



Master's thesis

**Balancing Humanitarianism and Deterrence:
The Role of National Identity in German Asylum Policies since 2022**

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Abstract

In 2015, former chancellor Angela Merkel's now infamous quote, "We can do this", marked the beginning of Germany's welcome politics. The policy was characterized by liberal asylum measures going beyond the protection standards set by the European Union. It has been argued that this was partly the result of Germany's identity. With no history on which to base an identity in the aftermath of the Third Reich, Germany instead built on the newly established European Union. Thus, the two share the underpinning values of human rights, democracy, and the rule of law, which create the foundation for their shared humanitarian and civilian identity.

However, a growing anti-immigration stance in the public, institutionalized in the form of the right-wing *Alternative für Deutschland* party, has been argued to skew the country's asylum politics towards the right. The new government inaugurated in 2022, which replaced the Christian Democratic Party as the strongest party and Merkel as chancellor after 16 years, announced its plans to change the direction of asylum politics in line with its motto 'a new start for German migration politics'. Under this motto, the new government introduced policies that civil society organizations have criticized as deterrence-based measures restricting the rights of asylum seekers. Among these were card-based and reduced welfare benefits as well as increased deportations.

This research seeks to identify the strategy behind these policies and examine the role Germany's identity plays in it. Thus, it utilizes Bacchