barriers (EMN/BAMF 2016). Moreover, non-cooperation by foreign governments in issuing identity documents continues to be a pertinent issue, despite heightened efforts on national and EU level to incentivize collaboration, e.g. via readmission agreements (Ellermann 2008; İçduygu and Aksel 2014; F. Lutz 2018). Without any doubt, the removal of migrants without a permit to remain is a cost-intensive endeavour requiring an intense amount of state coercion (Gibney 2008). It also carries a highly symbolic notion of executing state sovereignty (Rosenberger and Küffner 2016).¹² The asylum reception crisis contributed to intensify calls for strengthening return efforts in the EU (Slominski and Trauner 2018). However, the fact that migrants ordered to leave consistently outnumber those who are returned (both ‘voluntarily’ and forcibly) illustrates that despite increased efforts to tackle them, obstacles to enforce return persist (European Commission 2018; European Migration Network 2017). In 2018, while 478.155 third country nationals were ordered to leave (52.930 of them by Germany) (Eurostat 2019c), only 157.895 (29.055 in Germany) returned to a ‘third country’ (Eurostat 2019d), about half of them forcibly (Frontex 2019).¹³

In Germany, non-removable persons are issued a so-called toleration. This is not a residence permit, but merely the recognition of a “temporary suspension of deportation” (EMN/BAMF 2016, my translation). At the end of 2018, 180.124 persons with this non-status were living in Germany, 66.207 of which already for longer than three years. Main countries of origin are Iraq, India, Kosovo, Lebanon, Serbia, Turkey, Albania, Algeria and Pakistan; 58 per cent are between 16 and 49 years of age (publication no. 19/8258 of the German Parliament). The living

¹¹ The recognition rate is calculated as the sum of asylum recognitions (Basic Law Art. 16a), refugee recognitions (Geneva Convention), subsidiary protection statuses and determinations of a deportation ban, relative to the total number of decisions in a given time period (publication no. 18/12623 of the German Parliament). The adjusted recognition rate takes into account only cases in which decisions were made on a basis concerning content, not those decided upon due to formal reasons.

¹² Liberal states have turned increasingly toward incentivizing ‘voluntary return’, as this is less cost-intensive and thought of as more easily reconcilable with liberal norms. However, the label ‘voluntary’ remains controversial, as it implies a choice which in reality is one under very strong constraints (Cleton and Chauvin 2020; SVR-Forschungsbereich 2017).

¹³ Return rates of previous years (2012-2016) were somewhat higher (58-72%), but still fell short of their target (Slominski and Trauner 2018).

conditions of people with a toleration status resemble those of asylum seekers explained above; they also depend on location of residence, as their mobility is restricted in §61 Residence Act. In addition to the above explicated aspects, for ‘tolerated’ persons this regards specifically locally available consultations on ‘voluntary’ return programmes (Feneberg 2019) or training opportunities for young people (Schreyer and Bauer 2014).

Local authorities usually issue tolerations for a short period of time (one to twelve months) and renew them if deportation obstacles remain. Due to the often protracted circumstances, many people come to live in the limbo situation of several sequential periods of temporary suspension of deportation, so-called chain toleration (*Kettenduldung*) (Ellermann 2014). In an attempt to counter this, the legislator created several possibilities for ‘tolerated’ persons to regularize their status and obtain a residence permit. These include the residence permit for qualified ‘tolerated’ persons for the purpose of employment, the residence permit for well integrated adolescents and teenagers, the residence permit for sustainable integration and the residence permit on humanitarian grounds (EMN/BAMF 2016) (see Table 1 below).

Table 1: Regularization possibilities in Germany

Law	Name of Permit	Persons living in Germany with this status (end of 2018)
§18a Residence Act	Residence permit for qualified ‘tolerated’ persons for the purpose of employment	410
§25a Abs.1 Residence Act	Residence permit for well integrated adolescents and teenagers	5.878
§25b Residence Act	Residence permit for sustainable integration	3.679
§25 Abs.5 Residence Act	Residence permit on humanitarian grounds	53.919
		Total: 63.886

Data: publication of the German Parliament no. 19/8258

Most EU member states provide similar opportunities for residents in an irregular status to regularize, albeit reluctantly (Chauvin, Garcés-Mascreñas, and Kraler 2013; Kraler 2019;

Vianello, Finotelli, and Brey 2019).¹⁴ From the state perspective, regularization often constitutes the lesser evil than hosting a large amount of persons in an irregular status, as “[t]he presence of non-removed persons within a state’s territory is a permanent reminder of the limits of sovereignty” (Rosenberger and Küffner 2016, 138).¹⁵ In sum, the current legislative framework regarding persons with a toleration status in Germany can be described as an “area of tension” (Bauer and Schreyer 2019, 118, my translation), with both inclusive and exclusive norms at play. It is worth mentioning that the driving forces behind regularizations gradually shifted from predominantly humanitarian to economic objectives, with applicants needing to fulfil criteria of economic self-sustainability and integration (Ellermann 2014; Kraler 2019). A meritocratic logic has entered (Schammann 2017). The recent introduction of the so-called vocational toleration (*Ausbildungsduldung*) is a case in point, although it does not constitute a regularization *per se*, but a stabilization of an otherwise precarious situation that might pave the way for actual regularization of status in the future (Schultz 2020b).

In sum, both asylum seekers and ‘tolerated’ persons are migrants with precarious legal status. Simply put, it seems like the liberal state cannot decide whether to include or exclude these migrants. In the following section, I describe the underlying policy dilemmas that may explain this shakiness.

1.2.3 The policy dilemmas

In contrast to, for example, high-skilled labour migration, states do generally not actively recruit asylum seekers, but admit them based on humanitarian obligations resulting from constitutional or international commitments. Similar liberal constraints limit state powers to enforce the return of persons without a regular residence status, such as ‘tolerated’ persons. Policy-makers are hence confronted with policy dilemmas that boil down to a seemingly simple question: inclusion or exclusion (cf. Bader 2012; Zolberg 2012). As the status of the asylum seeker is *per se* temporally limited (until the application is decided upon), the dilemma is less pronounced here than it is in the case of ‘tolerated’ persons, where state authorities have already officially decided

¹⁴ However, it has to be noted that some EU member states do not even have a formal ‘toleration’ status. E.g. in Malta, “the presence of non-deportable refugees is known by the immigration authority, although there is neither suspension of deportation, nor legal right to stay”, which results in complete legal limbo for the persons thus stranded on the island (Nimführ and Sesay 2019, 2).

¹⁵ Hinterberger (2019) argues for the introduction of an EU Directive on regularizations, as this would solve the current inefficacies of the obligation for member states to enforce returns.

that the person in question is not entitled to a legal right to remain. Below, I describe the two dilemmas in more detail:

1) Regarding *asylum seekers*, the state needs to decide – within the limits set by its own constitution, as well as European and international human rights law (cf. e.g. Slominski and Trauner 2018) – which rights to grant people in the limbo situation of awaiting the decision on their asylum claim. Once they receive a protection status, the objective is usually quite clear: foster language competence, education and labour market integration in order to enable the person to become a productive member of society (Schultz and Kolb 2018). This is in line with broader integration policy approaches of Western immigration countries, which primarily aim at increasing socioeconomic self-reliance (Goodman and Wright 2015; Joppke 2007). Empirical studies show that investments into integration early after arrival pay off disproportionately more than later on (Hainmueller, Hangartner, and Lawrence 2016; Marbach, Hainmueller, and Hangartner 2018). However, for asylum seekers whose application is still pending, it is not crystal-clear what is beneficial from the state perspective. There is a trade-off between missing opportunities to foster ‘early integration’ for asylum seekers who will receive a positive decision on the one hand, and by doing so, making it more difficult to later enforce return of those who will not be granted a protection status on the other hand. Gibney (2008, 151) calls this “the threat of social integration”, as it is often the case that local communities oppose deportation if the individual or the family concerned attend local institutions and have formed social ties within the community (cf. also Ellermann 2009). The dilemma is exacerbated by relatively lengthy asylum procedures, prolonging the time that persons spend in the precarious legal status of ‘asylum seeker’. The main practical reason for the very existence of this policy dilemma is thus the apparent inability of liberal democracies to run fast, efficient and fair asylum processes, a problem which in the European case unresolved issues in the Common European Asylum System aggravate.

2) The second dilemma results from the above explained issue of *non-deportability*, i.e. the difficulties that liberal democracies encounter regarding the enforcement of return (Ellermann 2009; Gibney 2008; F. Lutz 2018). The question here is which rights to grant persons without a regular residence permit who are non-deportable? Again, from the perspective of the state, there is a trade-off between pragmatically facilitating integration on the one hand, and on the other hand, thereby deteriorating the chances to achieve deportation of that person in the future. Moreover, symbolically, there is also a dilemma in terms of governmental reputation, between either appearing strong, principled and ‘in control’ of migration; or acknowledging constraints,

but at the same time finding practical solutions to an impasse. The German Ministry of the Interior provides an example for the first line of argument, positing that a principled approach supports trust in and credibility of the asylum system (BMI 2015); while a *laissez-faire* policy would undermine the rule-of-law-principle. In practice, the currently observable trend towards elements of activation and meritocracy in migration law rather matches the second line of argument, though. The underlying idea of this meritocracy trend is that migrants with precarious legal status can earn their right to remain via training and employment (Chauvin, Garcés-Mascreñas, and Kraler 2013; Schammann 2017). All in all, given these tough decisions, it is hardly surprising that states usually delegate difficult decisions on non-removable persons' access to the labour market, social services and regularization to municipal administrations (Rosenberger and Küffner 2016). The main reason for the existence of this second dilemma is the incapacity to enforce return, i.e. the above-described phenomenon of non-deportability, which can be seen as (involuntarily) produced by the state itself (Düvell 2011).

Table 2: The policy dilemmas at a glance

	Migrant Category	Costs of Option 1: Societal Inclusion	Costs of Option 2: Societal Exclusion
Policy Dilemma 1	Asylum Seekers	Making it more difficult to enforce removal later if asylum decision turns out to be negative	Losing valuable time to foster integration early on if asylum decision turns out to be positive
Policy Dilemma 2	'Tolerated' Persons	Eroding trust in and credibility of the asylum system ('Laissez-faire-policy')	Preventing practical solutions to an impasse, keeping those concerned in limbo

Source: own compilation

To sum up, these two policy dilemmas are the result of policy failures of the liberal state. The first (lengthy asylum procedures) seems to be primarily a question of management and resources. The second (non-deportability), however, is arguably more profound, as it is linked to the liberal paradox and to what Joppke (1998a) called the "self-limited sovereignty" of liberal states to regulate migration. Now, how do these policy dilemmas shape processes of differential in- and exclusion in a liberal democracy such as Germany? As I shall develop in the following sub-chapter, this question has not received sufficient attention in the literature.

1.3 Literature review and contributions of individual articles

In this chapter, I situate my research in the existing literature and show how the three individual articles contribute to it. In brief, the storyline is this: liberal democracies face competing demands when designing migration policies (the liberal paradox, 1.3.1). This leads to complex and frequently ambiguous immigration policy mixes (1.3.2). The complexity and ambiguity of migration policies contributes to the often-observed variation in implementation outcomes in liberal democracies. Street-level bureaucrats are the ones who in the end need to figure out the liberal paradox of migration (1.3.3).

1.3.1 Differential inclusion as a result of the liberal paradox

International migration poses challenges to nation-states, and in particular liberal democracies (Cole 2000; Joppke 1998a). Hollifield (1992) famously called this the liberal paradox of migration, explaining that liberal democracies need to balance competing policy imperatives that result from core facets of liberal statehood itself (cf. also Boswell and Geddes 2011, 47–48; Ford, Jennings, and Somerville 2015). More specifically, while capitalism and constitutionalism drive liberal states towards more openness to migration, representative democracy and nationhood drive toward closure (Hampshire 2013). This leads to liberal democracies being neither completely open nor completely closed for migration. Consequently, regulations regarding entry and stay of migrants are typically complex and highly differentiated (e.g. Beine et al. 2016). Liberal democracies have increasingly turned to differential inclusion, i.e. granting different sets of rights to different groups of persons, which leads to the stratification of legal immigration status within countries of destination (Bosniak 2007; Könönen 2018; Mezzadra and Neilson 2012; Song 2016). Differential inclusion policies are associated with a state of existential insecurity for some, which scholars call legal precariousness (cf. Ellermann 2019). This existential insecurity implies the vulnerability to be deported from one's place of living (Anderson, Gibney, and Paoletti 2011; Banki 2013). Legal status also conditions bargaining power in the labour market, with migrants with a precarious legal status being more likely to experience labour exploitation and economic precariousness (Anderson 2010; FRA 2019b; Lewis, Dwyer, and Hodkinson 2015).¹⁶ I argue that the literature on the ethics of migration

¹⁶ For example, the European Agency for Fundamental Rights (FRA) (2019b, 68) identified tying residence rights to an employer's willingness to offer a job contract as a risk for labour exploitation.

tends to sidestep the phenomenon of differential inclusion of migrants with precarious legal status resulting from the liberal paradox. The first article seeks to address this lacuna.

Research Gap. The literature on the ethics of migration control has two main strands. First, the tension between universal liberalism and particularistic nationalism inbuilt in Western nation-states evoked fierce debates about whether liberal democracies have a moral obligation to admit outsiders (e.g. Abizadeh 2008; Blake 2006; Carens 1987; Miller 2009, 2010; Shachar 2009; Walzer 1983).¹⁷ Second, there is a growing literature on the related question of whether non-citizens already on the destination country's territory should receive a right to remain (e.g. Bosniak 2007; Carens 2005; Ellermann 2014; Song 2016).¹⁸ Both of these literature strands have limitations, two of which the article seeks to address. To begin with, the normative debate has long centred on the principled, but relatively abstract question of whether or not states have to admit non-citizens at all, at their external border. This debate is rather detached from the actual dilemmas that policy-makers face, which are usually not about whether or not to admit any migrants at all, but about more practical choices of whom to grant entry and rights and on what conditions.¹⁹ Moreover, most studies have a broad focus on immigration in general, disregarding different moral questions and political dynamics at play for different sub-types of migration. Generally, scholars have paid relatively scant attention to asylum in the normative debate on the state's right to exclude non-citizens (Gibney 2014; Miller and Straehle 2020).²⁰ What is more, while there are several accounts of what states owe to 'irregular migrants' or to 'refugees', these usually leave aside the question of what the state owes to non-citizens both while their asylum application is being processed and after it has been rejected. Some mention these migrants with precarious legal status in passing (e.g. Carens 2013, 210–12), but to my knowledge there is no in-depth discussion of the moral obligation of liberal states towards asylum seekers and non-deportable migrants. These two groups do not fit the boxes of either 'irregular migrants' or 'refugees'. The status of asylum seekers is not irregular, as they are permitted to remain in the

¹⁷ These debates on the question of the normative permissibility of immigration control have somewhat subsided. Today, there seems to be a consensus that states may control their borders, the question is rather on which grounds this is justified and to what extent (Bader 2012).

¹⁸ Social exclusion (within the state territory) is arguably more difficult to justify for liberal democracies than territorial exclusion (at the physical border), as liberalism principally postulates equal rights for those under the jurisdiction of the state (Gibney 2009; Joppke 2005). If a political community admits non-members, but does not grant them equal rights, the arrangement would resemble the democratically unattractive image of "a family with live-in servants" (Walzer 1983, 52).

¹⁹ Gibney (2004) and Carens (2013) constitute notable exceptions, moving the debate from ideal to non-ideal theory and attempting to provide ethically informed practical prescriptions for how states should deal with migration (for the distinction between ideal and non-ideal theory, see Carens 1996).

²⁰ There are exceptions, for instance the works of Dummett (2001), Price (2009), and Parekh (2017).

country while their application is being processed.²¹ They are, however, also not refugees yet in a strict legal sense. Non-deportable migrants are strictly speaking neither irregular, as their presence is known to the authorities, nor are they refugees, as their application for asylum has been denied. These groups of migrants with precarious legal status thus remain undertheorized in the literature on the ethics of migration. This neglect matters theoretically, as only focusing on these liminal groups can draw our attention towards some of the toughest policy dilemmas of migration control that liberal states face because of the cross-pressures that they are exposed to regarding the regulation of migration. The first article of this dissertation addresses these lacunas.

Context. Article 1 investigates the first of the two policy dilemmas of liberal democracies vis-à-vis migrants with precarious legal status present on the territory that I described in Chapter 1.2. Should the state offer integration measures to asylum seekers even though it is not yet clear whether they will receive a protection status and hence the opportunity to remain in the country for a considerable period of time? On the one hand, the benefits of early integration are manifold. On the other hand, in case of a negative asylum decision, it is more difficult to enforce a person's return if they already progressed on their integration path. The issue becomes all the more acute if asylum procedures take considerably long, as is continuously the case in Germany and other European countries (ECRE 2016). With mounting numbers of asylum applications spotlighting this dilemma, the German government introduced the so-called 'prospect of staying' (*Bleibeperspektive*) category in 2015. This administrative tool sorts asylum seekers according to their country of origin into those with an allegedly 'good prospect of staying' who are then eligible for preferential treatment mainly in the form of access to socio-economic integration measures and those with 'no' or a 'medium prospect of staying'. The categorization is updated biannually based upon the crude criterion of the recognition rate of compatriots having arrived in Germany in earlier months and years.

Research Question and Method. The article studies the normative permissibility of such differential inclusion policies for asylum seekers. It seeks to answer the research question: is differential inclusion based on a country-of-origin differentiation consistent with two conventional liberal principles. Methodologically, it combines a political philosophy approach with policy analysis. For the first, I employed two conventional moral benchmarks, approaching the legitimacy of

²¹ The fact that asylum seekers usually pass the external border without the state's legal consent – due to the paradox that the international asylum system presupposes irregular entry (Nußberger 2016) – does not matter, as the asylum application regularizes one's stay.

state actions regarding migrants with precarious legal status both from the question of what the state owes to its own citizens and what it owes to everyone under its jurisdiction. The *special obligations principle*, underlying the currently practiced approach of liberal democracies, assumes that national communities should generally prioritize their compatriots over non-members (Miller 2009; Walzer 1983). The *principle of legal certainty* comprises the idea that the liberal state needs to guarantee legal certainty for every person under its jurisdiction, regardless of legal status (Ellermann 2014). I applied the principles to scrutinize the ‘prospect of staying’ category that the German government introduced. Note that these two principles rest upon a minimal and conventional understanding of state obligations towards non-citizens. Choosing them to guide the analysis, I set the threshold for the policy tool’s normative permissibility deliberately low. Relevant statistics on asylum procedures in Germany, as well as empirical literature on refugee integration corroborate the theoretical analysis.

Results. I find that differential inclusion such as the ‘prospect of staying’ for asylum seekers could principally be compatible with special obligations and the principle of legal certainty and may thus be a legitimate policy instrument. However, differentiation according to a crude country of origin criterion does not comply with the two conventional principles employed for the analysis. On the contrary, the liberal state should extend the privileges of early integration to all those to whom it fails to act in a timely manner. Moreover, the paper shows that the ‘prospect of staying’ tool is also practically unwise, as it does not take into account non-deportability and therefore probably does not meet its declared aims. Therefore, I propose individual-based access rules that take into account the (likely) duration of asylum proceedings. The article also finds that being based on a crude group criterion, the ‘prospect of staying’ constitutes a case in point for those who claim that today’s migration policies have not entirely become decoupled from their ethnically exclusive predecessors (Ellermann and Goenaga 2019; Fox 2015).

Contributions. The article contributes to the literature in several ways: first, theoretically, it demonstrates that applying the special obligations principle may warrant in- rather than exclusion in the case of migrants with precarious legal status if inclusion is more likely to be advantageous for society as a whole (and hence for citizens). This finding buttresses calls for including asylum seekers (and non-deportable persons) as a specific target group of immigration policies in studies on the ethics of migration control. As the article illustrates, we cannot simply apply existing discussions to migrants with these types of precarious legal status. Second, empirically, it delineates that differential inclusion does not only work through ‘hard’ legal categories, but also through ‘soft’ administrative ones such as the ‘prospect of staying’. The

latter might be even more powerful in terms of their impacts on the lives of individuals thus labelled, as they cannot be appealed against in court, a point that might also be of importance for further theory development. Lastly, the paper appeals to researchers and policy-makers to think beyond the law on paper, asking the question whether current policies and practices are consistent with core commitments of the liberal state.

Linking back to the overall research question of this dissertation, the article illustrates how a liberal democracy struggles with addressing the policy dilemma of migration control, and how this shapes differential inclusion on the level of policy-making. The German government introduced the ‘prospect of staying’ to operationalize the likelihood of a positive return on investments in language competence and employability of asylum seekers. Put simply, the idea was to foster the integration of those likely to stay early on, to enable them to become productive members of society quickly, while excluding those who were less likely to receive a positive decision on their asylum application. Thus, in an attempt to dissolve the policy dilemma, the state added further layers to the hierarchies of social membership that, as I show in this first article, may prove difficult to be reconciled with liberal principles.

1.3.2 The immigration policy mix in liberal democracies

Having analysed how liberal democracies handle the policy dilemma in one case study, the second article moves up to the macro level, investigating migration policies across countries and over time.²² The underlying idea is to study how the liberal paradox shapes immigration policies, putting forward a novel idea of measuring the empirical complexity of such policies.

With the help of recent projects that quantify immigration policies and policy changes, scholarly knowledge about trends in immigration policy restrictiveness vastly improved. As a result, it has become much clearer that immigration policies of ‘the Western world’ have not become generally more restrictive in the past decades. Helbling and Kalkum (2018) find that immigration policies of OECD countries in the timeframe from 1980 to 2010 have become more liberal overall; however, simultaneously states have instituted more restrictive control mechanisms to prevent and detect breaches of migration law. Based on another dataset, de Haas, Natter, and Vezzoli (2018) come to similar conclusions for the years 1945 to 2014. These findings are in accordance with claims of various scholars who have described it as the key function of

²² I use the terms migration policies and immigration policies interchangeably.

migration policies to filter and select ‘desired’ from ‘undesired’ migrants according to the competing imperatives inherent to liberal democracies (Hampshire 2013; Joppke 1998b; Mau et al. 2012).²³ The result is that policy-makers focus on the strategic control of migration by classifying immigrants into different legal categories based on different reasons for admission. One expression of this is the prevalent concern to draw a clear line between asylum and labour migration. However, how do states actually combine policies targeting these separate groups?

Research Gap. There is a general acknowledgement in the literature that immigration policies are a heterogeneous mixture of policies often characterized by inconsistencies (Akkerman 2015; Boswell and Geddes 2011; Ford, Jennings, and Somerville 2015; de Haas, Natter, and Vezzoli 2015). However, empirical research has not yet systematically studied how countries combine policies for different migration sub-dimensions, irrelevant of whether this combination is the result of strategic choices or of incremental ad-hoc decisions. Existing literature either treats immigration policy as uniform (e.g. Abou-Chadi 2016), differentiates specific sub-dimensions of it (e.g. Beine et al. 2016; Consterdine and Hampshire 2019; de Haas, Natter, and Vezzoli 2015), or aims at identifying ideal types of immigration regimes, grouping countries into separate models (e.g. Boucher and Gest 2018; Koopmans 2013). Arguably, all these approaches have their limitations. While taking immigration policy as a uniform package neglects its multi-dimensional character, the focus on sub-dimensions runs the risk of losing sight of the overall characteristics of immigration policies. Lastly, attempts to identify regime types tend to disregard the competing imperatives of migration policy-making and to make unrealistic assumptions about the cohesiveness of policies across sub-dimensions (for criticism of such migration regime typologies see Finotelli and Michalowski 2012; Freeman 2006). Regime types typically assume static national models and uniform logics of countries’ immigration policies; an idea that seems unfitting to capture the empirical complexity of migration policies (see, however, Hampshire 2016). In addition to the lack of understanding of how states combine policies for different migration sub-dimensions, it remains an open question whether existing theories of immigration policy can explain the relative openness of states towards such a combination of sub-fields.

²³ The factor that primarily defines a person’s desirability in the eyes of destination countries is their economic contribution (Shachar and Hirschl 2014). There is increasing evidence that the idea to select migrants based on their (prospective) usability has spilled over from labour immigration to the asylum realm (Holzberg, Kolbe, and Zaborowski 2018; Laubenthal 2019; Wagner, Schultz, and Allemann 2019). It is also well documented that states expanded their instrument case in preventing non-desired migrants from reaching their territories, primarily by increasing selectivity in visa policies and externalizing migration control (Gammeltoft-Hansen 2014; Mau et al. 2012, 2015). This can have very detrimental consequences for the thus targeted (Last et al. 2017; Massey, Durand, and Pren 2016; Oette and Babiker 2017).

Together with my co-authors Philipp Lutz and Stephan Simon²⁴, I address these gaps in the second article.

Context and Theory. It is imperative to have valid concepts to describe immigration policies and render them comparable across countries and over time. The design of the second article is based on scholars who posit that sub-dimensions of migration policy are driven by different underlying logics of policy-making (e.g. Boräng 2018; Givens and Luedtke 2005; P. Lutz 2019), but we go beyond this literature by arguing that the empirical complexity of immigration policies can only be understood as a combination of its sub-dimensions. We therefore propose the ‘immigration policy mix’ as an alternative to regime types or separate analyses of sub-fields. Generally, one can understand a policy mix to be a set of different dimensions in a certain policy field (Howlett and Rayner 2013; Rogge, Kern, and Howlett 2017). While the use of this concept has proven beneficial for other policy fields, to our knowledge, there are no applications of the policy mix concept to immigration policies. Because of the liberal paradox, and with rising politicization of migration, the frequency of migration policy reforms has increased (de Haas, Natter, and Vezzoli 2018) and so has the regulatory complexity of immigration policies (Beine et al. 2016). Conceptualizing immigration policies as a policy mix helps us to consider this complexity, while simultaneously structuring and simplifying it in order to compare national immigration policy trajectories across countries and over time. We define the immigration policy mix as the combination of different admission channels, which interact to influence the direction, volume, composition and timing of migration. In addition to asylum, which matches the target groups this dissertation focuses on in general, we choose labour migration policies to study how states combine the two dimensions. We think that this specific combination bears particular relevance for advancing our understanding of immigration policies. All immigrant-receiving countries in the Western world have separate legal channels for asylum and labour migration. The humanitarian motivation to admit asylum migration and the economic motivation to admit labour migration are two core motivations of states to accept immigration (cf. Boräng 2018, 6ff).²⁵ To investigate the determinants of the immigration policy mix, we build upon existing theories of immigration policies and develop respective hypotheses. The convergence hypothesis expects an increasing similarity of immigration policy mixes across

²⁴ The contributions of the authors are detailed in Appendix C.

²⁵ Other important reasons for admitting migrants are family reunification and co-ethnic migration (cf. e.g. Helbling et al. 2017). Quantitatively, asylum and labour migration from non-EU countries to the EU are of roughly equal dimensions. In 2018, there were 647.170 first-time asylum applications and 885.666 first permits were handed out for the reason of ‘remunerated activities’ (Eurostat 2019a, 2020).

countries. The institutionalist hypothesis suggests path-dependence and the partisan hypothesis expects the immigration policy mix to follow political dynamics.

Research Questions and Method. How does the immigration policy mix vary across countries and over time? Which factors shape countries' relative openness to asylum and labour migration? To address these questions, we conducted a quantitative-comparative analysis of immigration policies in Western democracies. As the main dependent variable, we used the immigration policy mix defined here as the relative openness towards asylum and labour migration. To measure the immigration policy mix of a country, we relied on the 'Immigration Policies in Comparison' (IMPIC) dataset compiled by Helbling et al. (2017), covering 33 OECD countries from 1980 to 2010. Alternatively, we measured the immigration policy mix in terms of policy output by governments based on the DEMIG Policy dataset by de Haas et al. (2015). The resulting dataset included 237 government cabinets in 18 West European countries. Furthermore, we measured the immigration policy mix as the policy preference of political parties with a dataset of migration policy positions by Dancygier and Margalit (2020). Their dataset spans a long period from the early 1960s to 2013 and includes 12 West European countries. We operationalized convergence pressure, welfare institutions and government ideology as independent variables. The empirical analysis was conducted in two steps. First, we descriptively analysed the immigration policy mix on three different levels: the policy mix of countries (policy level), of political parties (policy preference) and of governments (policy change). We then investigated the role of partisanship by analysing party manifesto data regarding their political preferences toward the immigration policy mix. In a second step, we run panel regression models to assess the explanatory power of the different determinants of countries' immigration policy mix.

Results. To begin with, we find substantial variation within the two policy sub-fields of asylum and labour migration, and the resulting immigration policy mix shows large cross-country variation, too. OECD countries have largely different immigration policy mixes in place that are subject to substantial variation over time. There is a clear pattern of continuous convergence, which took place primarily from 1980 to the late 1990s and then slowed down. Countries converge towards a narrowing of the restrictiveness gap between asylum and labour and towards more liberal admission policies overall. We find that both EU membership (external pressure) and the strength of radical right populist parties (internal pressure) shape the immigration policy mix, which we take as further evidence buttressing the convergence hypothesis. The results neither provide evidence for path-dependence nor effects of partisan preferences. Different

welfare state regimes do not significantly differ in their immigration policy mix and neither do right-wing and left-wing governments enact significantly different policy mixes. However, our analysis shows that there are partisan differences when it comes to the preferred immigration policy mix. Left-wing parties tend towards asylum-favourability and right-wing parties towards labour-favourability. These partisan differences are however minor and do not have a significant effect on the immigration policy mix. In contrast, the results show that while both right-wing and left-wing political parties favoured asylum during the Cold War in the 1980s, they have increasingly favoured labour migration since the 1990s. We argue that the strong convergence of immigration policy mixes supports the idea of an increasingly limited room to manoeuvre for policy-makers due to competing pressures. While governments translated their increasing labour-favourability into more liberal policies on labour migration, they did not translate their decreasing asylum-favourability into more restrictive policies on asylum migration. Overall, these results suggest that the liberal paradox shapes the immigration policy mix.

Contributions. We contribute to the literature by introducing the concept of the immigration policy mix as a novel way to describe and compare countries' pattern of immigrant admission, offering an original approach to study the complexity of policies in this field. Furthermore, we expand theories of immigration policy to explain the immigration policy mix. We test our theoretical expectations with a quantitative-comparative analysis of immigration policies in OECD countries since 1980, providing the first comprehensive analysis of how countries combine policies towards asylum and labour migration. Our findings provide important insights into the driving factors behind immigration policies, as well as into the combination of different policy-dimensions in constrained policy environments more broadly.

Liberal democracies face competing political pressures when it comes to immigration policies, and the first article had illustrated this using a single case study. This second article now provides more insight into the migration policies that result from these competing imperatives, which are often a complex and incoherent mix of regulations. Disentangling this complexity is one further step towards answering the overall research question of this dissertation, i.e. how policy dilemmas shape processes of differential in- and exclusion. The remaining piece of the puzzle now is the question of how street-level bureaucrats implement these policies, and this is what the third article addresses.

1.3.3 Implementing ambiguous policies

The third article looks into how the empirical complexity of migration policies on paper translates into their implementation on the ground. How does it affect the work of street-level bureaucrats in immigration offices, and thereby the lives of their clients, that migration policies are complex and often inconsistent? Implementation can be understood as denoting “what happens between the establishment of a policy and its impact in the world of action” (O’Toole 2000, 273).

Research Gap. The article addresses two research gaps, one that applies to the policy implementation literature at large and one that primarily concerns migration studies. First, the question of how policy ambiguity shapes implementation remains understudied (Sætren and Hupe 2018). This is somewhat astonishing, as the concept constitutes a major building block of the literature on street-level bureaucracy (Baier, March, and Saetren 1986; Brodtkin 2012; Lipsky 2010). Second, while there is already some research on the implementation of migration policies, we still know comparatively little about it, and this can especially be said about *internal* migration policies, i.e. the work of immigration officials within countries of destination (Eule 2018). There is a rich literature on ethnic discrimination in public service provision (e.g. Einstein and Glick 2017; Hemker and Rink 2017; Thomann and Rapp 2018), but evidence on how processes of inclusion and exclusion are shaped by immigration officials, i.e. street-level bureaucrats whose client group consists solely of non-citizens, remains relatively sketchy. Existing studies indicate that implementers, while working under resource constraints, generally have wide scope over how to interpret laws and individual cases against the laws, especially regarding migrants with precarious legal status or visa applicants from non-Schengen areas (e.g. Alpes and Spire 2014; Dörrenbächer 2017; Eule et al. 2019). As a result, administrative application of immigration law has been shown to vary regionally (Bauer and Schreyer 2019; Ellermann 2009; Eule 2014; OECD 2017). The reasons for this regional variation remain, however, underexplored. Few studies investigate underlying mechanisms of the variation of migration policy implementation across regions or countries. Based on a theory of “socially coercive state capacity”, Ellermann (2009, 17) challenges traditional wisdom of one variant of the liberal paradox debate, which postulates a gap between public preferences for restriction and expansive migration policy outcomes. Schammann (2015) studies the implementation of the Asylum Seekers’ Benefits Law in two German municipalities. Based on the theoretical considerations of Matland (1995), he finds that the type of implementation practice depends on the dominant local interpretation of the policy goal. Looking at only one policy, this approach cannot disentangle the effect of policy

ambiguity from other local determinants, however. The third article of this dissertation follows up on this with an inter-policy and inter-agency comparative approach.

Context and Theory. The case study chosen for this investigation is labour market access for the two groups of migrants with precarious legal status formerly presented, i.e. asylum seekers and persons with a ‘toleration’ in Germany. Members of both these groups have to apply individually for a work permit at the local immigration office to be able to start a job or traineeship. As a work permit can be a step towards regularization of status for ‘tolerated’ persons, what is at stake is the establishment of legal rights to remain. Again, from the perspective of the state and its bureaucrats, there is a dilemma between on the one hand including those who are already in the country anyway and on the other hand enforcing the return of those without a legal right to remain. The dilemma between residence termination and integration is much more salient in the case of ‘tolerated’ persons than for asylum seekers, as the authorities have already finally rejected the asylum application of the former and employment would significantly improve their chances of regularizing their status in the future. I identified two competing logics or justifications for action that guide how street-level bureaucrats deal with the dilemma. On the one hand, the *regulatory control logic* is based on the idea that the rule of law should be consistently implemented, which implies the primary objective to be residence termination of those without a legal permit to remain. On the other hand, the *economic welfare logic* departs from the acknowledgment that many ‘tolerated’ persons are effectively not deportable, as explained above – the primary objective therefore is economic integration in order to minimize welfare dependence of those likely to stay, providing a pragmatic way out of the deadlock for both migrants and the state. I theorized that while the first is associated with a more restrictive implementation approach, the latter logic is associated with a more lenient interpretation of the law.

Research Question and Method. How does the ambiguity of policy goals shape policy implementation on the ground? To address this question, I chose a research design that enabled me to identify links between the characteristics of the policies in question and the type of implementation. Thereto, I combined document analysis and semi-structured interviews (Adler and Adler 2002; Keats 2000; Rubin and Rubin 2012) with senior officials in selected German immigration offices to allow for an inter-agency and inter-policy comparison. Germany constituted an appropriate case, as its institutional setting provides a relatively high autonomy for the about 800 municipal immigration offices that exercise internal migration control. Pursuing a purposive sampling strategy appropriate for small-n analysis (cf. King, Keohane, and

Verba 1994, 139), I selected immigration offices in consistence with the research aims and strategy. Choosing immigration offices within one *Land* enabled me to control for the possibility that *Länder* government involvement impacts offices' implementation approach and thus confounds the analysis (cf. King, Keohane, and Verba 1994, 182ff). Based on a compilation of relevant *Länder* decrees (see list of *Länder* decrees, Appendix 4, Table 16), I selected an Eastern German *Land* to compare the implementation approaches of a full sample of immigration offices within that *Land* (most-similar-system-design, cf. Levy 2008). Confidentiality was ensured to interviewees; therefore, the exact places of research are not disclosed. Despite the general difficulty in gaining access to immigration officials (Eule et al. 2019), I was able to conduct interviews at about 80 per cent of offices within that *Land*, with no systematic reason for non-response detectable. In total, I conducted 25 interviews primarily in October and November 2017; including nine explorative and five additional background expert interviews to crosscheck results (see list of interviews in Appendix 1, Table 3 and 4). Despite the relatively small sample size of eleven core interviews, interviewees' mostly congruent answers to many questions provided a basis to assume saturation was reached (Barglowski 2018). I recorded, transcribed and coded the core interviews with the software MAXQDA using a mixed approach, applying both theory-derived pre-given and open codes generated in the process (cf. Campbell et al. 2013) (see code system in Appendix 1, Figure 2).

Results. The data confirmed that the level of goal ambiguity of a policy had an impact on its implementation, with high variation between immigration offices even within the same region. Implementation approaches varied considerably in the case of the more ambiguous regulation regarding 'tolerated' persons' work permit, while offices applied regulations regarding asylum seekers' work permit more uniformly. Moreover, when street-level bureaucrats interpreted the ambiguous law, they did not do this in a vacuum, but employed larger contextual policy logics that I grouped into *regulatory control* and *economic welfare logic*. These logics aligned with the restrictiveness of implementation approaches of immigration offices. The interview data also offered inductive insights that lend support to a conceptual differentiation between *collective discretion* and *individual discretion*. With the former, I denoted general interpretations of ambiguous legal texts taken by superiors or jointly by officials for an entire office, and with the latter I described officials' interpretation of individual cases against these general rules.

Contributions. The qualitative research methodology of the article offers in-depth insights into the otherwise hard-to-access world of street-level bureaucrats in immigration offices. Thereby, the article contributes to the still mostly explorative literature on internal migration control

implementation, shedding light especially on the relationship between policy goal ambiguity – a result of policy dilemmas – and implementation. Spelling out two paradigms guiding the making of policies at the margin of in- and exclusion of migrants with precarious legal status, and tracing the use of these by implementers, it provides empirical evidence for the claim that the larger discursive context also matters at the street-level, when officials apply the ambiguous law to individual cases. Distinguishing between *individual* and *collective* discretion, the article also generates new starting points for consecutive research in this field.

In summary, the article demonstrates that how states legislatively handle policy dilemmas matters for dynamics of in- and exclusion on the ground. The harder the migration policy dilemma is for policy-makers, the more likely they will formulate laws in a way that leaves ample scope for interpretation and hence administrative drift. Put simply, policy-makers leave the policy dilemmas resulting from the liberal paradox to street-level bureaucrats, who have to figure it out. For these state agents on the ground, this can mean insecurity and frustration, and for their clients, it means unequal treatment. Given core liberal principles of equal opportunities and fairness, one's chances of obtaining a work permit, and, more importantly, related future residence rights should not depend on the specific orientation of one's local immigration office. The third article thus links back to the normative analysis of the first article.

1.4 Concluding remarks

Western democracies struggling with the regulation of migration is something we witness daily when following the news. At the time of writing this framework chapter, the current prime example in Europe is the ongoing dire situation of asylum seekers on the Greek islands. As I elaborated in this framework chapter, this struggling is a result of the liberal paradox of migration, i.e. the competing imperatives that states encounter due to core aspect of their liberal statehood itself, and the international competition between states. Policy-makers hence face dilemmas when deciding about the design of migration policies, which leads to often-ambiguous policies on paper that street-level bureaucrats then implement according to which notion of the policy context they or their superiors prioritize. This may lead to regional variation of migration policy outcomes that seems hardly reconcilable with liberal principles of equality and legal certainty. As a practical take-away, the findings especially of the third article thus call for clearer wording, communication and contextualization of policy goals wherever possible.

To reach these conclusions, the three articles that together create this dissertation made use of a broad range of theories and empirical methods driven by the individual research questions that tie in with the overall research question of the project. I hope to have convinced the reader that in order to understand how policy dilemmas shape processes of differential inclusion in liberal democracies, it is a worthwhile endeavour to uncover the implicit normative foundations of policies, compare policies across countries and over time, and go into the field to collect empirical data at the sites of policy implementation. This dissertation therefore contributes theoretically and empirically to the study of the determinants and effects of migration policies in liberal democracies.

The limitations of the project provide avenues for further research. Firstly, while Article 1 analysed a policy tool supposed to dissolve one of the policy dilemmas, it was beyond its scope to investigate the further implications that the construction of the ‘prospect of staying’ might have. Clearly, the term itself carries a certain connotation of (un)deservingness, reminding us of the social construction of target groups via policy-making (Schneider and Ingram 1993). Sorting asylum seekers into subgroups, labelling them as those who will likely stay and those who likely will not *before* their claim is actually decided upon could have impacts on how they are perceived and hence treated by street-level bureaucrats, as well as the public. This and related questions on socio-economic outcomes of groups with differently designated ‘prospects of staying’ and hence differential access to institutions could be explored in further studies. Secondly, in Article 2, together with my co-authors I proposed a novel and original way to study the complexity of immigration policies, expanding and testing theories on the determinants of immigration policies. We used the concept of the immigration policy mix to describe the restrictiveness of a country’s asylum policy relative to its labour migration policy. While offering empirical insights into how countries combine these policies, the approach is limited to the (albeit important) criteria of policy restrictiveness. The immigration policy mix is therefore a somewhat crude operationalization of policy goal ambiguity. Qualitative case studies might provide further insights into how strategically or not governments combine sub-dimensions of migration policy, and help to amplify the concept. Thirdly, Article 3 covers a range of potential explanatory factors for why street-level bureaucrats implement relevant policies more or less leniently. While it can rule out some of these factors, and finds that the implementation approach matches the policy logic interviewees employ, it was beyond its scope to provide a clear answer as to why officials employ which logic. This could be another area for future research. Moreover, as qualitative research, the findings of the third article are not generalizable beyond the specific context; and data was produced through what interviewees transmitted

verbally to the interviewer. However, keeping in mind that research access is not easily acquired in this field (Eule et al. 2019), providing such context-sensitive insights into immigration policy implementation may help advance scholarship on the study of the practices of differential in- and exclusion in liberal states.

Overall, this dissertation shows how policy dilemmas of migration control shape processes of differential in- and exclusion of migrants in liberal democracies. Given the structural determinants of these policy dilemmas, it is unlikely that they disappear anytime soon. However, the competing demands on governments may change in weight dynamically due to external shocks such as economic downturns, internationalization impulses or pressure from radical right-wing parties. Accordingly, we may ask how the current global crisis in connection with the Coronavirus pandemic might influence these conflicting imperatives on state action towards migrants. While it is certainly too early for a reliable assessment of the pandemic's effects, I would tentatively argue that the findings of this dissertation still hold in times of crisis. While with the closure of national borders and the disruption of transport systems global migration has almost come to a complete halt, with hardly predictable consequences for individuals and societies in countries of origin and destination alike, there are indications that processes of differential in- and exclusion of migrants continue unabatedly.²⁶ A case in point is the recent proposal of two German ministers to lift the employment ban for asylum seekers from 'safe countries of origin' in order to fill labour shortages in agricultural production. With the crisis displaying the dependence of key economic sectors and domestic care on migrant workers in Western democracies, we may interpret the potential loosening of employment bans in times of need as in line with the trend to favour usability over principle regarding the inclusion of principally unsolicited migrants. At the same time, asylum seekers on Greek islands continue to fall through the cracks, with Europe excluding them from the very necessities of human dignity, such as running water. The crisis may affect further aspects potentially relevant for migration policy-making, such as public attitudes towards migration, xenophobia and electoral behaviour, which are largely unforeseeable at this point. It thus remains an important task for researchers to uncover these processes of differential in- and exclusion, in times of crisis and beyond. This dissertation hopes to have contributed to this ongoing endeavour.

²⁶ See the various blogposts on COVID-19 and migration and mobility collected here: <https://nccr-onthemove.ch/news-covid-19-and-mobility/> (last accessed 08/04/2020).

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Appendix 1

Table 3: List of main interviews (Article 3)

No.	Date	City / District	Token	Main Interviewee (Position)	Length (minutes)	Additional interviewee(s)
1	05.10.2017	City	D10	department head	41	/
2	05.10.2017	District	D1	department head	51	/
3	20.10.2017	District	D2	office head	75	/
4	20.10.2017	District	D3	department head	49	2 caseworkers
5	03.11.2017	District	D4	department head (des.)	47	/
6	03.11.2017	District	D5	department head	79	/
7	06.11.2017	District	D6	senior caseworker	37	/
8	06.11.2017	District	D7	department head	37	/
9	10.11.2017	District	D8	office head	58	department head
10	13.11.2017	District	D9	department head	79	/
11	30.11.2017	City	D11	department head	91	/

Table 4: List of background interviews (Article 3)

No.	Date	Organization / Background
1	10.02.2017	Employment Agency (BA) Berlin, Team Asylum
2	16.03.2017	Bavarian Ministry of the Interior, Foreigners' Law
3	17.03.2017	Stay Welcome, Munich agency for matching refugees with employers
4	17.03.2017	Refugee Council Bavaria
5	05.04.2017	Refugee Council Lower Saxony
6	16.08.2017	Refugee Council Brandenburg
7	30.08.2017	Refugee Council Saxony
8	05.09.2017	Refugee Council Saxony-Anhalt
9	06.09.2017	Refugee Council Thuringia
10	23.04.2018	Refugee Council employee in the geographical area of study
11	23.04.2018	Welfare organization A, person responsible for job training programme for refugees in the geographical area of study
12	22.05.2018	Lawyer specialized on migration law in the geographical area of study
13	01.06.2018	Chamber of Industry and Commerce in the geographical area of study, person responsible for 'securing skilled personnel'
14	08.06.2018	Welfare organization B, person responsible for job training programme for refugees in the geographical area of study

Figure 2: Codesystem (Article 3)

Codesystem	D1	D2	D3	D4	D5	D6	D7	D8	D9	D10	D11	SUM...
> Arbeitsmarktsituation												31
▼ Beschäftigungserlaubnis												0
Widersprüche												10
Stellenwert												15
Bearbeitungsdauer												11
Einbeziehung ZAV												23
Versagungsgründe												25
Geduldete												32
Gestattete												37
Übergang												17
▼ Ausbildungsduldung												0
Fallschilderung												17
Häufigkeit												31
Versagungsgründe												20
Zielgruppe												17
> Bewertung												41
▼ Identität / Mitwirkungspflichten												0
Geduldete												57
Gestattete												16
allgemein												28
▼ unbestimmte Rechtsbegriffe												0
konkrete aufenthaltsbeendende Maßnahmen												23
Zumutbarkeit												6
▼ Entscheidungslogik												0
econ welfare logic												17
regulatory logic												11
▼ Entscheidungskontext												0
Rechtsprechung												12
Gesetzes-/ Erlasslage												37
Einheitlichkeit												33
Ermessen												26
Unsicherheit												13
Selbstbeschreibung liberal / restriktiv												9
Integrationsverständnis / Integrationsleistungen												15
> Leitlinien												56
▼ Politikintention												0
Landespolitik												3
> politische Veränderungen												21
Bundesebene												21
kommunal												25
▼ Organisationskontext												0
Vernetzung												50
Veränderung												19
Mitarbeiterführung												39
Kapazitäten												41
Behördengröße												11
▼ Externe Einflussnahme												77
Rechtsanwält*innen												2
Unternehmer*innen												37
Flüchtlingshelfer*innen (auch Gruppen)												20
Medien												8
Politiker*innen												13
▼ Selbst- / Rollenverständnis												0
Fachaufsicht / Ministerium												31
Behörde												34
> eigene Person												59
▼ Rechtfertigungsinstanz												62
Gesetz												36
Unternehmen / Wirtschaft												11
Dienstherr												10
> Sonstige												20
> Kundeninteraktion												45
Σ SUMME	128	163	98	108	135	125	93	110	176	97	148	1.381

Chapter 2. First Article: A prospect of staying? Differentiated access to integration for asylum seekers in Germany

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A prospect of staying? Differentiated access to integration for asylum seekers in Germany

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Abstract

This paper investigates the normative permissibility of differential inclusion policies, taking Germany as a case study. In the face of mounting asylum applications, Germany introduced new administrative rules differentiating access to integration for asylum seekers. The paper normatively examines whether this practice is consistent with two conventional liberal concepts: special obligations grounding the moral commitments of the liberal state towards its own citizens and the principle of legal certainty grounding its moral commitments towards everyone under its jurisdiction, including asylum seekers. Combining these two usually separately employed perspectives, it argues that while differential inclusion is in principle consistent with these liberal principles, the crude criterion of the country of origin does not comply with both perspectives. The paper contributes to the debate on the ethics of immigration by scrutinizing this real-world instrument of differential inclusion from a political philosophy perspective.

Keywords

Asylum seekers, integration, liberalism, special obligations, legal certainty, Germany

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Introduction

Differential inclusion is the predominant mode of today's immigration policy regimes (de Haas, Natter, and Vezzoli 2018; Helbling et al. 2017). States use immigration policies to select who is allowed to enter under which conditions and who is denied access to the state's territory (Shachar and Hirschl 2014). Differential inclusion – a term coined in this context by Mezzadra and Neilson (2012) – describes how selection does not only occur at the external state border: borders follow the immigrant inside, in the form of differentiated rights and obligations within the destination country (Bosniak 2007; Song 2016). Dissolving the binary between inclusion and exclusion, a myriad of different sociolegal statuses is thus produced (Mezzadra and Neilson 2012). This paper investigates the normative permissibility of differential inclusion policies for migrants in a precarious status, taking Germany's asylum policies as an example. "Precarious residents" (Gibney 2009, 10), i.e. migrants residing in a country who hold few rights and enjoy limited opportunities to advance to a more secure residence status can be found all over the world, with asylum seekers constituting an important sub-category. The related dilemma that policy-makers in practically all receiving countries face is this: which rights to grant people in the limbo situation of awaiting the decision on their asylum claim, which due to both complex legal structures and mismanagement of asylum systems can take several months and even years. Both psychological (e.g. Pernice and Brook 1996; Sinnerbrink et al. 1997) and social science research (e.g. Hainmueller, Hangartner, and Lawrence 2016; Jackson and Bauder 2014) have shown the detrimental effects of waiting time on asylum seekers' psychosocial health and (socio-)economic integration. The negative societal effects are often exacerbated by policies restricting access to the health system (Bozorgmehr and Razum 2015) or the labour market (Marbach, Hainmueller, and Hangartner 2018). However, as granting access to education and employment can establish rights to remain in the receiving country independent of the asylum decision, policy-makers are reluctant to broaden these opportunities for persons whose asylum claim has not yet been approved.

The resulting policy-makers' dilemma has become especially visible in Germany (cf. Lehner 2016; Thym 2016), owing to the unprecedented numbers of asylum applications the country received in 2015 and 2016. As the asylum system struggled to cope, a new administrative category was introduced to speed up processing and to enable 'early integration'.²⁸ This category

²⁸ Already from November 2014 onwards, the German government had liberalized the regulations of labour market access for asylum seekers (cf. e.g. Thränhardt 2015).

is the *Bleibperspektive*, literally translated the ‘prospect of staying’, i.e. the prospect of long-term residence. It determines i.a. an asylum seeker’s rights to economic integration, by making only those with an allegedly ‘good prospect of staying’ eligible for integration programmes such as language courses prior to their asylum decision. This differentiation and thereby expansion of bureaucratic categories for asylum seekers is part of a longer-term trend in states seeking to manage ‘refugee crises’ (Sigona 2018).

This article asks whether this specific type of differentiated access to integration using a country-of-origin differentiation is normatively permissible based on two conventional arguments of the normative debate on migration. The German example can be taken as a typical case of the more profound question regarding the tension inherent in the Western nation-state, which continuously struggles between its two founding blocks: universalistic liberalism postulating equal rights and liberties and particularistic nationalism presupposing the exclusion of non-members (Cole 2000; Hampshire 2013). Even though the number of asylum applications has considerably decreased since the height of the ‘refugee crisis’, the issue of prolonged waiting periods in refugee status determination processes remains salient (ECRE 2016). At the end of March 2018, there were 892.355 pending asylum cases in the EU, 420.305 of which in Germany (Eurostat 2018). The presence of migrants in this and similar limbo situations is an EU-wide phenomenon (Rosenberger and Küffner 2016) and similar to situations all over the world (Gibney 2009), and so the question of normative permissibility of differential treatment of these ‘unwanted’ migrants will remain significant. As Shachar (2014, 122) argues regarding “the current state of affairs in immigrant democracies”, it is precisely “the proliferating ‘in-between’ categories [i.e. categories *in-between* members and non-members which] must be closely monitored” (cf. also Mezzadra and Neilson 2012, 62).

While a larger part of the literature on the ethics of immigration is concerned with the question of whether the liberal state²⁹ has a sovereign right to restrict entry of non-citizens at its external borders (Abizadeh 2008; Blake 2006; Carens 1987b; Miller 2009; Walzer 1983), this article focuses on what the liberal state owes or does not owe in terms of socio-economic integration to those who have already passed the first gate of entry.³⁰ The fact that asylum seekers usually

²⁹ For the purpose of this paper, a ‘liberal state’ is understood to be a constitutional state built on the core principles of liberty and equality (cf. Hampshire 2013).

³⁰ In the tradition of the debate on distributive justice, I am not concerned with the state’s obligation to provide for basic material needs and basic human rights (concept of minimalist justice), but with the rules the state sets that regulate access to socio-economic integration and upward social mobility (concept of maximalist justice) (Miller 2009).

pass the external border without the state's legal consent – due to the paradox that the international asylum system presupposes irregular entry (Nußberger 2016) – does not matter here: their presence in the state's territory is regularized by the asylum application they lodge.³¹

There are three main positions on the question of whether the liberal state can rightfully exclude non-members (Wilcox 2009): the conventional view postulates that the state has a broad right to exclude at the border. One of the traditional arguments for the conventional view is the special obligations argument. Famously spelled out by communitarian Michael Walzer (1983), it maintains that a national community should legitimately prioritize its compatriots over non-members. Both liberal egalitarian and cosmopolitan positions have challenged this view. Idealist liberal egalitarians have argued for a human right to migrate (most prominently Carens 1987). Cosmopolitan proponents of more porous state borders have argued that global justice requires states to admit immigrants, as in the face of global inequalities barriers to immigration set by affluent states arbitrarily deny some the opportunity to improve their life prospects (e.g. Pogge 2005). Strikingly, the phenomenon of forced migration has largely been absent in the normative debate on the state's right to exclude non-citizens (Gibney 2014). Recently, however, the literature on the ethics of asylum has been growing. This increasing interest might be rooted in the growing critical awareness of state attempts to circumvent humanitarian obligations through externalization and deterrence policies (e.g. Gammeltoft-Hansen 2014) and the introduction of meritocratic elements in asylum policies (Schammann 2017). It also accompanies a gradual shift within the normative debate on migration itself, which has become less absolutely divided in proponents and opponents of open borders: today, most scholars agree that the state may control its borders, differing merely about the exact extent of and justification for it (Bader 2012).

This paper seeks to contribute to the literature on the ethics of immigration in two ways. First, it combines two perspectives that are usually separated, approaching the legitimacy of states' actions regarding migrants both from the perspective of what the state owes its own citizens and the rights of non-citizens. Second, its case selection of a recently introduced administrative policy targeting asylum seekers allows grounding the often somewhat detached normative debate on migration, while also covering an understudied group in this literature. The approach thus allows testing some of the arguments commonly brought forward on a real-world dilemma

³¹ As signatory to the Geneva Convention the state also commits to the principle of *non-refoulement*, which could be taken as consent to enter into a relationship with the individual asylum seeker.

faced by a liberal state. Departing from two minimal, conventional views on states' commitments, the paper argues that while differential inclusion is in principle a legitimate policy, the liberal state seems obliged to extend these privileges to all those to whom it fails to act in a timely manner.

The 'prospect of staying' construction is not a 'hard' legal category, but a 'soft' administrative one defined and re-defined by state agencies, which implies that it cannot be appealed against (Lehner 2016). This paper does therefore not explicitly analyse whether the construction is compatible with constitutional or human rights commitments. While such a legal analysis would certainly have its own merits, this article's main contribution lies in scrutinizing this instrument of differential inclusion from a political philosophy perspective on the meta level, going beyond the question of what is compatible with the law to address what is compatible with broader normative commitments of the liberal state (that ultimately underlie legal provisions). What we can gain from such an analysis is thinking beyond the law on paper, challenging the institutions often taken as given.

Introduction of the 'prospect of staying' category

The term 'prospect of staying' was first introduced in German law and policy on asylum in the heat of the 'refugee crisis' in October 2015 with the *Asylverfahrensbeschleunigungsgesetz* (law to speed up the asylum procedure). According to its explanatory memorandum, "people who have a good prospect of staying should be integrated into society and the labour market as quickly as possible" (publication no. 18/6185 of the German Parliament, my translation). The law stipulates to grant access to integration courses³² to the thus designated group, and the relevant passage in the Residence Act now reads as follows: "[t]his regulation applies accordingly [...] to foreigners who [...] are in possession of a temporary residence permit of asylum applicants during the asylum process and *for whom a regular and long-lasting stay is to be expected*" (§44 Abs.4 S.2 AufenthG, my translation and emphasis). The passage continues clarifying that "[f]or an asylum seeker originating from a safe country of origin in accordance with §29a of the asylum law it is assumed that a regular and long-lasting stay is not to be expected" (ibid., my translation). The 'prospect of staying' is thus only partially and negatively defined in the legal text itself. The explanatory memorandum of the *Asylverfahrensbeschleunigungsgesetz*, however, gives some further

³² Integration courses were introduced with the immigration law in 2005 and are primarily language courses, but also include an 'orientation course' on German history, culture and the legal system.

information: included are “asylum seekers [...] from a country with a high recognition rate or for whom a resilient outlook for the asylum application to be successful exists” (publication no. 18/6185 of the German Parliament, my translation). The category has found entry into German law on two more occasions since then, most recently in the Integration Act which entered into force in August 2016, establishing preferential treatment mainly in the form of access to socio-economic integration measures for a subgroup of asylum seekers.³³

It is crucial to note that the ‘prospect of staying’ is an administrative rather than a legal category: who counts as having a ‘good prospect of staying’ is determined by subordinate state agencies, i.e. the Federal Agency for Migration and Refugees (BAMF) and the Federal Agency for Employment (BA).³⁴ The recognition rate³⁵ of the respective country of origin group serves to determine the likelihood of a long-lasting stay: if it was above 50 per cent, the ‘prospect of staying’ is assumed to be ‘good’ or ‘high’. It is determined biannually which countries this applies to. Currently, this is understood to apply to Syria, Iran, Iraq, Eritrea and Somalia.³⁶

Why was the category introduced? Arguably, this was driven by an economic logic that has become an important determinant of migration and integration policies (cf. e.g. Mezzadra and Neilson 2012; Ong 2006; Shachar and Hirschl 2014). The immediate aim of providing newcomers early access to education and the labour market (and even making integration obligatory, as the Integration Act partly stipulates) is to minimize the dependence of residents on the welfare state, following a broader trend of integration policies of Western European countries (Joppke 2007). The category’s introduction occurred against the backdrop of increasing numbers of arrivals and the correspondingly mounting backlog of asylum applications. As the Federal Ministry of the Interior (BMI) put it, the idea was “to speed up the [asylum] processes so that it becomes clear early on that those who stay are being integrated and those who are not allowed to stay leave our country” (BMI 2015, my translation) – it was thus an attempt to address the above-mentioned policy-makers’ dilemma; enabling those likely to

³³ The phrase “regular and long-lasting stay to be expected” is also used in §421 of the Third Book of the Social Security Code about the support of language courses (§421 Abs.1 S.1 SGB III) (Lehner 2016) and it also figures in §132 of the Third Book of the Social Security Code on the promotion of vocational training of foreigners.

³⁴ It is assumed, however, that the specific categorization has been coordinated within the federal government; see e.g. an e-mail by the Federal Ministry of Labour and Social Affairs (BMAS): http://biaj.de/images/stories/2015-12-07_bmas-schreiben-421-sgb3-anlage.pdf, last accessed 14.06.2018.

³⁵ The recognition rate is calculated as the sum of asylum recognitions (Basic Law Art. 16a), refugee recognitions (Geneva Convention), subsidiary protection statuses and determinations of a deportation ban, relative to the total number of decisions in a given time period (publication no. 18/12623 of the German Parliament).

³⁶ <https://www.bamf.de/SharedDocs/FAQ/DE/IntegrationskurseAsylbewerber/001-bleibeperspektive.html>, last accessed 30.07.2018.

stay to become ‘productive’ members of the society as soon as possible, while preventing the integration of those who will likely not receive a permit to stay, as this would make it more difficult to later enforce their return.³⁷ In other words, the ‘prospect of staying’ was thought to help operationalize the likelihood of a positive return on investments in language competence and employability.

Two moral benchmarks for state action

Borders constitute social institutions that are crucial factors for stratifying the social and economic world at local, regional, national and international level (Balibar 2004; Bosniak 2007; Mezzadra and Neilson 2012). In the words of Balibar (2004, 111), borders have moved to the inside of states, “from the ‘edge’ to the ‘center’ of public space.” The ‘prospect of staying’ category is a form of positive selection of some into “programmes of social inclusion [...which can] also function as devices of hierarchization and control” (Mezzadra and Neilson 2012, 67). It can hence be understood as one of the many boundaries within the state. Just as immigration control at the external border works as a filter into the country, regulations and administrative practices such as the ‘prospect of staying’-differentiation serve as filters into society, assigning different degrees of utility and potential belonging to individuals. To approach the question of the normative legitimacy of this particular filtering mechanism, two moral benchmarks for state action – one towards its citizens and one towards all individuals present on its territory – can be identified. These two are chosen as both imply a minimal and conventional understanding of what the liberal state owes to non-citizens. Hereby, the threshold for a policy’s normative permissibility is set deliberately low.

The special obligations principle

In the normative debate on migration, the conventional view postulates that the state has a broad right to exclude at the border. One of the traditional arguments for this view is the special obligations argument. Famously spelled out by Michael Walzer (1983), the special obligations argument maintains that a national community should prioritize its compatriots over non-members. In the words of Miller (2009, 297), it generally takes the following form: “principles

³⁷ The aim of speeding up asylum processes has been reached to some extent at least regarding new applications, but it is debated whether this came at the cost of decreasing quality of decisions. The case backlog has not disappeared with faster processing, but shifted to the courts (publication of the German Parliament no. 19/3148).

of distributive justice apply to people who have a certain relationship to one another. It is by virtue of being so related that they can advance particular claims of justice against one another, invoking distributive principles”.

As Walzer (1983, 31) explains, “[t]he idea of distributive justice presupposes a bounded world within which distributions take place”. While it is clear that distributive justice works within a group of people that have a certain relationship to one another, it remains controversial who forms that group and which principles determine membership. Affiliations between family members seem to be an obvious case: parents have special concern for the well-being of their own children that they do not have for the well-being of someone else’s children. This is not deemed unjust, but “potentially constitutive of every person’s well-being” (Abizadeh 2016, 108). It is less morally intuitive, however, to claim that there is a special relationship between compatriots, which results in them owing each other special obligations. This question – should priority be given to compatriots or not – has been thoroughly debated by political philosophers and theorists (see the discussion in Bader 2005). The important issue here is that the special obligations concept underlies the currently practiced approach of liberal states, where social justice is understood to be “justice within the boundaries of independent states whose members have a common national identity” (Miller 2009, 304).³⁸

The aim here is not to analyse the special obligations argument in its entirety, but to show the possibility to derive the permissibility of differential access to integration from this well-accepted, conventional argument. For the sake of the argument, let us assume that the state is in fact morally obligated to prioritize the interests of its own citizens.

The principle of legal certainty

While a conventional approach to the question of whether state exclusion of non-members is normatively justified is easily palpable, due to the scarcity of respective literature it is harder to identify a similarly classical approach of moral commitments of the liberal state towards asylum seekers on its territory. A minimal – and therefore, one could argue, consensual – approach would be to assume that the liberal state needs to guarantee legal certainty for every person under its jurisdiction, regardless of legal status.

³⁸ This principle even holds in the EU, which has still not advanced to become a social union.

Constitutionalism makes it generally difficult for the liberal state to exclude internally. This is pointed out by Joppke (2005, 51), who maintains that the modern liberal state's possibilities for internally excluding non-members "are even more limited than excluding them externally", for "[n]ow a democratic logic enters, according to which immigrants [...] are owed equal consideration by the state under whose roof they have come to reside, and on whose protection they now depend". The fact that someone is due to their physical presence on a state's territory subject to that state's power and coercion generates certain rights and responsibilities for that person. "Ethical territorialists", as Bosniak (2007, 395) calls them, even argue that the fact that all 'territorial insiders' – i.e. people physically located on the state's territory regardless of their way of entry – are subject to state power should generate equal rights for them (Bosniak 2007; Song 2016; Walzer 1983). One does not have to go to such lengths to acknowledge that everyone present in a state should be subject to the rule of law. The rule of law is a crucial characteristic of constitutionalism, and the principle of legal certainty is one of its central preconditions. This principle "recognizes the right of individuals to make long-term plans for their lives by requiring that state action be reasonably predictable and nonarbitrary" (Ellermann 2014, 293).³⁹ The principle of legal certainty also requires the state to act in a reasonably timely manner.

Analysis: is the 'prospect of staying' legitimate?

Against the benchmarks of special obligations and legal certainty, is the 'prospect of staying' category a legitimate policy instrument? Is it consistent with the moral commitments of the state towards both its own and territorially present non-citizens as conventionally understood?

Is differentiation permissible at all?

The 'prospect of staying' implies differentiated access to economic integration. Nationals from a country with an assigned 'good prospect of staying' have advance access to integration courses and labour market education and training programmes. The latter include for instance job application training, skill assessment, employment education programmes for up to eight weeks

³⁹ Ellermann (2014) employs the principle of legal certainty to ground the right to stay of undocumented immigrants.

(including occupation language training) and funding opportunities for job applications, travel costs, and costs for the recognition of foreign certificates (BMAS 2017).

Differentiated access to economic integration can be framed as a question of distributive justice. The conventional approach to the distribution of rights within a territorially bounded state is the status-based approach, where rights are derived from the respective legal status of a person, with only citizens enjoying the full rights spectrum. Differentiation in the liberal state e.g. along the lines of immigration status is not the exception, but the rule (Bosniak 2007). The principle of equality, a cornerstone of the liberal state, does not require treating everyone the same, but treating everyone with equal concern and respect (cf. Dworkin 1973). However, is differentiation normatively permissible in respect to economic integration?

According to the special obligations argument, the state may exclude non-citizens at the external border. The question remains whether this also applies to migrants who have already entered the country. Applied to internal boundaries, the principle of prioritizing citizens would justify some barriers to accessing institutions such as the labour market for non-citizens, as they prevent what could be regarded as unfair competition to local workers. It is the protective function of the border here that justifies differential exclusion (cf. Newman 2003). The other side of the coin, differential inclusion can also be justified from this perspective, as it is arguably least costly for the society as a whole if economic integration is offered (only) to those who will likely stay, minimizing the chances of welfare dependence. If migrants were excluded for a long period, this would lead to welfare loss. Thus, differentiation is in principle consistent with the special obligations argument.

According to the principle of legal certainty, state action has to be timely and predictable. Both differentiation according to legal status and graduation – i.e. that the set of rights increases “in extent and significance the closer to the status of citizenship the individual progresses” (Bosniak 2007, 391) – seems permissible from that perspective, as long as the respective regulations are comprehensible and accessible for those concerned. Hence, differentiation is in principle consistent with the moral commitments of states towards asylum seekers, too.

Let us consider the alternative scenario ‘access for all’ (i.e. non-differential inclusion). This in fact breaches both principles, which strengthens the argument made. In practice, an individual asylum seeker’s *real* prospect of staying is not only determined by whether or not a protection status is granted, but in case of a negative decision also by whether the person actually leaves the country. Opening early integration measures for all, including those who will very likely have

to leave due to a rejection of their asylum application might a) be an investment in vain if the person leaves⁴⁰ (and hence not in line with special obligations), and b) in the case of persons not leaving voluntarily after a negative asylum decision ironically make it more difficult for the liberal state to enforce their departure (cf. Gibney 2008). The better integration outcomes are already during the asylum process, the more unfortunate it seems if later, after the rejection of the asylum application, a deportation decision is taken (cf. Lehner 2016) – one could argue that the principle of legal certainty becomes destabilized.⁴¹

Hence, differentiation can be consistent with both the special obligations argument and the principle of legal certainty.

Is it legitimate to apply group-based differentiation?

Instead of being clearly defined in the law, the category ‘prospect of staying’ is determined “schematically, with the aid of the coarsest scale the asylum and residence law has in store, namely the country of origin” (Lehner 2016, my translation). A three-tier system has emerged since the introduction of the category, distinguishing 1) those assumed to have a ‘good prospect of staying’ from 2) those from a ‘safe country of origin’ (designated by law)⁴², and 3) all other asylum seekers (hybrid group). In addition to determining access to economic integration, the category also used to determine the length of the asylum process, as cases in group 1 and 2 were processed by the BAMF as a priority in 2016 and 2017 (BAMF 2017, 2018; BMI 2015; Will 2018).

The cut-off value of 50 per cent, above which a ‘good prospect of staying’ is to be expected, seems arbitrary (Table 5). Technically, the criterion also applies to several other countries of origin: these are primarily countries with low case numbers (such as Ruanda, Myanmar, Nepal), but among them we find also one of the most important countries of origin: Afghanistan, which is in the ‘hybrid’ category (Voigt 2016). Afghanistan’s recognition rate in 2016 was above the threshold (55.8 per cent), but Afghan asylum seekers were still not allowed to participate in

⁴⁰ Although there might be other legitimate reasons for providing these services even in those circumstances (in line with the special obligations argument): returnees might use newly obtained skills in their country of origin, thereby fostering development and (i.a. economic) transnational links.

⁴¹ Arguably, this ‘unfortunate’ situation stems from the somewhat artificial separation between asylum and non-asylum migration law.

⁴² For insights into the historical evolution and critical analyses of current practices of the ‘safe country of origin’ concept, cf. e.g. Engelmann (2014).

integration courses.⁴³ In 2017, the recognition rate of Afghans went slightly below the 50 per cent threshold (44.3 per cent).

Table 5: Recognition rates of top 10 countries of origin in Germany

Country	Admin. Category (June 2018)	Number of (first) Applicants		Recognition Rate (%)		Recognition Rate (Adjusted) (%)		Avg. time 'til admin. decision (months)		Avg. time 'til final decision (months)
		2017	2016	2017	2016	2017	2016	2017***	2016	Jan.-June 2017
Total		198.317	722.370	43,4	62,4	53,0	71,4	10,0	7,1	12,6
thereof:										
Syria	GPS*	48.974	266.250	91,5	98,0	99,9	99,9	6,1	3,8	9,1
Iraq	GPS	21.930	96.116	56,1	70,2	64,5	77,2	8,0	5,9	10,8
Afghanistan	Hybrid	16.423	127.012	44,3	55,8	47,4	60,5	13,1	8,7	12,9
Eritrea	GPS	10.226	18.854	82,9	92,2	97,6	99,3	7,1	10,7	10,8
Iran	GPS	8.608	26.426	49,4	50,7	57,1	60,6	10,6	12,3	12,0
Turkey	Hybrid	8.027	5.383	28,1	8,2	33,6	17,5	9,2	16,3	17,1
Nigeria	Hybrid	7.811	12.709	17,3	9,9	24,2	17,3	13,5	14,2	18,5
Somalia	GPS	6.836	9.851	60,8	71,1	82,9	89,2	11,7	17,3	17,7
Russian Fed.	Hybrid	4.884	10.985	9,1	5,2	13,9	10,4	14,3	15,6	13,1
unsettled**	Hybrid	4.067	14.659	50,6	84,4	63,2	91,6	11,1	7,3	13,1

Source: publication no. 18/11262, 19/185 and 19/1371 of the German Parliament; BAMF (2017, 2018); own compilation.

Note: Recognition rates and average time only apply to those applications that have been decided upon in 2016 (2017), the number of which is smaller than the number of applicants.

*GPS is short for Good Prospect of Staying. **Most of these appear to be Kurds and Palestinians from Syria, who do not have Syrian identification papers, but can nonetheless prove their protection need.

***3rd quarter of 2017 (no other data available).

Moreover, the duration of proceedings needs to be considered. The average time from when the asylum application is submitted until a final decision is taken varies a lot between countries of origin (Table 5, last column). Statistics indicate that asylum seekers in the hybrid group such as Afghans and Nigerians are “doubly disadvantaged” (Brücker 2016, 380, my translation): first,

⁴³ Afghans were never included into the ‘good prospect of staying’ category, although they were likely to stay in Germany even in case of a negative asylum decision, as they were subject to a deportation stop unless classified as a criminal or potential threat. This was effective from December 2016, but was heavily debated again in June 2018 (see <https://www.zeit.de/politik/deutschland/2018-06/asylagebericht-abschiebestopp-afghanistan-aufhebung-angela-merkel>, last accessed 22.06.2018). The BMAS decided to open labour market integration programmes for Afghan asylum seekers for the second half of 2017 (see http://ggua.de/fileadmin/downloads/ausbildungsfoerderung/RD-Weisung_Afghanistan.pdf, last accessed 21.06.2018).

their asylum processes are usually lengthy, which has a negative impact on economic integration (Hainmueller, Hangartner, and Lawrence 2016). Second, during this long waiting period, they are excluded from key state integration programmes.

Against this backdrop, it seems that the ‘prospect of staying’ category does not comply with the two normative benchmarks proposed above. The connecting element of both principles employed here is time. From the special obligations perspective, the question arises whether asylum seekers during the oftentimes-considerable waiting period between submitting an application for asylum and receiving a final decision from the authorities develop *de facto* relationships with the national community that then establish special obligations. Although asylum seekers often live in centralized housing, one could argue that “[w]hatever their legal status, individuals who live in a society over an extended period of time become members of that society, as their lives intertwine with the lives of others there. These human bonds provide the basic contours of the rights that a state must guarantee” (Carens 2005, 16; cf. also Gibney 2009). Among these rights would arguably be the one to not being excluded from certain integration services.⁴⁴

Yet, even if one deems it far-fetched to consider asylum seekers as gradually becoming members and thereby establishing rights and would rather keep the group of state members narrowly defined, the ‘prospect of staying’ tool cannot do justice to protect the rights of the narrowly-defined group of state members, i.e. nationals. To protect the native population from economic harm, supporting the integration of those who stay and hence their path to economic independence is an investment in the future that promises reduced social costs and higher benefits (e.g. taxes). Departing now from the premise that the state has special obligations toward its citizens and therefore needs to ensure that asylum seekers will not pose an economic burden on the society in the future, it is crucial to point out that the assumptions of the ‘prospect of staying’ category do not comply with reality:

First, the empirical premise of the differentiation – that Syrians, Iranians, Eritreans, Somalis and Iraqis will likely stay for a considerable amount of time and others such as Afghans will likely not – is very shaky, as the recognition rates indicate (Table 5). Second, for a variety of reasons it has proven difficult to return rejected asylum seekers to countries of origin (Ellermann 2009; Eule 2014; Gibney 2008). So even if it contradicts political interests of migration control, the

⁴⁴ For a discussion of the right to stay, see Carens (2010) and Ellermann (2014).

reality is that regardless of the asylum decision, many applicants will likely stay for a considerable amount of time. By not granting them early access, it seems no exaggeration to caution that the “integration problem of tomorrow is being created” (Brücker 2016, 380, my translation).

One could object that the practical matter of how asylum and return policies are implemented is not relevant for the legitimacy of differential integration policies, as this argument would disappear once these issues are resolved. However, a non-idealistic argument needs to take into account real-world circumstances and it is arguably unlikely that these issues will be solved in the foreseeable future (for the difference between realistic and idealistic approaches to the ethics of migration, cf. Carens 1996; for the persistence of the “deportation gap”, see Rosenberger and Küffner 2016).⁴⁵

In addition to this, from the legal certainty perspective, it can be argued that the state is obliged to guarantee a decision about asylum applications in due time. In a first step, territorial presence establishes the right to obtain a permission to remain as an asylum seeker (in Germany, the *Aufenthaltsgestattung* §55 Abs.1 AsylG). This status then in a second step establishes further (graduated) rights towards the receiving state, i.a. the right to legal certainty. It can be argued that the failure to decide about an asylum application in a timely manner as well as the non-facilitation of return of rejected asylum seekers amount to a type of state failure. In the absence of state action in a timely manner, the principle of legal certainty requires that individuals concerned can move on with their lives and plan for their future. Denying access to economic integration programmes is therefore not consistent with the principle of legal certainty. In other words: during an unreasonably long time in limbo, asylum seekers in the hybrid group grow into a legal position in which it becomes considerably harder for the liberal state to deny them rights to integration. However, one would have to differentiate between long waiting times through no fault of one’s own and self-inflicted ones due to non-cooperation with the authorities.⁴⁶

That long wait times should lead to certain rights is in fact widely accepted (Carens 2010; Ellermann 2014), but usually as an *a posteriori* decision: the longer a person waits in limbo, the more rights they should be granted.⁴⁷ However, it is argued here that the principle of legal

⁴⁵ From the said normative perspective, a prospect of staying instrument that includes not only protection, but also deportation rates would be easier to justify – however, politically certainly unfeasible.

⁴⁶ This is increasingly recognized in German law, see e.g. §60a Abs. 6 AufenthG, §1a Abs. 3 AsylbLG.

⁴⁷ One could read e.g. the EU Reception Conditions Directive in such a way. For instance, Article 15 stipulated that access to the labour market has to be granted to an asylum seeker no later than nine months after the application (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN>, last accessed 15.02.2019)

certainty warrants that access to integration programmes should be *a priori* granted to all asylum seekers who at least have an earnest chance of remaining (be it due to a positive asylum decision or the non-feasibility of return). This would be a just measure because of the central inconsistency of the ‘prospect of staying’ category with the principle of legal certainty, which consists in the fact that the category is an administrative and not a legal one, and can hence not be appealed against.

To clarify this point, it is instructive to briefly look at the historical development of immigration admission policies: liberal states have turned from a group-based mode of exclusion to the current individual-based one. Early immigration policies in countries such as the USA, Australia and the United Kingdom were explicitly racially discriminatory – an often mentioned example is the ‘White Australia Policy’ which remained in force until the early 1970s (Cole 2000). Today, immigration policies seek to select individuals primarily on the basis of market values, i.e. skills, talents and financial resources (Shachar and Hirschl 2014), or in other words based on the expectation of their ability to integrate into the host society. Pre-arrival civic integration policies that “discourage the immigration of unwanted groups without explicitly naming ethnic categories” (FitzGerald et al. 2018, 30) are one example of how “systematic group biases” remain, or have maybe even become more prevalent, in immigration policies of liberal countries (Ellermann and Goenaga 2019, 87). However, *explicit* ethnic or national criteria for group-based categorical exclusion have vanished from liberal democratic migration policies.

The ‘prospect of staying’ poses a problem to this general liberal agreement of non-selectivity based on citizenship and ethnicity precisely because it is non-refutable: “the apodictic practice of state agencies regarding integration measures normatively does not seem to be sufficiently verified and differentiated” (Lehner 2016, my translation). The ‘prospect of staying’ cannot be changed *ex post*, but has an impact on one’s socio-economic integration opportunities – which ironically in turn influence one’s real prospect of staying, as good integration outcomes can improve a migrant’s chances of obtaining permanent residence and eventually citizenship status. Insofar as the category assigns a group characteristic to an individual *qua* their nationality, one could even argue that it contains a racializing element. In short, the country of origin-based criterion seems incoherent with the requirements of the principle of legal certainty, too.

Conclusion

Drawing on insights from the normative debate on external migration control, and taking Germany's asylum policies as a case study, this paper has argued that differentiated access to early integration is in principle a legitimate measure taken by the liberal state. Using the country of origin as the criterion to determine a person's eligibility, however, seems normatively questionable as it does not comply with conventional views about the state's moral commitments towards both citizens and non-citizens. Additionally, the analysis also suggests that the tool is practically unwise, as it seems hardly able to meet its stated objectives. Policy-makers face significant constraints in dealing with the phenomenon of precarious residence (Gibney 2009; Rosenberger and Küffner 2016; Thym 2016). A liberal state, however, needs to be able to reconcile the apparent trade-off between migration control and integration management more competently than with a country-of-origin based instrument, as seen in the case study analysed here. An alternative to this fixed 'prospect of staying' category could be individual-based access rules that take into account the (likely) duration of asylum proceedings. If these exceed a certain timeframe, access to integration measures should be granted regardless of the person's nationality.⁴⁸ This alternative procedure would be consistent with both the special obligations argument and the principle of legal certainty.

Several lessons can be drawn from this case of differential inclusion of asylum seekers in Germany for the broader debate on liberalism and migration. Looking at the seldom analysed case of asylum and providing a reality check of the often employed special obligations argument for closed (external) borders, this paper sheds light on unresolved issues in the normative debate on migration and integration. The analysis has pointed out that the special obligations argument does not always result in the seemingly obvious conclusion: to protect its own citizens, it might in certain circumstances be the state's obligation to facilitate inclusion rather than exclusion of territorial insiders, as this will pay off in the long term. While the legitimacy of states' actions on migration and integration has usually been approached either from the perspective of what the state owes its own citizens or which rights non-citizens have, this paper combined the two. Departing from two rather minimal, conventional views on states' commitments, the analysis has come to the conclusion that while privileged access to integration opportunities is in principle a viable policy, the liberal state seems obliged to extend these privileges to all those to

⁴⁸ In case of non-cooperation on the part of the asylum seeker, these rights could be revoked.

whom it fails to act in a timely manner. The main limitation of this paper consists in its focus on economic rationales regarding the special obligations argument, i.e. leaving aside questions of national and cultural identity also frequently used to legitimate external migration control for the sake of prioritizing citizens' needs. Although this focus can be justified by the fact that an economic logic was underlying the introduction of the category in the first place, future research focusing on the cultural dimension would be welcome.

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Chapter 3. Second Article: Explaining the immigration policy mix: The relative openness towards asylum and labour migration

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Explaining the immigration policy mix: The relative openness towards asylum and labour migration

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Abstract

Immigration policies are ‘mixed bags’ consisting of a plethora of regulations in various dimensions. In this article, we disentangle these policies and introduce the concept of the ‘immigration policy mix’ to analyze how countries choose to regulate immigration. Thereby, we distinguish between asylum and labour migration as main admission channels. How do states combine the humanitarian and economic motivation to admit immigrants? Despite increasing efforts of policy-makers to distinguish between refugees and migrant workers, we know surprisingly little about how countries combine different policy dimensions and what factors shape their relative openness to different target groups. Does the immigration policy mix of liberal democracies follow a pattern of convergence, is it path-dependent or subject to political dynamics? We test these hypotheses with an analysis of immigration policies in OECD countries between 1980 and 2010. We find that while partisan preferences shifted from asylum to labour migration over the last few decades, the immigration policy mixes of countries have strongly converged towards more liberal policies overall. The immigration policy mix is explained neither by welfare institutions nor by government ideology but reflects governments’ limited room to manoeuvre due to competing political pressures. We demonstrate that the immigration policy mix allows for a better understanding of countries’ complex regulation of immigration.

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Keywords

Migration, policy, comparative politics

Introduction

Many policy-makers in Western democracies are concerned with drawing a clear line between asylum and labour migration. This reflects the focus of governments on the strategic control of migration by classifying immigrants into different legal categories based on different reasons for admission. Yet, in public debates, asylum and labour migration are often pitted against each other, and there are numerous indications that policy-makers may also strategically consider the combination of these two dimensions. The British immigration policies under New Labour (1997-2010) illustrate this: confronted with public backlash against rising immigration, Labour turned toward increasingly restrictive asylum policies while opening the British labour market to migrant workers (Consterdine 2018, 135). More recently, similar developments can be observed in Eastern Europe, where several of the EU governments most vocal in their opposition against refugee reception recently proactively liberalized entry conditions for migrant workers from outside the EU (Klaus 2020). These examples suggest that governments strategically consider the combination of asylum and labour migration policies.

So far, we lack a clear understanding of how various immigration regulations relate to each other. In this article, we address this issue by providing the first comprehensive analysis of how countries combine policies towards asylum and labour migration. The humanitarian motivation to admit refugees seeking protection and the economic motivation to admit migrant workers to fill labour shortages are the two most prominent reasons why states accept immigration (cf. Boräng 2018, 6ff; Helbling et al. 2017).⁵² We analyse these two admission channels with the novel concept of the ‘immigration policy mix’. Thereby, we seek to answer the following questions: how does the immigration policy mix vary across countries and over time? Which factors shape countries’ relative openness to asylum and labour migration?

Existing literature either treats immigration policy as uniform, neglecting its multi-dimensional character, or seeks to explain only specific sub-dimensions such as asylum or labour migration policies. Unlike previous scholars, we do not aim to identify ‘grand’ immigration regime types, but analyse the relative openness that countries choose for different admission channels. We follow scholars who posit that sub-dimensions of migration policy are driven by different underlying logics of policy-making (Boräng 2018; Givens and Luedtke 2005; Lutz 2019), but go

⁵² For reasons of simplification and readability, we use the term ‘refugees’ to describe humanitarian migrants independent of their legal status, thereby also including asylum seekers whose application for asylum has not yet been finally determined.

beyond this literature by arguing that the empirical complexity of immigration policies can only be understood as a combination of its sub-dimensions. Despite the acknowledgment in the literature that immigration policies are a “mixed bag” (de Haas et al. 2015, 4; Akkerman 2015), empirical research has not yet systematically studied the policy mix that countries opt for. Moreover, it remains an open question whether theories of immigration policy can also explain the relative openness of states towards refugees and migrant workers. We aim to fill this gap with an analysis of the immigration policy mix in liberal democracies and by testing three different explanations for its variation: the idea of policy convergence, the role of welfare institutions and the influence of partisanship.

This study contributes to the literature in several ways. While the policy mix concept has helped to advance research in other policy fields such as macro-economic or environmental policy, to our knowledge it has not yet been applied to the migration field. We introduce the immigration policy mix as a novel way to describe and compare countries’ pattern of immigrant admission. Furthermore, we expand theories of immigration policy to explain the immigration policy mix. Finally, we test our theoretical expectations with a quantitative-comparative analysis of immigration policies in OECD countries since 1980. The findings provide important insights into the complexity of immigration regulations in liberal democracies.

The immigration policy mix

In order to understand immigration policies, we require systematic and comprehensive ways to describe such policies that allow for the comparison across space and time. Previous attempts in that direction have either differentiated sub-fields of immigration policy (e.g. Beine et al. 2016; de Haas, Natter, and Vezzoli 2015; Helbling et al. 2017), or aimed at identifying specific types of immigration regimes to group countries into different models (e.g. Boucher and Gest 2018). While the focus on sub-fields tends to lose sight of the overall characteristics of immigration policies, the regime types - that have gained most prominence in the neighbouring field of citizenship and immigrant integration (e.g. Koopmans 2013) - tend to neglect the competing drivers of policy-making and to make unrealistic assumptions about the cohesiveness of policies across various sub-dimensions (Finotelli and Michalowski 2012; Freeman 2006). The idea of regimes assumes static national models and uniform logics of countries’ immigration policies. By implication, regimes are conceived as having well-integrated, consistent and path-dependent policy frameworks. However, previous research has shown that migration policies are often “mixed bags” (de Haas, Natter, and Vezzoli 2015, 4) and characterized by inconsistencies and

“deliberate malintegration” (Boswell and Geddes 2011, 47-48; Ford, Jennings, and Somerville 2015). We should therefore rather expect differences in degree than differences in kind when it comes to immigration policies. Moreover, the attempt to identify immigration regime types tends to be historically contingent and often focuses on migration demographics rather than actual policies (e.g. the common distinction between classic ‘settler states’, old and new countries of immigration, see Cornelius and Tsuda 2004). For these reasons, regime typologies have severe limitations that hamper the analysis of the empirical complexity of immigration regulations.

Nevertheless, scholars need valid concepts to describe immigration policies and render them comparable across countries and over time. We therefore propose to look at the ‘immigration policy mix’ as an alternative to regime types. The idea of a policy mix is to describe a policy field by acknowledging that policies may be the result of a diverse set of policy rationales rather than representing a single uniform model (Rogge, Kern, and Howlett 2017). Generally, we can understand a policy mix to be a combination of different dimensions in a certain policy field. It is a flexible concept that avoids the problematic assumptions of regime types. The policy mix concept has gained prominence in other fields. In the study of macro-economic policy, it advanced the development of integrated analyses of fiscal and monetary policies and of how their concurrence explains inflation (e.g. Bianchi and Ilut 2017); the concept thus contributed to one of the main developments in post-Keynesian macroeconomics (Hein 2017). In the study of environmental policy, the concept is used to investigate optimal portfolio design in e.g. climate change mitigation (Howlett and del Rio 2015). To our knowledge, there are no such applications of the policy mix concept to immigration policies.

We argue that the policy mix concept is fruitful for studying immigration policy-making and its determinants. It ties in with the presumptions of the ‘liberal paradox’, i.e. the idea that liberal democracies need to balance competing demands resulting from capitalism, representative democracy, and constitutionalism when designing migration policies (Boswell and Geddes 2011, 47-48; Ford, Jennings, and Somerville 2015; Hampshire 2013). The resulting need to be both open and closed to immigration suggests that immigration policies are neither only liberal nor only restrictive, but incrementally adjusted and often contradictory. A policy mix approach is most fit for an investigation of the empirical complexity resulting from the ‘liberal paradox’. With rising politicization of migration, the frequency of migration policy reforms has increased (de Haas, Natter, and Vezzoli 2018) as well as the regulatory complexity of immigration policies (Beine et al. 2016). Conceptualizing immigration policies as a policy mix helps us to consider this complexity, while simultaneously structuring and simplifying it in order to compare national immigration policy trajectories across countries and over time.

We understand immigration policy as all laws, regulations and orders in regards to the entry and stay of immigrants based on different legal channels (cf. Helbling et al. 2017). Accordingly, we define the immigration policy mix as the combination of different admission channels, which interact to influence the direction, volume, composition and timing of migration. We follow the common approach of describing immigrant admission in terms of their restrictiveness.⁵³ The immigration policy mix allows us to assess which admission channels are more open than others, and hence to describe which admission motivation countries prioritize. Given the interrelatedness of different migration motivations, it seems plausible that different admission channels jointly shape immigration outcomes. The concept of a policy mix therefore offers not only a new perspective on the design of immigration policies but can also enhance our understanding of how these policies shape immigration outcomes.

In this paper, we focus specifically on the mix of asylum and labour migration policies. For various reasons, we think that this specific combination bears particular relevance for advancing our understanding of immigration policies.

First, liberal democracies typically structure their immigration policies by a number of admission channels according to the different motivations that they have to selectively accept immigration (Helbling et al. 2017). All immigrant-receiving countries in the Western world have separate legal channels for asylum and labour migration, fulfilling the analytical requirement of cross-national equivalence. Refugees and migrant workers make a large part of the overall number of immigrants admitted by states, although labour migration tends to be substantially larger than humanitarian migration.⁵⁴ Existing datasets on immigration policy distinguish sub-fields based on different target groups (de Haas, Natter, and Vezzoli 2015, Helbling et al. 2017). This differentiation of regulations creates the need to assess immigration policies as a policy mix in order to capture their multi-dimensionality. Note that particular policy choices might however result from mixed motives. Labour migration policies can take into account humanitarian considerations (Ruhs 2019), and asylum policies increasingly incorporate economic or meritocratic elements (Laubenthal 2019). Nevertheless, admission channels are designed and legitimized based on particular reasons to accept immigration. We opt to conceptualize the immigration policy mix based on the combination of admission channels because it reflects the common structure of immigration regulations.

⁵³ This does however not exclude alternative aspects to describe admission channels (e.g. complexity or selectivity).

⁵⁴ Globally, refugees constitute only a small percentage of overall migration.

Second, the distinction between humanitarian and economic admission is politically salient: in public debates, asylum and labour migration are often pitted against each other. This bifurcation often implies differentiating the ‘deserving’ from the ‘undeserving’ (Bansak, Hainmueller, and Hangartner 2016). Many scholars focus on the selectivity of policies and emphasize that states increasingly use economic criteria for immigrant admission (e.g. de Haas, Natter, and Vezzoli 2018; Ellermann 2019). Moreover, there are ample indications that the asylum-labour mix plays an important role in policy-making, where governments strategically combine the two dimensions (see introduction).

Third, asylum and labour migration arguably present the two migration categories that are most contrary to each other regarding their admission logics.⁵⁵ While the admission of refugees is an international obligation for liberal democracies, it is within their sovereign right to exercise state discretion whether or not to accept labour migration. The reason for recruiting migrant workers is genuinely economic self-interest of the receiving state, whereas the admission of refugees is grounded in humanitarian reasoning and the idea of a moral responsibility of the state (cf. Boräng 2015; 2018; Ruhs 2013). For the former the criterion is skill-based and meritocratic – what can migrants contribute to the country of destination – for the latter, it is based on the individual’s need for protection. Other admission reasons are arguably less easy to categorize into the antipodes of ‘humanitarian’ and ‘economic’ motivation. For instance, family migration can be both related to asylum and labour migration, depending on the citizenship or residence title of the respective ‘principal’ person entitled to family reunification. For this reason, our analysis of the immigration policy mix focuses on economic and humanitarian admission as the two core motivations of states to accept immigrants.

Converging, path-dependent or partisan?

To understand the immigration policy mix, we need to investigate what drives the relative openness of liberal democracies to asylum and labour migration. We discuss three approaches that build upon existing theories of immigration policies. The convergence hypothesis expects an increasing similarity of the immigration policy mix across countries. The institutionalist

⁵⁵ While economic and humanitarian motivations for immigrant admission are important, they are not necessarily the only ones. Further motivations could be ethno-cultural reasons, e.g. in the case of admitting ethnic co-nationals living abroad or geopolitical reasons, as was the case regarding asylum seekers during the Cold War (Zolberg 2012).

hypothesis suggests path-dependence and the partisan hypothesis expects the immigration policy mix to follow political dynamics.

The convergence hypothesis

A prominent hypothesis in the immigration politics literature is the idea that countries' immigration policies become increasingly similar over time because of internal and external constraints (Hollifield, Martin, and Orrenius 2014; Meyers 2002). Recent studies find empirical evidence for this claim (de Haas et al. 2018; Helbling and Kalkum 2018; but see Consterdine and Hampshire 2019 on the contrary). We discuss in the following why this should also apply to the immigration policy mix.⁵⁶ In brief, the idea is that due to convergence pressures on both asylum and labour migration policy, as a result we will also see the immigration policy mix become more similar across countries.

In the context of asylum, we identify four different mechanisms to support the idea of policy convergence over the last few decades. The most prominent such mechanism is a 'race to the bottom' with countries competing to be as unattractive for potential asylum seekers as possible (Betts 2009, 177). Thereby, the convergence pressure results from the interdependence of countries' asylum policies and potential spillover effects of restrictive asylum policies that may increase the number of asylum requests in neighbouring countries. A second source of convergence pressure are global or regional migration regimes. The international refugee regime has established the norm of 'non-refoulement' that outlaws forced returns of individuals who have to fear persecution in their country of origin. Further convergence pressure is to be expected from regional integration, in particular emanating from the European Union, as asylum governance constitutes one of the most developed elements of EU migration policy (Hampshire 2016). The nature of Europeanization is an issue of scholarly debates. Some argue that member states use EU harmonization of asylum policies to legitimize the tightening of national asylum laws, circumventing liberal-democratic constraints at the national level such as courts protecting refugee rights (e.g. Lavenex 2006). Others argue to the contrary that EU harmonization rather leads to an increase in legal standards because of the EU's regulatory capacity as well as strong member states' bargaining successes (e.g. Zaun 2016). Overall, countries' integration into international regimes of asylum governance should result in the increasing similarity of their

⁵⁶ Convergence can take place on different levels such as policy goals, policy outputs or policy outcomes. We follow the concept of the immigration policy mix and focus on convergence in terms of policy restrictiveness. We do not look at whether asylum and labour migration policies within countries become more similar over time.

asylum policies. A third convergence mechanism is policy emulation with countries imitating others and learning from their experience (cf. Meyers 2002). All Western receiving countries share the intention to minimize the spontaneous arrival of asylum seekers and therefore have followed each other in establishing policies of ‘remote control’ (e.g. FitzGerald 2020). Finally, convergence of asylum policies could result from geopolitics and historical events. During the Cold War the Western world established and retained relatively liberal asylum regulations as this fitted their ideological demarcation from the Eastern Bloc (Zolberg 2012). With the end of the Cold War, the ideological justification for liberal asylum policies had vanished, while refugee arrivals increased and anti-immigration parties gained electoral strength (Mudde 2013). This led countries to converge towards viewing refugees as a burden to be minimized. In addition, we might see catch-up effects of former communist countries and new immigration countries to the established democracies with a longer history of immigration. These considerations suggest that the asylum policies of OECD countries are subjected to significant convergence pressure in the period of our investigation.

Labour migration follows a different policy logic since states enjoy sovereign discretion in the admission of migrant workers. Unlike in asylum policy, the role of global or regional regimes as drivers of convergence is negligible since there is no global labour migration regime akin to the refugee regime (Betts 2011). Labour migration (of third-country nationals) is also the least harmonized migration policy field in the EU (Hampshire 2016). Apart from the lack of international and regional norms and legal frameworks, similar economic needs can lead to policy emulation where receiving countries learn from the experience of others. With most Western states facing common challenges resulting from demographic ageing and domestic labour shortages, policy-makers tend to “do what others do or already have done” (Finotelli and Kolb 2017, 83). A second convergence mechanism could be the interdependence of countries’ labour migration policies. Countries liberalizing labour migration become more attractive for skilled migrant workers in comparison to their competitors, resulting in a competition for the ‘best and brightest’ (Czaika 2018). With countries’ growing dependence on migrant labour since the 1980s, we expect labour migration policies to converge towards more liberal policies.

In sum, both the field of asylum and labour migration face substantial convergence pressure. While in asylum this stems primarily from international obligations, Europeanisation and countries’ common goal of minimizing refugee intakes, in the case of labour migration the pressure is caused by labour shortages and demographic ageing of Western societies and an intensified international competition for workers. Besides these pressures for more openness, the domestic politicization of immigration and the electoral success of radical-right parties has

increased pressures on governments towards more restrictive policies (Lutz 2019; Mudde 2013). These constraints reduce governments' room to manoeuvre in shaping the immigration policy mix. Economic globalization, political internationalization and domestic politicization have significantly increased since 1980 and jointly limited the available policy space for national governments. The convergence pressures on the immigration policy mix stem from the shared challenges of the liberal paradox of conflicting imperatives of popular demands, market needs and institutional obligations. For this reason, we expect that the immigration policy mixes of liberal democracies have become more similar over the period of our investigation.

Hypothesis H1: The immigration policy mixes of Western democracies have converged over time.

The institutionalist hypothesis

Another perspective on immigration policy comes from a political economy approach. It posits that whether and what type of immigration a state seeks to promote is shaped by the structure of labour markets and welfare institutions (Afonso and Devitt 2016; Ruhs 2013). The underlying logic is that the existing institutional settings limit the leeway for radical change and thus results in path-dependent policies.

Immigration may strengthen the economic foundation of Western welfare states by compensating demographic imbalances, but may also pose a fiscal threat if migrants are entitled to welfare and turn out to be net-receivers (Lutz 2020). How welfare states respond to migration might therefore be shaped by the different welfare state regimes that vary in their labour market structure as well as in their degree of decommodification and social solidarity (Esping-Andersen 1990). What does this mean for the immigration policy mix? Institutional explanations have been formulated for labour migration (Menz 2010; Ruhs 2018) as well as asylum migration (Boräng 2015). Moreover, governments often contrast 'useful' labour migration with 'burdensome' asylum migration (Menz 2006, 393). It is therefore plausible that countries' immigration policy mix is embedded in their politico-economic institutions. In the following, we elaborate on how the political economy of a country might shape its immigration policy mix by an economic rationale and a solidarity rationale.

Many receiving countries are concerned that immigration might become a fiscal burden. More generous welfare states are more likely to extend welfare rights to immigrants and thereby are more exposed to migration-related fiscal risks (Menz 2006; Freeman and Kessler 2008; Römer 2017). In addition, welfare generosity is typically coupled with highly regulated labour markets that render it more difficult to integrate labour market outsiders (Ruhs 2013, 114). This matters

for immigrant admission since labour market integration of refugees tends to be much more challenging than in the case of migrant workers (e.g. Chin and Cortes 2015). Since universal welfare states face larger risks from non-economic immigration, we can expect them to prefer migrant workers to refugees. In contrast, minimalist welfare states with liberal labour markets are less exposed to fiscal risks from immigration and have a greater need of and integration capacity for migrant workers. Their pressure to prioritize economic-oriented admission is therefore lower. We expect these institutional settings to influence countries' immigration policy mixes, with higher welfare generosity to be associated with higher labour-favourability.

Hypothesis H2a: The more generous the welfare state, the higher the labour favourability of the immigration policy mix (economic rationale).

An alternative institutionalist perspective focuses on how welfare state institutions shape social norms. Institutions shape perceptions about what is fair in society, and who is deserving of assistance (e.g. Laenen, Rossetti, and van Oorschot 2019). Generous welfare states have internalized norms of universal solidarity and draw their legitimacy from their inclusiveness. For this reason, welfare generosity should be associated with more openness towards immigration regardless of its (perceived or actual) economic usefulness (Boräng 2015). We may therefore expect a spillover effect from welfare generosity to immigrants and in particular, refugees as a most disadvantaged group. A stronger solidarity-rationale should increase the preference for refugees over migrant workers because of the higher moral deservingness attributed to the former (Bansak, Hainmueller, and Hangartner 2016). In contrast, conservative and liberal welfare states are based on norms of reciprocity and individual responsibility rather than solidarity or universalism (Taylor-Gooby et al. 2019). These norms are better compatible with economic admission of migrant workers than the humanitarian admission of refugees. Their institutional logic leans towards more economically oriented admission. For these reasons, we could expect that generous welfare states are associated with a higher asylum-favourability.

Hypothesis H2b: The more generous the welfare state, the higher the asylum-favourability of the immigration policy mix (solidarity rationale).

The partisanship hypothesis

A third theoretical approach considers immigration policies to follow political dynamics and to be determined by partisan preferences. Migration touches upon core questions of societal (re-)distribution of material and symbolic resources and is therefore likely to evoke partisan conflict (Natter, Czaika, and de Haas 2020; Schain 2008). Empirical studies show that political parties

compete on the issue of immigration and take different policy positions (Akkerman 2015; Lehmann and Zobel 2018; Dancygier and Margalit 2019). Consequently, we expect that political ideology also shapes preferences of governments regarding the immigration policy mix.

For the political left, solidarity and universalism are central parts of their ideological profile. As solidarity is also a key norm driving the admission of refugees (Boräng 2015), we expect that left parties tend to support liberal asylum policies. This fits with the findings of Helbling's (2014, 34) analysis of the framing strategies of political parties, showing that most parties employ moral-universal claims, but "the further to the left a party can be placed, the more important moral-universal [...] arguments become". At the same time, left-wing parties traditionally represent the interests of the domestic working class and therefore support labour market protectionism, i.e. protecting native workers from neoliberal reforms of labour market regulations and against the alleged competition of migrant workers. Together with trade unions, they tend to prefer a restrictive labour migration policy out of fears that the additional labour supply might diminish the bargaining power of local workers and thus undermine labour standards (Freeman 2006). In summary, we expect left-wing parties to be more open towards asylum than labour migration.

Hypothesis H3a: The stronger left-wing parties, the higher the asylum-favourability of the immigration policy mix.

The ideology of the political right, in contrast, is traditionally rooted in the support of economic liberalism that favours open markets. These parties represent the interests of employers and their demands for migrant workers as a flexible and cheap labour force (Hampshire 2013, 24). Moreover, right-wing ideology is also based on values such as conformity, tradition and social conservatism (Thomson and Rafiqi 2018). These values are more prone towards ethnocentrism, the attachment to national identity and viewing immigration as cultural threat. Consequently, right-wing parties are less committed to international solidarity than left-wing parties and their ideological facets of cultural conservatism and nativism tend to fuel critical views of refugees. We therefore expect that while the political right is generally more anti-immigration than the political left, right-wing parties tend to prefer migrant workers to refugees.

Hypothesis H3b: The stronger right-wing parties, the higher the labour-favourability of the immigration policy mix.

Data and Method

To test our hypotheses, we conduct a comparative analysis of immigration policies in Western democracies. As the main dependent variable, we use the immigration policy mix defined here as the relative openness towards asylum and labour migration. To measure the immigration policy mix of a country, we rely on the ‘Immigration Policies in Comparison’ (IMPIC) dataset compiled by Helbling et al. (2017). The IMPIC dataset is the most comprehensive dataset on immigration policies and covers 33 OECD countries from 1980 to 2010.⁵⁷ For each policy field the IMPIC index captures the restrictiveness of entry conditions and eligibility criteria that define how difficult it is to establish legal residence in a country. Moreover, the rights and the security of status associated with a respective entry permit are included that stipulate for how long immigrants can stay on the territory and to what extent they are granted certain rights such as access to the labour market. We extract two variables on immigration regulation restrictiveness from the dataset, one for asylum and one for labour migration that incorporate these aspects (for details of the operationalization see Appendix 3). Then we calculate the immigration policy mix, our main dependent variable, as the difference between them (*asylum - labour*). The resulting variable ranges from -1 to +1 with negative values representing asylum-favourability and positive values representing labour-favourability. The further away the value from zero, the larger is the restrictiveness gap between asylum and labour. The measurement of a policy mix with different policy dimensions requires a certain isomorphism between the measurement aspects and the numerical properties of the different policy indices. The IMPIC addresses this challenge by identifying the theoretical minimum and maximum of sub-indices instead of defining the range by the empirical distribution. Furthermore, the existence of a specific legal provision is fixed at the value of 0.5. These construction features mitigate potential incommensurability of different policy sub-indices. The IMPIC dataset therefore allows for a meaningful comparison of policy restrictiveness across the different target groups of refugees and migrant workers.

Alternatively, we measure the immigration policy mix in terms of policy output by governments based on the DEMIG Policy dataset by de Haas et al. (2015). This dataset codes migration reforms for both asylum and labour migration and offers a sufficient coverage of countries and

⁵⁷ The included countries are Austria, Australia, Belgium, Canada, Switzerland, Chile, Czech Republic, Germany, Denmark, Estonia, Spain, Finland, France, United Kingdom, Greece, Hungary, Ireland, Israel, Iceland, Italy, Japan, South Korea, Luxembourg, Mexico, Netherlands, Norway, New Zealand, Poland, Portugal, Sweden, Slovakia, Turkey, United States.

time. The dataset measures for each migration reform the directional change (more liberal, more restrictive, neither nor). We use the government extension by Lutz (2019) to assign these reforms to the responsible government cabinet and calculate for each cabinet the net figure of liberalizations minus restrictions in the two policy areas. The resulting dataset includes 237 government cabinets in 18 West European countries.⁵⁸ With the IMPIC we measure the overall policy mix of a country, with the DEMIG we measure the particular policy changes by governments. These datasets are largely complementary to each other and allow us to test our hypotheses regarding the overall immigration policy as well as regarding policy changes by governments (cf. Schmid and Helbling 2016).

Furthermore, we measure the immigration policy mix as the policy preference of political parties with a dataset of migration policy positions by Dancygier and Margalit (2020). Their dataset spans a long time period from the early 1960s to 2013 and includes 12 West European countries.⁵⁹ The authors code positional statements in party manifestos of three party groups (centre-left, centre-right, anti-immigrant parties).⁶⁰ Each statement can be positive, negative or neutral, with positive positions representing statements in favour of more immigration or of a positive impact of immigration (negative statements refer to the opposite). We select the item ‘jobs’ that measures labour-market related statements such as job availability, labour shortages and the recruitment of migrant workers as the labour migration position of a party. The position on asylum is measured with the item ‘asylum/refugees’ based on statements related to the admission of refugees and the asylum process. The two items capture the net-sentiment on a scale from -1 to +1 with negative values representing overall negative views and positive values representing overall positive views. This measurement then allows calculating the preferred immigration policy mix of a party by subtracting the labour sentiment from the asylum sentiment.

We operationalize convergence pressure, welfare institutions and government ideology as independent variables (see Table 8 in Appendix 3 for details on the operationalization). First, we measure convergence pressure with two variables. As a main external source of convergence pressure, we include a dummy for EU-membership. Since European harmonization is found primarily in the field of asylum and much less regarding labour migration, we expect EU-

⁵⁸ The dataset includes Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

⁵⁹ The dataset includes Austria, Belgium, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Sweden, Switzerland, and the United Kingdom.

⁶⁰ The authors chose the largest party within these three party groups in each electoral period.

membership to be associated with a higher asylum-favourability. As a main internal source of convergence pressures, we include the strength of anti-immigration mobilization measured by the vote share of radical-right populist parties. The radical right has become increasingly successful in elections across Western democracies. The stronger these anti-immigration parties, the higher the pressure on governments to prioritize ‘desired’ labour migration over ‘undesired’ asylum migration. Second, welfare institutions are measured with an aggregated index of welfare generosity by Scruggs et al. (2014), covering unemployment, sickness and retirement. Alternatively, we use a set of four welfare state regime dummies.⁶¹ The three classic regime types by Esping-Andersen (1990) differ, among other aspects, by their degree of decommodification, which can be low (liberal), medium (conservative) or high (social-democratic), and which indicates their welfare generosity. Additionally, we include the Southern European regime as a fourth type (Arts and Gelissen 2010). Third, the political ideology of a government is operationalized by two variables, the seat share of left-wing and right-wing parties among all governing parties. Finally, two important control factors are included: the unemployment rate to account for the business cycle that affects labour demand and net migration as a proxy of general issue importance.

The empirical analysis is conducted in two steps. First, we provide a descriptive analysis of the immigration policy mix on three different levels: the policy mix of countries (policy level), of political parties (policy preference) and of governments (policy change). Thereby, we compare the immigration policy mix across space, time and political ideology. The change over time is estimated using locally estimated scatterplot smoothing (LOESS). These analyses reveal the overall pattern of the immigration policy mix and the degree of variation across different dimensions. In a second step, we test our three theoretical hypotheses. We assess the convergence hypothesis by measuring the sigma(σ)-convergence (declining dispersion between countries over time) and beta(β)-convergence (laggard countries catching up). The sigma-convergence is measured by how the cross-country variation (standard deviation) changes over time. It has been argued that this variance-approach may underestimate the magnitude of convergence due to processes of conditional convergence (Plümper and Schneider 2009). Therefore, we estimate the beta-convergence by regressing the policy change over time on the initial starting point and by separate estimates for EU and non-EU countries. In addition, we

⁶¹ Conservative regimes are Austria, Finland, France, Germany, Japan, and Switzerland. Social-democratic regimes are Belgium, Denmark, Netherlands, Norway, and Sweden. Liberal regimes are Australia, Canada, Ireland, New Zealand, United Kingdom, and the United States. Southern European regimes are Italy, Spain, Portugal, Greece.

assess the underlying assumption of whether the convergence pressures shape the policy mix in the multivariate regression models.

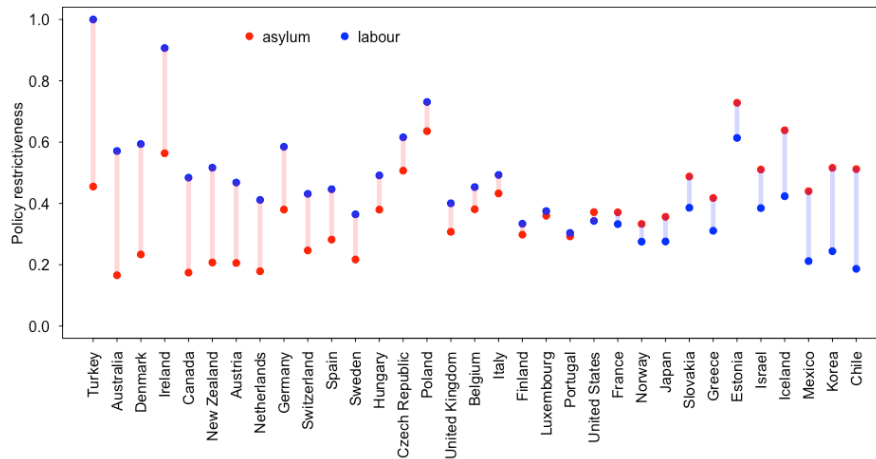
We then investigate the role of partisanship by analysing party manifesto data regarding their political preferences toward the immigration policy mix. This allows us to test the underlying assumption of the partisanship hypothesis that left-wing and right-wing parties have different preferences on the asylum-labour mix. In a last step, we run panel regression models to assess the explanatory power of the different determinants of countries' immigration policy mix that we theorized in our hypotheses. To account for the time-serial cross-sectional nature of the data we include country fixed effects and panel-corrected standard errors. We use two different model specifications, one on the within-country variation and one on the between-country variation. Within-models are more likely to detect effects of political dynamics and convergence pressure, whereas between-models are more apt to detect the influence of path-dependence. Additionally, the same models are re-estimated for governments with policy output as dependent variable and a cabinet periodization that is most likely to identify potential partisan effects (see Garritzmann and Seng 2019).⁶² Finally, we conduct a series of robustness tests to verify the effect stability.

Results

We first present descriptive evidence on the immigration policy mix as the relative openness of policies towards asylum and labour migration. In Figure 3, we present the average policy restrictiveness on asylum and labour migration across countries based on country-means for the time period 1980 to 2010. Among those, twenty-one countries are more restrictive on labour than on asylum migration, and twelve countries are more restrictive on asylum than on labour migration. The first descriptive analysis reveals that not only is there substantial variation within the two policy sub-fields, but also the resulting immigration policy mix shows large cross-country variation.

⁶² In the government-models, we include the cabinet duration measured by the number of days a cabinet was in office as an additional control.

Figure 3: Immigration policy mix across countries

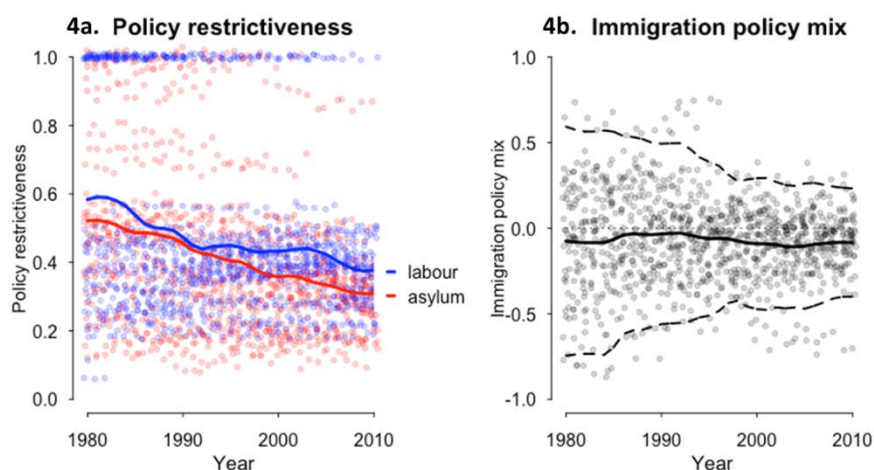


Note: The plot displays the immigration policy mix of countries over the period from 1980 to 2010. The countries are ordered by the size of the relative restrictiveness between asylum and labour migration policy. The coloured lines between the dots represent the immigration policy mix, a red colour represents asylum-favourability, a blue colour represents labour-favourability.

We then estimate average trends of asylum and labour restrictiveness over time (see Figure 4a). Immigration regulations have on average become more liberal over time for both refugees and migrant workers. Policies on asylum are overall somewhat more liberal than those on labour migration over the whole period from 1980 to 2010. In Figure 4b, we estimate how the immigration policy mix of the OECD countries evolved over time. While the average mix has moved very slightly towards lower asylum-favourability in the second half of the 1980s and early 1990s, it has moved back to higher asylum-favourability since then.⁶³ The average immigration policy mix is relatively stable over time and shows no signs of moving towards more economically motivated admission regimes. Over the thirty years of observation, there has been substantial change in the immigration policy mix within countries that is not represented by the average change since countries shifted in both directions (see Appendix 3 for more details). Also regarding country-specific changes of the policy mix over time, there is large variation and no clear direction of change - evidence against institutional stickiness expected from path-dependence.

⁶³ The average immigration policy mix in 2010 (-0.084) has a slightly higher asylum-favourability than in 1980 (-0.075).

Figure 4: Immigration policy mix across time



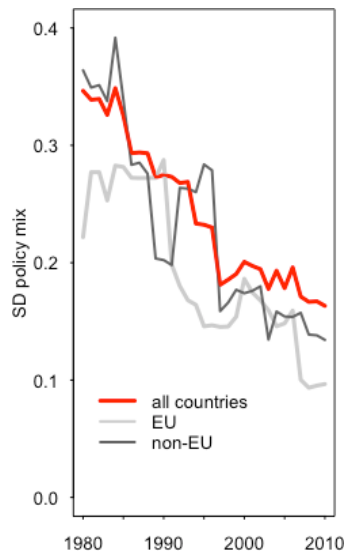
Note: The two plots display LOESS estimates (smoothing span of 0.2) across 33 OECD countries. The observations are jittered and semi-transparent to reduce over-plotting. On the left, we estimate the policy restrictiveness on asylum and labour migration. On the right, we estimate the immigration policy mix.

We then test the convergence hypothesis by measuring the variance in the immigration policy mix over time (see Figure 5). There is a clear pattern of continuous convergence, which took place primarily from 1980 to the late 1990s and then slowed down. We see that convergence can be observed for both EU and non-EU countries. The immigration policy mixes converge towards the sample mean. To corroborate the evidence of convergence, we also estimate the beta-convergence with regression models (see Table 6). These models provide equally strong support for convergence and reveal that convergence for EU countries is substantially stronger than for non-EU countries. This suggests some degree of club convergence resulting from Europeanization.⁶⁴ Overall, the convergence more than halves the average restrictiveness gap between asylum and labour over the thirty-year period.⁶⁵ Countries are converging towards a liberal model of similar levels of openness towards asylum and labour migration. These results confirm Hypothesis H1 that there has been a convergence of the immigration policy mix in Western democracies over time.

⁶⁴ This is confirmed when we estimate club convergence with an interaction term between the initial immigration policy mix with the EU-dummy. The interaction coefficient is highly significant.

⁶⁵ The average restrictiveness gap is 0.28 in 1980 and 0.13 in 2010.

Figure 5: Policy mix σ -convergence



Note: The line plot displays the temporal evolution of the standard deviation of the immigration policy mix across 33 OECD countries and separated for the 20 EU member states and 13 non-EU countries (year 2010 as reference).

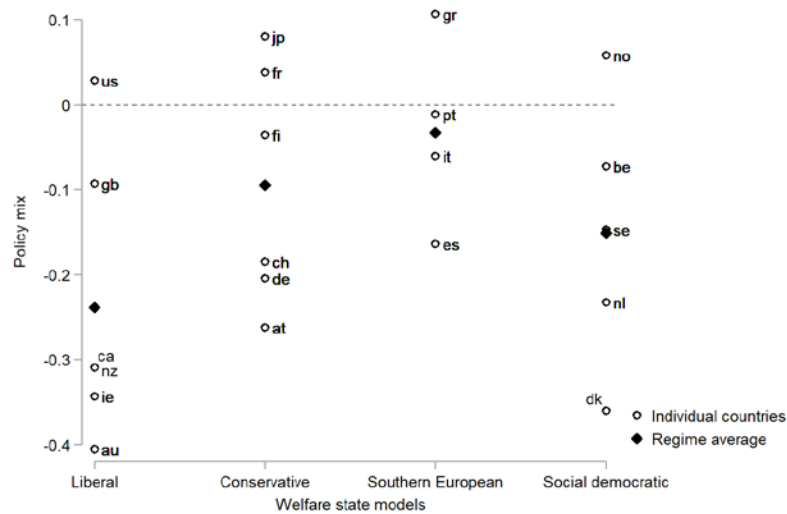
Table 6: Estimation of policy mix β -convergence

	<i>DV: Change in Policy Mix (1980-2010)</i>		
	(1) All OECD	(2) EU	(3) Non-EU
Policy Mix 1980	0.788*** (0.074)	1.089*** (0.081)	0.602*** (0.106)
Constant	0.072* (0.026)	0.104*** (0.024)	0.084 (0.046)
Observations	33	20	13
Adjusted R ²	0.776	0.905	0.721

*Note: The table displays regression estimates for policy convergence across 33 OECD countries. Countries are classified into EU and non-EU countries based on their membership status in 2010. Level of statistical significance as follows * <0.05 ; ** <0.01 ; *** <0.001 .*

We then assess the role of welfare institutions for countries' immigration policy mix. Figure 6 shows the distribution of countries' policy mix across different welfare regime types. All welfare state regimes show on average an asylum-favourability, liberal regimes the highest and those in Southern Europe the lowest. However, there is no clear pattern following their different levels of welfare state generosity. Overall, the variation is larger within than between welfare state regimes and the differences are not statistically significant. In brief, the descriptive analysis does not provide support for the institutionalist hypothesis.

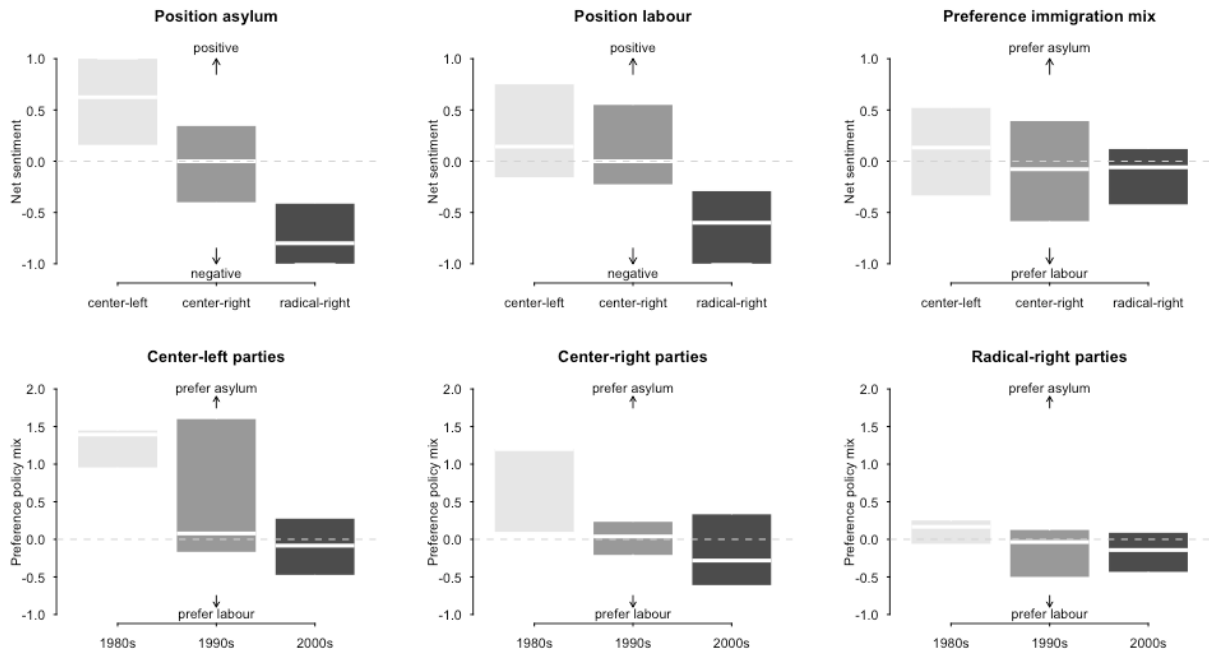
Figure 6: Policy mix by welfare state regime



Note: The plot displays the immigration policy mix of countries by their welfare regime as well as the average policy mix of the different welfare regimes.

In a next step, we look at the policy preferences of political parties regarding asylum and labour migration. Does party ideology determine the preference regarding the immigration policy mix? We assess this based on the revealed policy positions of political parties in their electoral manifestos. The boxplots in Figure 7 compare the distribution of policy positions on asylum and labour migration between centre-left, centre-right and radical-right parties. As expected, radical-right parties have a large negative sentiment score on both asylum and labour immigration in their party manifestos. Centre-left parties are strongly positive on asylum and mildly positive on labour migration. Centre-right parties are on average slightly positive on both asylum and labour migration. The pattern suggests that between left-wing and right-wing parties there is a partisan divide primarily on asylum but far less on labour migration. We then calculate the preference on the immigration policy mix by the three party groups. Again, we find a partisan pattern with left-wing parties having on average more positive sentiments on asylum than on labour, whereas right-wing parties are on average slightly more negative towards asylum than labour migration. This pattern provides limited evidence for the underlying assumption of Hypothesis H3 that the preference on the immigration policy mix varies by partisan orientation. Overall, political parties differ more on whether to admit immigrants than on the specific mix of immigrants.

Figure 7: Party preferences on the immigration policy mix



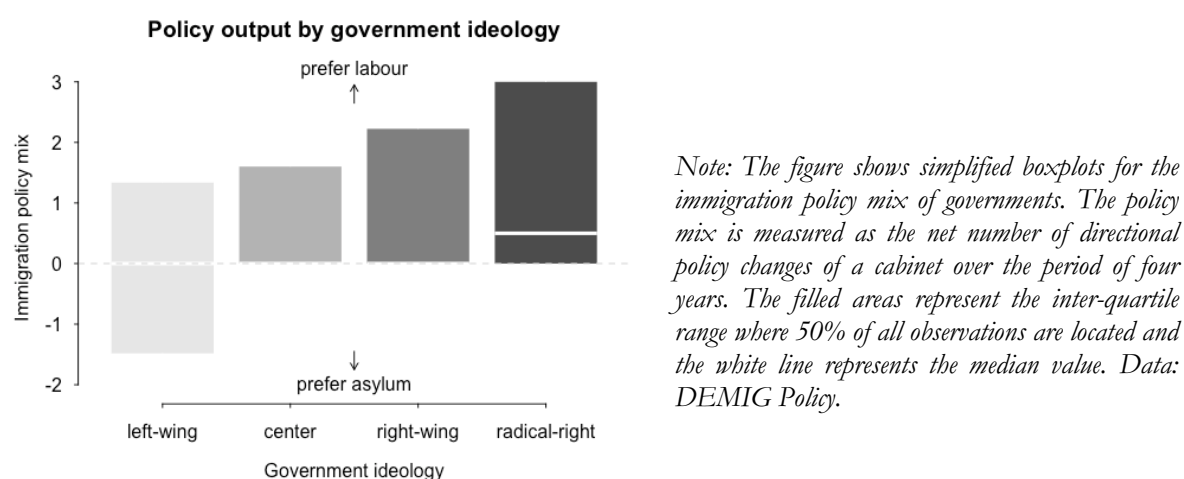
Note: The figure displays simplified boxplots on the immigration policy preferences of political parties. The filled areas represent the inter-quartile range where 50% of all observations are located and the white line represents the median value. Data: Dancygier and Margalit 2020.

Immigration politics has evolved substantially over the last few decades with the issue gaining salience and contributing to the restructuring of political conflict structures. In a next step, we therefore track how party preferences evolved between 1980 and 2013 (see Figure 7). There is a strong shift from preferring asylum to preferring labour migration. This change is observable for all three party groups, whereas it is strongest for centre-left parties and weakest for anti-immigrant parties. The largest shift in preferences for the immigration policy mix took place between the 1980s and the 1990s. Looking separately at the evolution of party sentiments for asylum and labour shows that the shifts occurred during different time periods. The sympathies for refugees dissipated after the 1980s, while in the 2000s parties became more positive about admitting migrant workers. This pattern suggests that the preference change regarding the immigration policy mix is the result of Western democracies withdrawing their sympathies for refugees after the Cold War and their move towards increasing acceptance of labour migration after the year 2000. Note that these results are based on only twelve West European democracies and can therefore not necessarily be generalized for all OECD countries that also include former communist countries. Nevertheless, the trend appears in all observed countries and therefore

provides strong evidence that the political preferences regarding the immigration policy mix have shifted significantly over time.

To compare the policies that parties enact when in government, we look at the immigration policy mix based on the reforms of governing parties (see Figure 8). Here we observe the same pattern, a slight tendency of left-wing parties towards higher asylum-favourability, while right-wing parties and in particular radical-right parties tend towards higher labour-favourability. This partisan pattern is therefore found both at the level of policy preferences as well as the policy output. Nevertheless, the differences between left-wing and right-wing parties are overall small and the difference in the median between the party groups is not statistically significant. This pattern is largely stable over the period of observation from 1980 to 2014.

Figure 8: Immigration policy mix (reforms)



In a second step, we estimate panel regression models to assess the influence of convergence pressures, welfare institutions and government ideology on the immigration policy mix. We estimate the policy mix determinants for the between-country and the within-country variation (Table 7). EU-membership increases the asylum-favourability in the within-model. This suggests that joining the European Union tilted countries' policy mix towards asylum-favourability. An increase in the vote share of radical right parties leads to higher labour-favourability. Both sources of convergence pressures exert a significant effect on countries' immigration policy mix but as expected only for the within-country variation. This confirms the

underlying assumption of Hypothesis H1 on convergence. More surprisingly, welfare generosity leads to a significantly higher asylum-favourability in the within-model but not in the between-model. This does not provide evidence for Hypothesis H2 in terms of path-dependence but reveals an association of welfare reforms with the immigration policy mix. Regarding Hypothesis H3 on the influence of government ideology, the models do not find any substantial effect of right-wing or left-wing parties' participation in government.

To better grasp the substantive interpretation of these effects, we show the marginal effect plots in Figure 9. A change from the vote share of radical right parties from no votes to a third of the votes reduces asylum-favourability, thus closing the restrictiveness gap between asylum and labour. A change of the welfare generosity from very low to very high generosity as well as joining the European Union increases asylum favourability by 0.2 points. This shows that the effects are of meaningful size.

In addition, we estimate the determinants of the immigration policy mix based on the policy output of government cabinets. Instead of the overall policy mix, this analysis looks at the reform pattern of different governments. We find no significant effect in these models, which might be in part due to the lower number of observations (see Table 9 in Appendix 3). The most substantial effect is found for radical-right strength, resembling the result of the policy-level models. Since the policy-output models are limited in their ability to identify convergence but most likely to detect partisan effects, they corroborate the pattern of our results. Overall, the model estimates do not find empirical support for the idea of path-dependent 'national models' when it comes to the asylum-labour mix. Neither is the policy mix shaped by government ideology. However, substantial effects are found for external and internal convergence pressures, with Europeanization leading to more asylum-favourability and successful anti-immigration parties leading to more labour-favourability. This confirms the underlying assumption of the convergence hypothesis.

We test the robustness of our findings using different model specifications and alternative measurements (see Appendix 3 for the detailed model estimates). We include additional year fixed effects to account for external events affecting all countries at the same time. The results of welfare generosity and EU-membership are confirmed, while the effect of the radical-right is slightly weaker and loses its statistical significance. We then replace the welfare generosity index with dummies for welfare regimes. The results that we yield using this classification do not differ from the results using the welfare generosity index in the between models. Then, we include a variable measuring net migration, which is only available for European countries, and it does

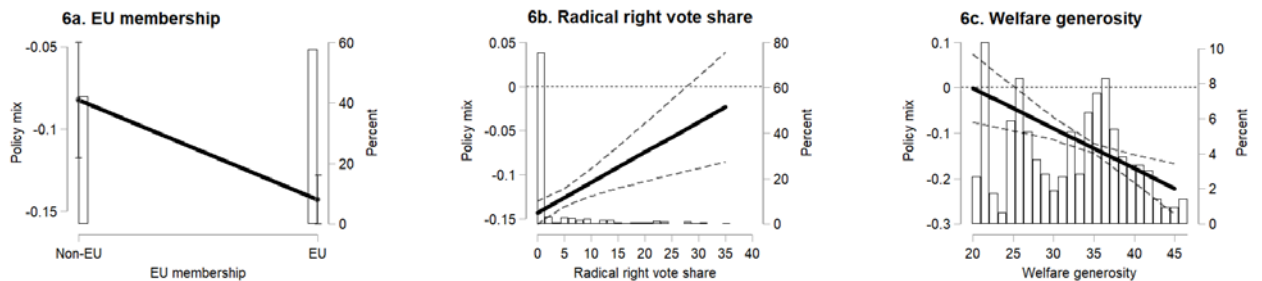
not change our results substantially. Finally, we do resampling, and only include European countries. The results for radical right vote share and EU-membership are confirmed, while the effect for welfare generosity becomes slightly weaker and loses its statistical significance. We conclude that the effects of convergence pressure as well as the non-effects of government ideology and path-dependence from welfare state regimes are overall robust.

Table 7: Determinants of the immigration policy mix

	DV: Immigration policy mix	
	(1) within	(2) between
EU-membership	-0.0713* (0.0285)	0.0418 (0.121)
Radical-right vote share	0.00413** (0.00126)	-0.00730 (0.00891)
Welfare generosity	-0.00684* (0.00321)	0.00151 (0.00800)
Left cabinet	0.000345 (0.000242)	-4.51e-05 (0.00239)
Right cabinet	0.000213 (0.000243)	-0.000394 (0.00292)
Unemployment	0.00367 (0.00262)	-0.0142 (0.0219)
Constant	0.0520 (0.109)	-0.0755 (0.440)
Observations	628	628
R-squared	0.037	0.073
Number of countries	21	21

Standard errors in parentheses
 *** p<0.001, ** p<0.01, * p<0.05

Figure 9: Marginal effects of immigration policy mix determinants



Note: The figure shows the marginal effects for the impact of the radical right vote share, welfare generosity and EU membership on the immigration policy mix. Solid bars represent 95 percent confidence intervals. Barplots represent the observations of the determinants in percent.

Conclusion

Liberal democracies face competing political pressures when it comes to immigration policies. The resulting policies are often a complex and incoherent mix of regulations. In this article, we disentangle this complexity and provide the first comprehensive analysis of the immigration policy mix focusing on the relative openness towards asylum and labour migration as main admission channels. We argue that the concept of the policy mix is more apt to study the empirical complexity of immigration policies than uniform regime typologies.

We demonstrate in our empirical analysis that OECD countries have largely different immigration policy mixes in place that are subject to substantial variation over time. We find a clear convergence trend towards a narrowing of the restrictiveness gap between asylum and labour and towards more liberal admission policies overall. This finding is buttressed by evidence of both external and internal convergence pressure shaping the immigration policy mix. The results neither provide evidence for path-dependence nor effects of partisan preferences. Different welfare state regimes do not significantly differ in their immigration policy mix and neither do right-wing and left-wing governments enact significantly different policy mixes.

Nevertheless, our analysis shows that there are partisan differences when it comes to the preferred immigration policy mix. Left-wing parties tend towards asylum-favourability and right-wing parties towards labour-favourability. These partisan differences are however minor and do not have a significant effect on the immigration policy mix. In contrast, the results show that while political parties favoured asylum during the Cold War in the 1980s, they have increasingly favoured labour migration since the 1990s. Although one might expect this to apply primarily to right-wing parties, we find that this is also the case for left-wing parties to a similar extent. While the political preferences shifted over time, the average immigration policy mix has remained largely stable. In sum, the immigration policy mix is neither path-dependent following an institutional logic nor shaped by political dynamics of partisan politics, but it can largely be explained by structural constraints leading to cross-country convergence.

These findings go against the common expectation that liberal democracies have become increasingly selective by prioritizing economically-oriented admissions. They provide strong support for the idea of the liberal paradox that immigration regulations are shaped by competing policy imperatives inherent to liberal democracies. The changes in political preferences from 1980 to 2013 reveal a decreasing asylum-favourability and an increasing labour-favourability independent of political ideology. This suggests that the economic imperative of domestic

labour shortages and the political imperative of domestic opposition against immigration have affected all political parties. Consequently, we do not find any partisan effects on the immigration policy mix. Moreover, the strong convergence of immigration policy mixes supports the idea of an increasingly limited room to manoeuvre for policy-makers due to competing pressures. While governments translated their increasing labour-favourability into more liberal policies on labour migration, they did not translate their decreasing asylum-favourability into more restrictive policies on asylum migration. This suggests that liberal constraints prevented a restrictive turn in asylum policies. The immigration policy mix is therefore primarily shaped by convergence pressures from the liberal paradox.

All in all, these results demonstrate that the concept of a ‘policy mix’ is a more useful alternative to regime typologies in the study of immigration policies. It allows researchers to assess immigration regulations that are not characterized by uniform models explained by historical institutionalism but by a combination of incremental changes within a constrained policy environment. We suggest that future studies deepen this analysis and utilize the policy mix concept to expand our current understanding of how countries regulate migration and how different policy dimensions jointly shape immigration outcomes.

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Appendix 3

Table 8: Data and operationalization

Variable	Operationalization	Data source	Country coverage
Immigration policy mix	<p><u>Policy level (country-year units):</u></p> <p>Relative openness of immigration regulations calculated as asylum restrictiveness minus labour restrictiveness.</p> <p>Asylum: Aggregated index of regulations on asylum and refugees in terms of their restrictiveness from 0 to 1.</p> <p>Labour: Aggregated index of regulations on labor migration in terms of their restrictiveness from 0 to 1.</p> <p><u>Policy change (cabinet units):</u></p> <p>Relative change in restrictiveness in immigration reforms calculated as the net labour liberalisations minus net asylum liberalisations by cabinets that were in office for at least three months. We select reforms in the area of ‘entry and stay’ that represent immigration policies. We then separate reforms based on the following target groups:</p> <p>Asylum: “Refugees, asylum seekers and other vulnerable people”</p> <p>Labour: “Low-skilled workers”, “Skilled/high-skilled workers”, “Investors, entrepreneurs and business people”, and “International students”</p>	<p>IMPIC dataset, Helbling et al. 2017 [AvgS_Reg_B, AvgS_Reg_C]</p> <p>DEMIG (de Haas et al. 2015), Government Extension (Lutz 2019)</p>	<p>IMPIC: all 33 OECD countries</p> <p>DEMIG government extension: Austria, Belgium, Denmark, France, Finland, Spain, Portugal, Switzerland, Italy, Netherlands, Luxembourg, Ireland, United Kingdom, Iceland, Denmark, Sweden, Norway, German (18 West European countries)</p>
Welfare state generosity	<p>Aggregated index of welfare generosity based on generosity related to unemployment insurance, sick pay insurance and public pensions.</p>	<p>Scruggs et al. 2014, Comparative Welfare Entitlements Dataset [TOTGEN]</p>	<p>Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland,</p>

			United Kingdom, United States.
Left-wing government	Relative power position of social democratic and other left parties in government based on their seat share in parliament, measured in percentage of the total parliamentary seat share of all governing parties. Weighted by the number of days in office in a given year.	CPDS, Armingeon et al. 2018, 2017 [gov_left2]	Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom, United States.
Right-wing government	Relative power position of right-wing parties in government based on their seat share in parliament, measured in percentage of the total parliamentary seat share of all governing parties. Weighted by the number of days in office in a given year.	CPDS, Armingeon et al. 2018, 2017 [gov_right2]	Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom, United States.
Unemployment	Unemployment rate, as percentage of the civilian labour force.	CPDS, Armingeon et al. 2018	Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom, United States.
Radical-right strength	Cumulative vote share of parties belonging to the party family of radical-right populist parties at the last election in percentages.	CPDS, Armingeon et al. 2018 [right1, right2, right3, right4, right5]	Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland,

			United Kingdom, United States.
EU-membership	Dummy variable on membership in the European Union (0=non-member, 1=member)	CPDS, Armingeon et al. 2018 [eu]	Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom, United States.
Net migration	Immigration minus emigration per 1000 residents	Quality of Government Dataset (QoG)	Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom.

Manifesto data on the policy preferences of political parties (Dancygier & Margalit 2020):

Asylum migration [asylum/refugees]:

“for example, statements about the inflow of refugees; conditions and regulations of the asylum process.”

Labour migration [jobs]:

“Labor market: impact on job availability of natives; facilitating the recruitment of high-skill or low-skill labor; references to labor shortages in certain sectors. For example, statements referring to immigration filling labor shortages should be coded here.”

Figure 10: Change of the immigration policy mix (1980-2010)

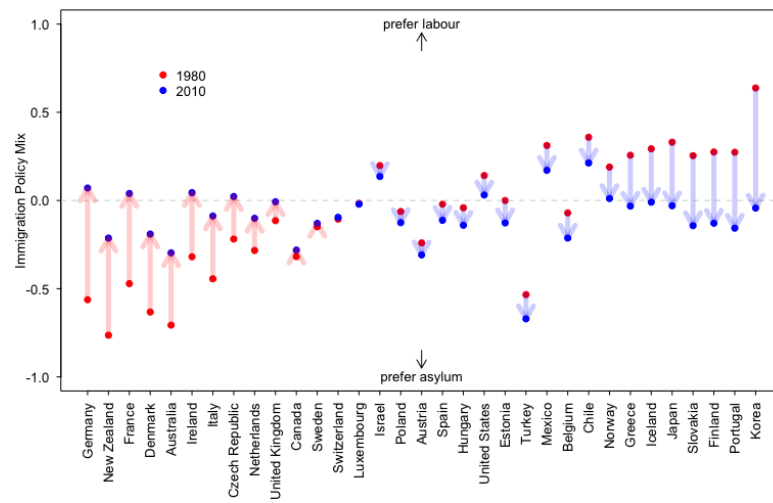


Figure 11: Party sentiments to asylum and labour migration over time

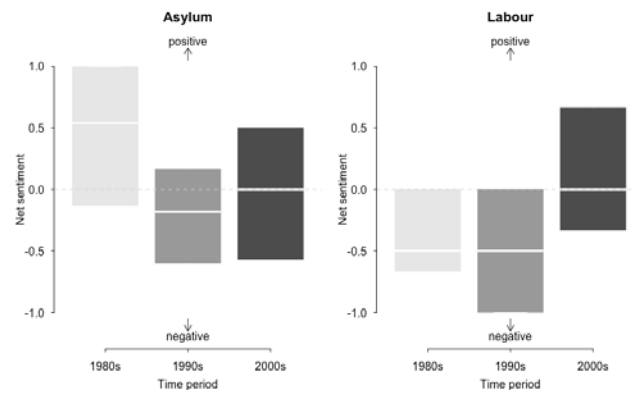


Figure 12: Line plot of immigration policy mix by country over time



Table 9: Determinants of the immigration policy mix (government output)

	DV: Immigration policy mix	
	Within	Between
	(1)	(2)
Right cabinet	-0.122 (0.536)	-0.013 (0.796)
Left cabinet	-0.116 (0.475)	-0.367 (0.845)
Welfare generosity	-0.028 (0.053)	-0.012 (0.028)
Radical-right vote share	0.043* (0.024)	-0.0004 (0.032)
Unemployment	-0.071 (0.050)	-0.059 (0.053)
EU-membership	0.099 (0.472)	0.874 (0.537)
Cabinet duration	0.0001 (0.0002)	0.001* (0.001)
Constant	0.651 (1.872)	-0.651 (1.705)
Observations	185	15
Adjusted R ²	0.015	0.215

*Note: Panel estimates based on cabinet units. Level of significance as follows: * < 0.1 ** < 0.05 *** < 0.01.*

Table 10: Within regressions including year fixed effects

	DV: Immigration policy mix
	(1)
EU-membership	-0.116*** (0.0312)
Radical-right vote share	0.00190 (0.00136)
Welfare generosity	-0.00960** (0.00324)
Left cabinet	0.000235 (0.000242)
Right cabinet	0.000122 (0.000247)
Unemployment	0.00355 (0.00298)
Constant	0.0872 (0.112)
Observations	628
Number of countries	21
R-squared	0.110
Year-FE	YES

Standard errors in parentheses
*** p<0.001, ** p<0.01, * p<0.05

Table 11: Between regressions using a welfare state model dummy

	DV: Immigration policy mix (1)
EU-membership	0.00883 (0.107)
Radical-right vote share	-0.0153 (0.00847)
Welfare state models, ref. Conservative	
Social democratic	-0.0682 (0.0951)
Liberal	-0.170 (0.112)
Southern European	0.164 (0.126)
Left cabinet	-0.00109 (0.00226)
Right cabinet	-6.39e-05 (0.00249)
Unemployment	-0.0248 (0.0235)
Constant	0.160 (0.263)
Observations	651
Number of countries	21
R-squared	0.465

Standard errors in parentheses
*** p<0.001, ** p<0.01, * p<0.05

Table 12: Within and between regressions using net migration as a control variable

	DV: Immigration policy mix	
	(1) within	(2) between
EU-membership	-0.0602** (0.0225)	-0.0538 (0.172)
Radical-right vote share	0.00341*** (0.00101)	-0.00948 (0.0105)
Welfare generosity	-0.00885*** (0.00263)	-0.00439 (0.0112)
Left cabinet	-0.000161 (0.000239)	0.000675 (0.00342)
Right cabinet	-0.000317 (0.000274)	-0.000680 (0.00313)
Unemployment	-0.00341 (0.00244)	-0.0157 (0.0241)
Net migration	7.73e-08 (6.13e-08)	6.62e-07 (8.00e-07)
Constant	0.246* (0.0962)	0.181 (0.656)
Observations	444	444
R-squared	0.068	0.249
Number of countries	16	16

Standard errors in parentheses
*** p<0.001, ** p<0.01, * p<0.05

Table 13: Model estimates with only European countries

	DV: Immigration policy mix	
	(1) within	(2) between
EU-membership	-0.0664* (0.0284)	-0.0802 (0.158)
Radical-right vote share	0.00354** (0.00130)	-0.00560 (0.00938)
Welfare generosity	-0.00602 (0.00325)	-0.00489 (0.0106)
Left cabinet	0.000234 (0.000289)	0.00197 (0.00298)
Right cabinet	-3.08e-05 (0.000339)	-0.000610 (0.00281)
Unemployment	0.00246 (0.00283)	-0.00358 (0.0198)
Constant	0.0845 (0.121)	0.0757 (0.604)
Observations	473	473
R-squared	0.036	0.218
Number of <u>country_nr</u>	16	16

Standard errors in parentheses
 *** p<0.001, ** p<0.01, * p<0.05

Note: In this specification, we include European countries only (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom). For this reason Australia, Japan, New Zealand, the United States and Canada were excluded.

Chapter 4. Third Article: Ambiguous Goals, Uneven Implementation – How Immigration Offices Shape Internal Immigration Control in Germany

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Ambiguous Goals, Uneven Implementation – How Immigration Offices Shape Internal Migration Control in Germany

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Abstract

This paper investigates regional variation in migration policy implementation, focusing specifically on the underexplored role of policy ambiguity. It chooses a salient case study of internal migration control implementation: the application of labour market access policies for migrants with precarious legal status in German municipal immigration offices. Studying the implementation approaches of eleven offices within one *Land* by means of semi-structured interviews with senior officials, the research design allows for drawing inter-agency and inter-policy comparisons. The data provides empirical evidence for the claim that the more conflictive and hence ambiguous a policy, the more importance can be placed on local determinants of implementation. Different logics (economic welfare and regulatory control logic) legitimizing more restrictive or expansive implementation are identified and linked to the broader migration policy context. Moreover, the difficult task of officials to determine applicants' identity clarification efforts – a condition for receiving a work permit – serves as basis for conceptually distinguishing between collective and individual discretion of street-level bureaucrats.

Keywords

Asylum seekers, precarious legal status, labour market integration, migration control, policy implementation, street-level bureaucracy

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Introduction

Scholarly knowledge about the design and effects of immigration policies has advanced substantially recently, but “[a] final missing piece of our puzzle is the implementation processes” (Helbling and Leblang 2018, 18). The aim of this paper is to systematically explore regional variation in migration policy implementation and investigate the role of an explanatory factor not sufficiently covered by existing literature (Sætren and Hupe 2018): the role of the level of ambiguity⁶⁷ inherent in the regulation itself. It chooses a case study of internal migration control implementation, as states control immigration not only at or outside their borders, but also internally (Brochmann 1999), and it is especially the implementation of internal migration control that remains understudied (Eule 2018). This is surprising given that street-level bureaucrats (Lipsky 2010) regulate access to rights and resources for non-citizens.

Germany is an apt case for this investigation: first, it hosts a relatively high number of migrants with precarious legal status, i.e. non-citizens residing in the country who hold few rights and enjoy limited opportunities to advance to a more secure residence status (Gibney 2009). Migrants in such a precarious position can be found in many countries (e.g. Nimführ and Sesay 2019). In Germany, both asylum seekers and ‘tolerated’ persons are migrants with precarious legal status. While asylum seekers receive a temporary residence permit for the time that their asylum application is being processed (*Aufenthaltsgestattung*), ‘tolerated’ persons, while also known to state authorities, are legally obligated to leave the country. A ‘toleration’ document (*Duldung*) designates the temporary suspension of deportation for persons without protection status and residence title whose return to the origin country can for different reasons not be enforced.⁶⁸ This ‘deportation gap’ persists throughout Europe (FRA 2011; Rosenberger and Küffner 2016).

Second, Germany recently selectively liberalized labour market access policies for migrants with precarious legal status (see e.g. Schammann 2017). In particular, the recent introduction of the so-called vocational toleration (*Ausbildungsduldung*) can be regarded a paradigm shift in German immigration law, granting persons in the precarious legal status of ‘toleration’ the possibility to get on a path to regular residence for the purpose of employment. This means that what is at

⁶⁷ Ambiguity here refers to the “[c]apability of being understood in two or more ways” (OED Online 2019).

⁶⁸ At the end of 2018, 296.060 persons with asylum decision pending and 180.124 ‘tolerated’ persons lived in Germany (publication of the German Parliament no. 19/8258; stock figures from 31/12/2018). Similar legal constructs exist in several European countries (FRA 2011).

stake in the decision of street-level bureaucrats whether or not to grant a work permit is the establishment of legal rights to remain.

Third, Germany's institutional setting provides a relatively high autonomy for immigration offices in exercising internal immigration control. Several sources indicate that the administrative application of work permit issuing varies regionally to a significant extent (Breidenbach 2017a; OECD 2017; Schreyer and Bauer 2014). This regional variation arguably violates a core principle of the liberal state, namely the principle of equality of treatment and fairness.⁶⁹ The issue is especially salient due to the well-researched socio-political and individual importance of labour market integration and the prospect of 'earning' residence rights via employment.

What determines how migration policies are implemented? Studies have pointed to institutional- and individual-level factors (see e.g. Alpes and Spire 2014; Ellermann 2009; Eule 2014).⁷⁰ Some scholars have emphasized that the very ideologies that drive or inform policy-making shape administrative behaviour (Hall 2010; Pratt 2005; Satzewich 2013). This latter link is further explored here, as the interrelationship between policy design and implementation constitutes an often-neglected issue in implementation research (cf. Sætren and Hupe 2018). Most of the few existing studies on migration policy implementation are of explorative character, providing important insights for theory development. Few studies (e.g. Ellermann 2009) test hypotheses on the underlying mechanisms of implementation variation. Schammann (2015) studies the implementation of the Asylum Seekers' Benefits Law in two German municipalities. Based on the theoretical considerations of Matland (1995) that assume greater implementation variation the more ambiguous and conflictive the policy, he finds that the type of implementation practice depends on the dominant local interpretation of the policy goal. However, in contrast to the here presented study, his research design does not allow for testing Matland's ambiguity-conflict-framework itself, as it focuses on one regulation only.

This paper makes two main contributions: first, its research design based primarily on semi-structured interviews with senior immigration officials in one German *Land* allows applying Matland's framework to a migration policy implementation context suitable for inter-agency and inter-policy comparisons. It thus provides empirical evidence for the hypothesis that under

⁶⁹ In this paper, a 'liberal state' is understood to be a constitutional state built on the core principles of individual liberty and the equal moral worth of people (Hampshire 2013).

⁷⁰ For an overview of earlier studies, see Borkert and Caponio (2010, 20).

conditions of high policy goal ambiguity implementation varies considerably more than under conditions of low ambiguity. Second, it goes beyond the original Matland framework by conceptualizing different logics driving internal migration policy-making, i.e. economic welfare and regulatory control logic, and tracing how these logics (re-)appear in implementation. While the paper cannot make causal claims as to why certain offices employ one or the other logic, it provides insight into a range of potential explanatory variables. It thus contributes to the still mostly explorative literature on internal migration control implementation by showing that the context of policy-making also matters for its implementation, a factor which has remained underexplored in the literature. Distinguishing between *individual* and *collective* discretion, the paper also generates new starting points for consecutive research in this field.

The paper is structured as follows: I begin with explaining the methodology. Next, relevant recent legislative changes in German internal migration control are analysed. Thereafter, the variation in implementation approaches found in the case study is illustrated. Based on this, I subsequently identify two types of logics guiding internal immigration control, i.e. economic welfare and regulatory control logic, and demonstrate how the first is connected to more liberal and the latter to more restrictive implementation approaches. Lastly, I take the issue of identity clarification as an example to differentiate between individual and collective discretion in policy implementation. The final section concludes.

Methodology

The comparative approach of this study is a multidimensional one: it compares policies and decrees targeting two migrant groups (asylum seekers and ‘tolerated’ persons), and the implementation approaches of immigration offices toward these two groups. It thus combines an inter-group and inter-office comparison.

First, to assess the level of conflict and ambiguity of regulations regarding a) asylum seekers’ and b) ‘tolerated’ persons’ access to employment and vocational training, a thorough document analysis was undertaken, including relevant publications of the German Parliament, the Federal Ministry of the Interior and *Länder* ministries.

Second, the operationalization of the dependent variable – restrictiveness of local implementation – relies on interview data.⁷¹ To begin with, nine explorative expert interviews on *Länder* approaches and inter-*Länder* regional variation confirmed that there was considerable variation on the dependent variable. While the federal government has the rule-making authority in immigration law, the *Länder* are in charge of overseeing its application by the immigration offices. The interior ministries of the *Länder* can issue decrees interpreting federal law, which are binding for all immigration offices within their jurisdiction, but may be trumped by courts in case of appeal. To control for the possibility that *Länder* government involvement has an impact on offices' implementation approach and thus confounds the analysis, one *Land* was chosen and the approaches of immigration offices within it compared (most-similar-systems-design) (cf. King, Keohane, and Verba 1994, 182ff). According to a compilation and comparative analysis of relevant decrees (Table 16 in Appendix 4), the selected Eastern German *Land* can be regarded as neither generally expansive nor generally restrictive regarding labour market access of asylum seekers and 'tolerated' persons.

In October and November 2017, eleven semi-structured interviews (Rubin and Rubin 2012) were conducted face-to-face with heads of departments or senior officials in eleven immigration offices.⁷² Most department heads reported to be closely involved in day-to-day affairs at their office. In two offices, each work permit case comes through their own hands, i.e. they decide based on what their caseworkers prepared. All department heads said they convened regular (some daily) meetings with caseworkers to discuss general procedures and individual cases. At the latest, they get involved in work permit cases once complications arise, such as appeal procedures. Confidentiality was ensured to interviewees; therefore, the exact places of research are not disclosed. In addition to open questions about the importance of and the procedures related to work permit applications at their offices, interviewees were asked to describe recent cases, as narratives are known to reveal more than directly asking respondents about abstract general explanations (Mosley 2013).⁷³ Moreover, they were asked specifically how relevant

⁷¹ As decisions of immigration offices on work permits are not systematically and centrally recorded (OECD 2017, cf. also publication of the German Parliament no. 18/13329), it is not possible to calculate the rejection rate to use as a proxy for restrictiveness. The administrative act does not even have to be carried out in writing unless requested (Bender and Bethke 2018). Rejection rates are also difficult to interpret because applications might be withdrawn after an initial consultation. Aggregate data from the federal employment agency on work permit approvals cannot suffice to explain variation in the processing of work permit applications by immigration offices, as not all applications are being forwarded.

⁷² Most interviews were one-on-one. In two cases (D3, D8; Table 15), the main interviewee insisted on having staff members participate.

⁷³ Interview guidelines are available from the author upon request.

indeterminate legal terms were defined locally.⁷⁴ Interviews were recorded, transcribed and then coded using a mixed approach, applying both theory-derived pre-given and open codes generated in the process (cf. Campbell et al. 2013). Quotations were translated into English by the author. To increase validity, interview data on the restrictiveness of the offices' implementation approach was later cross-checked with information from background interviews with five external experts on labour market integration of asylum seekers and 'tolerated' persons in the respective *Land*. These background interviews largely confirmed my previous analysis, supporting the idea that senior officials' accounts can be taken as an indication for how their respective office generally operates.

This research design allows for the identification of links between the characteristics of the policies in question and the type of implementation. Nonetheless, it is indispensable to highlight the limitations of the approach: as qualitative research, it is not generalizable beyond its specific context; yet providing context-sensitive insights into the field of internal immigration control – to which research access is not easily acquired – may help advance scholarship on the study of migration policies.

Conflictive legislative changes and policy ambiguity

It was quite interesting to observe how the obstacles were taken down. You could see, like an onion that is being peeled and at some point there was only a tiny little bit left. (D2)

As one of the immigration officials interviewed described here, since 2009, and more thoroughly 2014, several legislative changes have facilitated labour market access of asylum seekers and 'tolerated' persons in Germany (see i.a. OECD 2017; Schreyer, Bauer, and Kohn 2015). This development was paralleled by a number of more restrictive policy changes, primarily with the aim of facilitating return of rejected asylum seekers (Will 2018). The objective of granting earlier access to the labour market was to enable asylum seekers and 'tolerated' persons to support themselves more rapidly rather than remaining dependent on benefits (publication of the German Parliament no. 18/1528). The most recent reform⁷⁵ was the Integration Act of August 2016, which introduced the so-called vocational toleration (*Ausbildungsduldung*). This regulation

⁷⁴ For example, immigration officials were asked how the term 'measures to terminate a residence' was defined at their local office, answers were grouped and coded as restrictive, restrictive-intermediate, intermediate or expansive (see below).

⁷⁵ This paper considers only the regulations and decrees up to the time that the fieldwork was conducted (October-December 2017).

had long been demanded by employer organizations. Accordingly, persons who take up vocational training are entitled to receive a toleration for the duration of the training (typically three years), and a further toleration of six months to look for a job after successful completion of the training. If employment is found, they receive a residence permit for two years. The reform is to be seen within larger developments for regularization of those ‘tolerated’ persons who through no fault of their own could not be deported, which had already set in with the Immigration Act of 2005 (cf. Geiger 2016, 39–42).⁷⁶ The vocational toleration’s novelty lies in the timing: immediately after a negative asylum decision, a path towards a right to remain can set in; it is thus a “special form of legalization” (Thym 2016a, 251, my translation). Nonetheless, the Federal Government emphasizes that even a vocational toleration “legally only effects the suspension of deportation” (publication of the German Parliament no. 18/13329, my translation). The legislator’s message on the regulation is thus deeply conflictive (Thym 2016a), which can be a source of frustration for street-level bureaucrats having to implement it:

They [the government] sell something, which is only a half measure and in the end it is the offices at the bottom that are beaten up, to put it crudely, because we will be seen as the prohibiting ones again. [...] And that is where the wangling starts, what do we want, do we want them out or do we not want them out? We need to have a position on this. We don’t have such a position. All we have is half measures.
(D1)

Policy ambiguity such as this remains an underexplored factor in research on migration policy implementation. This is somewhat astonishing, as the concept constitutes a major building block of the street-level bureaucracy literature (Brodkin 2012). In his seminal book, Lipsky (2010, 27) argues that “[g]oal expectations for the agencies in which [street-level bureaucrats] work tend to be ambiguous, vague, or conflicting”. Frontline implementers have to perform a twofold task of interpretation: they need to interpret the often-ambiguous law, and they need to apply it to the individual cases. This is why bureaucrats with direct client interactions in public institutions not only implement policy, but function themselves as policy-makers (Lipsky 2010).

It is an inherent feature of the policy process to have ambiguities in policies, they are the “natural consequence of gaining necessary support for the policies” (Baier, March, and Saetren 1986, 208; see also Lipsky 2010, 41), especially in a coalition government (Martin and Vanberg 2005).

⁷⁶ The introduction of §18a and §25a Residence Act that allow granting residence titles to young ‘well-integrated’ ‘tolerated’ persons in 2009 and 2011, respectively, are further examples of what Schammann (2017) calls meritocratic elements in migration politics (and one could add the later introduced §25b here).

Thus, “[s]tatutory mandates often are exceedingly vague” (Matland 1995, 155), which also applies to the case study at hand: given the conflicts surrounding the vocational toleration’s objectives, it is hardly surprising that the wording in the respective §60a II 4-12 of the Residence Act is not crystal-clear either. Thym (2016a, 250, my translation) attests the new regulation an “(outsized) complexity”, originating from the fact that “competing interests have been embodied in the ramified details of regulations”. An evident indication for this conflict is that the text of the draft regulation was changed in the very last minute by including that the vocational toleration is only to be granted if “concrete measures to terminate a residence are not on hand” (Breidenbach 2017b; cf. Thym 2016a). The interpretation of this indeterminate legal term is only one of several contested legal questions surrounding the regulation (Röder and Wittmann 2017). Indeterminate legal terms remain open for interpretation by implementers. According to Matland (1995), the type of implementation that likely occurs depends on the degree of ambiguity and whether the conflict present in the policy-making stage persists after a policy is adopted: in case of low conflict and low ambiguity, “administrative implementation” will occur. In highly symbolic policy fields, conflicts often remain despite of ambiguous policy formulation. In this case, “symbolic implementation” will likely occur and there will be large variation in implementation outputs (Matland 1995, 165–70).⁷⁷

Migration can certainly be regarded a highly symbolic policy field, as respective regulations determine different gradients of membership of a nation-state; i.e. privileges that affect access to material and symbolic resources. Indeed, goal ambiguity is comparatively frequent in migration policies (de Haas and Natter 2015; Jordan, Stråth, and Triandafyllidou 2003; Schammann 2015). As Eule et al. (2019, 86) highlight based on an ethnography on migration control in eight European countries, “[s]treet-level bureaucrats are very well aware of [...] often-opposing demands and try to place themselves and their decisions within the often-politicised context”.

In the present case study, it was especially regulations granting access to economic integration for ‘tolerated’ persons that caused conflict in policy-making and public debate. In contrast, the work permit for asylum seekers was less conflictive, as it does not imply the same potential consequences for persons’ right to remain. The conflict around ‘tolerated’ persons’ access to

⁷⁷ Although published more than two decades ago, according to a recent review of the literature Matland’s (1995) theoretical framework is still very relevant, as it constitutes ‘one of the last theoretical constructs [...] that has been launched to reconcile the top-down and bottom-up approaches in implementation research’ (Sætren and Hupe 2018, 566).

work reappeared soon after the vocational toleration was introduced, when economic associations demanded more consistent (and more generous) implementation by local immigration offices (publication of the German Parliament no. 18/13329). The Federal Ministry of the Interior (BMI) therefore issued guidance notes on §60a Residence Act in May 2017, including detailed, albeit legally unbinding, notes on the vocational training regulations. At least seven *Länder* have since issued decrees of their own that add to the BMI Notes, sometimes explicitly stating that certain interpretations of the legal text are not shared (Table 16 in Appendix 4). These administrative regulations constitute a legal ‘nought’ (Bender and Bethke 2018). At the time of conducting the interviews, the *Land* chosen as case study did not have its own decree on vocational toleration.

Variation in implementation approaches

While work permit applications were part of day-to-day work in the immigration offices visited, the relatively new vocational toleration had not been applied for in large numbers (yet) at the time of investigation. According to the Administration Department of the *Land* chosen as case study, from January to September 2017, 70 vocational tolerations were applied for, a little more than half of which were issued (some were still being processed). In 2016, the employment agency gave their consent for work permits in this *Land* in about 750 cases (>80% approval rate), about 90% of which for asylum seekers and the remaining 10% for ‘tolerated’ persons (Statistik der Bundesagentur für Arbeit 2017). The overall implementation setting is very dynamic, as almost all offices experienced an increase in caseload and subsequently also in staff since 2015.

Interview data confirmed variation in implementation approaches of immigration offices. The degree of this variation is minimal regarding asylum seekers’ work permit applications and very pronounced regarding ‘tolerated’ persons, a finding later backed up by external experts. Interviewees reported that work permit applications of asylum seekers go rather smoothly:

During the asylum procedure, we don't have to check anything regarding the work permit. In principle, everyone who applies for it and can present an employment contract and the employment agency confirms it gets the work permit, always together with the notice that things can change once the asylum procedure is completed. (D10)

The last sentence already points to the fact that work permit applications for rejected asylum seekers (‘tolerated’) are much more contentious. This went to the point where in one district,

the head administrator (who also holds political office) had issued an internal instruction note stating that persons who are employed are generally not to be deported – a very expansive interpretation of the law:

He [the Landrat] is very active in this; he himself promotes the idea to hire refugees in the business community. The demographic change becomes more and more noticeable [...]. There is a big personal interest of the Landrat for us to become active [...]. (D9)

In another district, the (former) head of office's (*Amtsleiter*) stance was that work permits should never be issued for 'tolerated' persons – a very restrictive interpretation of the law:

He took the view that 'tolerated' persons should not have employment in principle, because they are obliged to leave and we don't want to make life here appealing to them [...] [S]o we had to bow to that and did basically not issue work permits for 'tolerated' persons. (D7)

Apart from these extreme cases, there was also considerable variation within the rest of the districts on handling 'tolerated' persons' work permit applications; for instance regarding the interpretation of what constitutes 'concrete measures to terminate a residence', the existence of which prohibits a vocational toleration. This is an indeterminate legal term which leaves room for interpretation or 'discretion', the notion of which shall be further explored below. Some officials already considered the criterion of 'concrete measures to terminate a residence' to be met once a deportation order is sent to the responsible agency on *Land* level (D3). For others, this only applied after verifying that the agency has already started working on the file (D4, D8, D11), and yet others once travel documents are ready and the flight is scheduled or about to be scheduled (D1, D2, D5, D7, D10). Two interviewees answered that already sent deportation orders (if a flight is not yet scheduled) could be cancelled in case a client has secured a vocational training contract and applied for the respective toleration (D6, D9). There was also variation regarding clients' transition from the asylum seekers' permit to a toleration following a negative asylum decision regarding the timeframe and insistence that offices put in reassessing and possibly withdrawing a work permit. This not only confirms the importance of ambiguity in the legal text for implementation, but is also in line with Eule's (2014) finding that implementation outcomes are particularly diverse in those cases in which migrants have relatively insecure legal statuses.

Linking this to the policy ambiguity literature and the described context of the present case study, the following interim conclusion can be drawn. While regulations on liberalizing access to work for asylum seekers were passed relatively smoothly and have not generated much

debate, the regulation on the vocational training for ‘tolerated’ persons abounds with ambiguity in its wording and was accompanied by conflictive discussions before, during and after its adoption. The interview data confirms that these differences have had an impact on how smoothly and consistently both policies are implemented, and hence provide empirical evidence for the soundness of Matland’s framework in internal migration policy implementation.

Employed logics: regulatory control vs. economic welfare

Migration is a politicized issue and migration policies are generally conflictive (Hampshire 2013). The conflict of objectives in internal immigration policies has been referred to as “a dilemma between migration control and integration promotion” (Thym 2016a, 251, my translation).⁷⁸ This dilemma pervades societal debates, the political arena and policy implementation.⁷⁹ It can be systematically spelled out as follows: the two competing logics or justifications for action are on the one hand the *regulatory control logic* and on the other hand the *economic welfare logic* (Table 14). Both depart from different assumptions and conceptions of fairness, contain different interests, and are traceable in the implementation context.

The *regulatory control logic* is based on the idea that the rule of law should be consistently implemented, which implies the primary objective of residence termination of those without a right to remain. Entitlement is thus closely linked to the legal status of the person, explicitly categorizing those with and those without a right to remain. An example for clear regulatory control logic would be:

A ‘tolerated’ person is in fact not to be integrated. There the residence is to be terminated by law. (D3)

As social ties associated with economic integration can hinder efforts to forcefully remove a person later on (Ellermann 2009; Gibney 2008), the objective of residence termination trumps any potential benefits of labour market participation. Prioritizing return can be seen as ‘acting tough’ on migration; and access barriers to the labour market can have signalling effects both towards the ‘native’ population (‘Your jobs will be protected against intruders’) and towards

⁷⁸ These migration policy conflict lines run not only across, but also within political parties: For instance, centre-left parties are usually driven by both ‘welfare state/labour market protectionism’ and ‘international solidarity’, while centre-right parties usually seek to combine ‘market liberalism’ with ‘value conservatism’ (de Haas and Natter 2015, 4).

⁷⁹ Morris (2010) examines judicial cases on welfare support for asylum seekers in the UK, contrasting a ‘cosmopolitan’ with a ‘national’ paradigm in order to aid the analysis. Similarly, the conceptualization of the two logics proposed here is meant to serve as an investigative lens primarily.

potential immigrants (‘There is no point in choosing the asylum route if not eligible for a protection status’).

Table 14: The two competing logics of internal migration control

	Regulatory control logic	Economic welfare logic
Assumption / point of departure	Imperative to enforce the rule of law consistently	Acknowledge that barriers to deportation persist
Conception of fairness	Fairness as rule of law (right to remain versus no right to remain)	Meritocracy: training / working establishes deservingness; Kantian: presence grants rights
Primary objective	Priority of residence termination for those without a legal right to remain	Priority of integration to minimise burden on social security systems
Secondary objective(s)	Avoid integration to not counteract priority of residence termination	Meet employer demands (skills shortages), avoid large-scale social exclusion (security aspect)
Signalling effect(s) to the public	Acting ‘tough’ on migration, protecting ‘native’ jobs	Migrants contribute to social security systems
Signalling effect to (potential) migrants	No incentive: access to the labour market is difficult	Cooperation rewarded with rights to integrate / remain

Source: own compilation.

In contrast, the *economic welfare logic* departs from the acknowledgment that many ‘tolerated’ persons are effectively not deportable (cf. Rosenberger and Küffner 2016). The primary objective therefore is economic integration in order to minimize welfare dependence of those likely to stay, providing a pragmatic way out of the deadlock for both migrants and the state. Demands of employers in times of (projected) skills shortages and demographic ageing are meant to be met by including this population into the pool of employable people. Large-scale social exclusion and societal instability or insecurity can thereby be avoided. In the following example, an official talked about a ‘tolerated’ young man whose first vocational training placement did not work out:

[W]e do try to place them somehow into something so that they can stay. One always says, there is a lack of skilled workers or in general of trainees in trade, so if one already has someone, then one can let him stay as well. (D6)

The main underlying conception of fairness of the economic welfare logic is meritocracy (Schammann 2017): participating in training and the labour market, migrants with precarious legal status can ‘earn’ the right to remain. This is also a signaling effect to those concerned: ‘if you make an effort, you can make it here.’ Focus on labour market integration arguably also

signals to the general public that certain migrants ‘deserve’ to be received as productive members of society (on the link to deservingness, see e.g. Chauvin and Garcés-Mascareñas 2014; Gonzales, Sigona, and Burciaga 2016).

Table 15: Implementation approaches according to policies and employed logics, by level of restrictiveness

district / city	implementation approaches			employed logics
	self-description	re: asylum seekers	re: ‘tolerated’ persons	
D6	expansive	expansive	expansive	econ
D9	expansive	expansive	expansive	econ
D10	/	expansive	intermediate	econ
D1	/	/	intermediate	reg
D4	/	expansive	intermediate	econ / reg
D5	/	expansive	intermediate	econ / reg
D7	restrictive / expansive	expansive	intermediate-restrictive	econ / reg
D2	restrictive	expansive	intermediate-restrictive	econ / reg
D11	expansive	intermediate-restrictive	intermediate-restrictive	econ
D3	restrictive	expansive	restrictive	reg
D8	/	intermediate	restrictive	reg

Note: Interviewees were asked about their self-description indirectly, i.e. how they evaluate the practices of their office in comparison with others. If interviewees remarked about their practices as relatively ‘restrictive’ or ‘expansive’ on other occasions during the interview, this was coded as well. About half of interviewees did not disclose a self-description.

Table 15 provides an overview of the offices’ implementation approaches vis-à-vis the two target groups and the logic predominantly employed by the respective interviewee. It demonstrates that while some officials referred solely to reasons grouped under the economic welfare logic when describing their handling of work permit applications, others referred to both logics, and some exclusively expressed their view that they were to prioritize return over integration (Table 15, last column). Moreover, the data provides some indication for regulatory control logic being linked with more restrictive, and economic welfare logic being linked with more expansive implementation approaches in the case of ‘tolerated’ persons. It is beyond the scope of this paper to provide a clear answer as to why interviewees employ which logic. Looking at potential explanatory variables, the examples given in the previous chapter highlight the obviously influential role of superiors, in line with earlier research (Ellermann 2009; Eule 2014; Schreyer and Bauer 2014). Their specific political affiliation, gender or local labour market

factors have not been found to convincingly explain variation in the case study context, however.⁸⁰ External pressure by employers or volunteer groups may have an impact on implementation, both leading immigration officials to reconsider cases (D5), but also to heightened suspicion, if e.g. an applicant tells the office that their lawyer advised them not to present any identification documents (D2). As an internal explanatory factor, pragmatism has been shown to play an important role in the daily work of immigration officials (Eule 2018). Applied to the case study, pragmatism, as an inherent component of economic welfare logic, can result in a quite generous application of ambiguous policies:

We are, in the particular cases, also a little bit past the law [...]. When someone comes with a vocational training contract, [...] theoretically I could have put the Kosovar Albanian on the plane. We didn't do that. [...] We were a bit generous there; [...] everything else would have been nonsense. Why put yourself under such stress; and then all the volunteers who have maybe made an effort to place someone in a training company. (D6)

This quotation is remarkable. It shows how officials may use their room for manoeuvre in ways that can be completely detached from the law (Eule et al. 2019): Kosovo is actually one of the by law designated 'safe countries of origin', and hence nationals from there are legally excluded from the possibility of obtaining a vocational toleration. Pragmatism in conjunction with the presence of volunteers or vocal employers may, however, lead to this restriction being discarded.

In reality, the conflict of objectives is more complex. For instance, there is an important temporal dimension, where one objective can gradually replace the other with the passing of time, when it becomes clear that return is not viable through no fault of the person concerned (SVR 2017; Thym 2016b). Moreover, there may be an ethnocultural dimension running transversely to the two logics. Recent literature has emphasized the blurring of the economic and the ethnocultural in migration politics (Bonjour and Duyvendak 2018; Chauvin, Garcés-Mascareñas, and Kraler 2013). In the presented framework, ethnocultural considerations rather seem to underlie a regulatory control logic in which exclusion is justified by strict appliance of the law. The following quotation shows how 'the foreigner' was conceptualized as the

⁸⁰ Only few interviewees acknowledged that their superiors take an active interest in work permit applications. The political party of the *head administrator* does not seem too decisive: among expansive and intermediate cases, there are members of the CDU, the SPD and Die Linke; more restrictive districts are headed not by SPD and Die Linke members, though, but by CDU or FDP party members. The success of the far-right party AfD does not seem relevant. For instance, one of the expansive cases had the highest share of second votes for AfD in the 2017 Parliamentary Elections of all the districts in the sample (>24%). There also does not seem to be a clear gender effect.

uncivilized ‘other’ by the official, who talked about an apartment provided for one of their clients by the district:

They also have to come to grips with our culture, and that is a very important aspect. And we do realize how difficult it is for the foreign citizens, how do I put this now? It is difficult to get them used to our living conditions. What for us is normal, is typical or is also German then. [...] But when you are opening an apartment like that, and it is full of [...] garbage. Where you say, you feel ashamed. And then you know that these persons do not want to embrace this in actuality. They come here and live their lives, and they have of course lived another live [before], which is hard to imagine for us. Also lived with another hardship, not only because they have found the way to us, be it via sea or land, they have a completely different expectation, which is not similar to ours. (D8)

The implementation approach of the office said official directed was categorized as restrictive in terms of ‘tolerated’ persons, and intermediate regarding asylum seekers, which makes it one of the most restrictive offices studied regarding labour market access. Contrary to this, and maybe at the opposite end of the spectrum, another official described the opportunity to get to know “the cultures and interesting people” as an asset of their job (D9) – their immigration office was found to be one of those with the most expansive approach regarding labour market access of migrants with precarious legal status (Table 15).

In any case, the simplification of the two logics introduced here was meant to describe the general conflict lines in order to use them as a heuristic schema in the analysis. The crucial point is: “[i]mplementation [...] is a continuation of the social and political environment in which policy decisions were taken” (Jordan, Stråth, and Triandafyllidou 2003, 211). For instance, Western norms of love marriage shape visa officials’ decision-making on family reunification cases (Scheel 2017). In the present case study of work permit applications of migrants with precarious legal status, immigration officials operate in an area of conflict between residence termination and regularization or integration. Just as both logics co-existed in the phase of policy-making, they were also found to be present in the phase of policy implementation. The interview data indicates that which one of the two dominates actors’ decisions plays a role for the restrictiveness of the implementation approach chosen.

Collective and individual discretion in identity clarification

Returning to the image of the peeled onion, amidst increasing liberalization of labour market access for asylum seekers and those without a right to remain, one of the remaining obstacles is that applicants have an ‘obligation to cooperate’ (*Mitwirkungspflicht*) in obtaining identity documents. Cooperation with return is a central tool in migration control in Europe (Rosenberger and Koppes 2018). According to the immigration officials interviewed, non-compliance with the obligation to cooperate constitutes the main reason for denying work permits and vocational training for ‘tolerated’ persons.⁸¹ The right to work has become a tool in asylum policy and migration control (Valenta and Thorshaug 2013), and here the importance of discretion comes to the fore. The issue of identity clarification shall be taken as an example to elaborate on the concept of discretion in policy implementation, proposing to distinguish between *collective* and *individual* discretion.

Discretion constitutes a central analytical concept in the policy implementation literature (Lipsky 2010). The term ‘discretion’ is, however, used in various ways in different scholarly disciplines (Eule et al. 2019). In accordance with Eule et al. (2019, 87), I understand discretion in policy implementation as “both necessary and potentially problematic”. While it is impossible to design laws in a way that can be unequivocally applied to every individual case, discretion can be problematic in that it produces outcomes not consistent with general liberal norms of fairness and legal certainty. From the literature it is clear that there is wide scope for discretionary decision-making in migration policy implementation (e.g. Alpes and Spire 2014; Pratt 2010; Salter 2007).

While discretion has originally been conceptualized primarily as exercised by individuals, the policy implementation literature recently started focusing on its collective dimension (Rutz and du Bont 2020). Based on the interview data, and supplementing previous studies, I illustrate here that one can conceptually distinguish between *collective* and *individual* discretion in internal migration control implementation. Collective discretion then denotes general interpretations of ambiguous legal texts that are taken by superiors or jointly by the officials for the entirety of an office:

⁸¹ This does not apply to asylum seekers, which is an important reason for asylum seekers’ work permit applications being less controversial than the ones issued by ‘tolerated’ persons. Demanding identification of asylum seekers is exceptional.

Where there is room for discretion [...] one has to execute discretion; that is you say 'as district X, as a baseline we do it this way', which might in the nuance deviate from other immigration offices. [...] The last decree, you have to issue yourself, so to speak. So, we have to reach an agreement here [at the office] on how we apply [the regulation]. (D5)

The example of identity clarification provides insights into how offices interpret certain aspects of ambiguous regulations for their entire agency, defining in broad lines how to implement these locally. For instance, one office reported using internally drafted guidelines to determine the specific demands of cooperation in identity clarification for specific countries of origin (D3). Another interviewee explained that in their office, they distinguished between looser demands in identity clarification for asylum seekers' work permits and stronger ones for the more momentous issue of vocational toleration (D2). Applicants with a toleration status often find themselves in a deadlock: they are worried they could be deported once they present identification documents, but non-cooperation in obtaining them is a reason for work permit refusal. One official mentioned that at their office they came up with a "creative solution" to this deadlock, a type of condition subsequent (D10, similarly D2).

Similar to the term 'concrete measures to terminate a residence', there is no clear rule how to interpret if someone's efforts to obtain a passport are sufficient, i.e. whether cooperation can be reasonably expected (*Zumutbarkeit*). This provides for an example of individual discretion, i.e. for how street-level bureaucrats deal with individual cases:

This is where the scope for interpretation starts, where you say: 'well, it is not his fault; the embassy hasn't given him an appointment'. Yes, those are the diverse minor details that provoke discretion or contradictions. (D5)

Several officials mentioned identity clarification to be a source of uncertainty in their work and express that they would like to have clearer instructions on how to handle it (D1, D4, D7, D8, D9); although these would be difficult to draft due to dynamically changing levels of cooperation by origin countries. Others remarked that they enjoyed the leeway that discretion provides them with (D2), or, to the contrary, hid behind the view that they would not have any room for discretion at all (D3). Regarding the vocational toleration, officials claimed they would not deport an applicant if they obtained a passport after the person had applied, but it would be hard for applicants to trust the immigration office (D1, D2, D3, D8, D9, D10, D11). The distrust is mutual, however (cf. Griffiths 2012): for instance, officials (D5, D6, D7) assumed that applicants did have identity documents:

With the black Africans it is even more difficult [than with nationals X]. Usually they have already been here for a comparatively long time and in parts they come to me and say: 'I don't have anything [identity documents], I don't know anyone [in the country of origin], I'm not in touch with my sister anymore', but she lives there still, and well, what shall I do with them. I cannot blame them. Usually it happens then, that is the crux, that when they want to marry or have a child, a German one, then all of a sudden the passport magically appears, yes. (D7)

This is in line with descriptions of a ‘culture of suspicion’ present at different sites of migration control implementation (Alpes and Spire 2014; Dahlvik 2017; Eule et al. 2019; Hall 2010; Infantino 2016; Pratt 2010; Salter 2007; Scheel 2017). Interestingly, the official’s remark about ‘magically appearing passports’ illustrates both a certain pragmatic serenity (“I cannot blame them”) in conjunction with a weakly defined ethnic group bias. In general, the interviews indicate that immigration officials’ perceptions of clients’ compliance with identity clarification varies according to their origin, with references made to certain nationalities, but also – in the broader description of their work – to “cultures”, “traditions” and religion. This can be taken as an instance of the use of “racialized knowledges” that border officials have been shown to rely on (Pratt 2010, 472). Beyond the one-off encounters at land ports of entry that Pratt (2010) analyzed, for migration officials with repeated client interaction (such as in detention centres, or, less intensively, at immigration offices), being unsure about their clients’ identity seems to be a formative aspect of their work (Hall 2010). In this regard, one interviewee directly linked identity clarification to deservingness and a meritocratic conception of fairness. As colleagues from other offices (e.g. D1, D5, D6), the official emphasized that it would be important:

[...] that I know who I am dealing with. That I really know, this is such and such and he is willing to find his way here [...]. This willingness is a really important part of integration for me. [...] One can also drop out of a training or quit a job [...], but the willingness to do this and above else the appreciation towards the country by saying, I am such and such, I am this and this person. (D10)

Interpreting an individual case against the ambiguous law, ideas of deservingness closely linked with both regulatory control and economic welfare logics seem to be crucial.⁸² It can only be hypothesized here that deservingness perceptions might be linked especially to how individual discretion is being exercised.

⁸² This is in line with the burgeoning literature on the link of migration policies and deservingness (cf. e.g. Chauvin and Garcés-Masareñas 2014; Gonzales, Sigona, and Burciaga 2016).

Again an instance of collective discretion, some offices actively sought to use employers as allies in identity clarification: as the companies have an interest in the person remaining, they can help explain to them the importance of cooperating with the authorities (e.g. D9, D11). For example, in a district employing strong economic welfare logic, the immigration office even reached out to companies employing asylum seekers whose claim had finally been rejected:

Then we wait [...] and see whether something [identity document] is being presented or not. [...] We then [...] write to the companies and say: dear company XY, you have employed Mr. XY, but he is obliged to leave and has to present his passport, do influence him a little bit; we guarantee you that [...] he won't be deported once the passport is presented. (D9)

In summary, identity clarification, as both condition for obtaining a work permit and necessity to make migrants with precarious legal status deportable, epitomizes the level and significance of policy goal ambiguity in the implementation of internal migration control. The issue serves as an example to elaborate on the concept of discretion in policy implementation by distinguishing between collective and individual discretion.

Conclusion

This paper explored the role of an understudied part of the policy implementation puzzle, namely policy goal ambiguity. It thereby sought to analyse more in-depth the link between the ideologies that drive policy-making and the application of those policies by street-level bureaucrats. An especially salient case of internal immigration control was investigated: immigration offices' handling of work permit applications for migrants with precarious legal status in Germany. The empirical case of labour market access regulations for those who do not (yet) have a legal right to remain provides new perspectives on the wider migration policies literature, displaying the tension between residence termination and economic welfare objectives as a policy dilemma of all levels of the liberal state. In a highly conflictive policy field such as migration, ambiguous policies are likely the rules rather than the exception; the question of how this affects implementation has however not been systematically tackled yet.

Focusing on two groups of migrants with precarious legal status in the same implementation context, the research design allowed for analysing the role of policy goal ambiguity in a comparative way. In combination with document and policy analysis, semi-structured interviews with senior officials in eleven municipal immigration offices in one German *Land* complemented by expert background interviews provide the basis for the following conclusions:

First, there is variation in the implementation approaches of German immigration offices even within one *Land*. Second, the degree of this variation seems to depend upon the level of ideological conflict surrounding a policy and the related ambiguity of its phrasing, supporting a key assumption of Matland's (1995) theoretical framework: variation was found to be minimal regarding asylum seekers' work permit applications and very pronounced regarding persons with the even more precarious toleration status. For the latter, the dilemma between residence termination and integration is much more salient, as their asylum application has already been finally rejected and employment would significantly improve their chances of a right to remain in the future. Third, immigration officials as street-level bureaucrats need to interpret the ambiguous law, and they do not do this in a vacuum, but seem to employ larger contextual policy logics that correlate with their office's implementation approach. The data indicate that those adhering primarily to the prioritization of strict legal rules tended to show a more restrictive, and those employing more pragmatic, economic welfare oriented logic a more expansive interpretation of the law's objectives. Fourth, identity clarification proved to be a recurring topic in migration policy implementation, and served as an example to distinguish between collective and individual discretion. Officials are in the paradoxical situation of having to claim identity documents from 'tolerated' work permit applicants who they would have to deport once they obtain those documents. Fifth, and linked to the previous point, when interpreting an individual case against the ambiguous law, ideas of deservingness that relate to the meritocratic conception of fairness seem to be present.

While not generalizable beyond its specific context, this paper took a first step in investigating how goal ambiguity in internal immigration control (as a subfield of migration policies) plays out in implementation, in a context of relatively high bureaucratic autonomy. Future research on the still often neglected interrelationship between policy design and implementation (cf. Sætren and Hupe 2018) could focus more on other potential explanatory variables not explored in-depth in the present paper, e.g. external pressure on implementers. From a policy recommendations perspective, the findings call for clearer communication and contextualization of policy goals, in order to minimize existing regional variation: assuming state principles of equal opportunities and fairness, one's chances of obtaining a work permit and, more importantly, future residence rights should not depend on the specific orientation of one's local immigration office.

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Appendix 4

Table 16: *Länder* decrees on labour market access for asylum seekers and 'tolerated' persons, 2016/2017 (territorial *Länder* only)

<i>Land</i>	government coalition	type of decree	date issued	short description
Brandenburg	SPD/Linke	Decree	27.10.2017	makes the (non-binding) implementation recommendations on §60a Residence Act of the Federal Ministry binding (with additional comments)
Baden-Württemberg	Grüne/CDU	Circular Letter to central immigration offices / Decree	12.06.2017	includes one-year vocational school into the 3+2-regulation's scope of application
		Circular Letter to the central immigration offices	24.03.2017	immigration offices explicitly asked to investigate possibilities of granting regular residence for tolerated persons in cases of good integration (incl. 3+2-regulation)
Bayern	CSU/Freie Wähler	Inter-Ministerial Circular (IMC)	01.09.2016	on employment and vocational training of asylum seekers and tolerated persons, emphasizes e.g. priority of deportation, 3+2-regulation only for rejected asylum seekers, very broad interpretation of 'concrete measures to terminate a residence'
		Amendment to the IMC	19.12.2016	prospect of staying (recognition rate) to be included in discretionary decision on work permits for asylum seekers
		Amendment to the IMC	27.01.2017	on work permit decisions: clarifies that it would be legally inadmissible to not grant work permits to Afghans <i>per se</i> because of prospect of staying
		Cabinet Decision	23.05.2017	clarifies that rejected asylum seekers and tolerated persons in general can be granted work permit (for vocational training: six months before start)
		E-Mail	07.08.2017	on the reasonability of the acquisition of identity documents for asylum seekers whose permit has not (yet) transpired
Hessen	CDU/Grüne	Circular Letter	14.07.2017	additional notes on implementation recommendations on §60a Residence Act: 3+2-regulation
Mecklenburg-Vorpommern	SPD/CDU	<i>no decree on employment & vocational training</i>		

Niedersachsen	SPD/Grüne; since November 2017: Grand Koalition	E-Mail, later Circular Decree	13.03.2017	labour market access of asylum seekers & tolerated persons: generally to be exercised in favour of employment access
		Circular Letter	28.06.2017	regarding the implementation recommendations on §60a Residence Act of the Federal Ministry: old <i>Land</i> decree (16.02.2017) still in force
		Circular Decree	27.09.2017	Additional notes on implementation recommendations on §60a Residence Act: 3+2-regulation: less restrictive than Federal Ministry
		Protocol of an Official Meeting ("decree character")	23.10.2017	discretion on work permits as a general rule to be carried out in favour of employment access
		E-Mail	06.11.2017	no revocation of work permit for vocational training due to change of decrees regarding timing of asylum application
Nordrhein-Westfalen	SPD/Grüne, since July 2017: CDU/FDP	Decree	21.12.2016	on vocational toleration, i.a. no discretion in work permit cases in conjunction with vocational toleration
		Decree	19.06.2017	on Application Guidance Notes of the Federal Ministry: clarifies that Dec. 2016 <i>Land</i> decree trumps those
Rheinland-Pfalz	SPD/FDP/ Grüne	Circular Letter	18.11.2016	regarding the toleration for the purpose of vocational training: more expansive than view of Federal Ministry (i.e. discretion re: work permit reduced to zero)
		Circular Letter	07.10.2016	handling of rejected Afghan asylum seekers: immigration offices to check possibilities of granting residence permit on other grounds (i.e. 3+2-regulation)
		E-Mail	08.05.2017	on the timing of vocational toleration: can be given up to 3 months prior to start of vocational training, before: discretionary toleration possible
		Circular Letter	20.06.2017	implementation recommendations of the Federal Ministry with additional comments, making explicit that previous Circular Letters still hold
Schleswig-Holstein	CDU/Grüne / FDP	Application Notes	14.02.2017	i.a. against view of Federal Ministry: no discretion in work permit in conjunction with vocational toleration
Saarland	CDU/SPD	<i>no decree on employment & vocational training</i>		

Sachsen	CDU/SPD	Application Notes	12.12.2016	i.a. against view of Federal Ministry: no discretion in work permit in conjunction with vocational toleration
Sachsen-Anhalt	CDU/SPD/Grüne	Application Notes	19.12.2017	on Application Guidance Notes of the Federal Ministry: still some discretion in work permit, no possibility to use 'dissolving condition'
Thüringen	Linke/SPD/Grüne	Provisional notes	22.11.2016	i.a. against view of Federal Ministry: no discretion in work permit in conjunction with vocational toleration

Source: own compilation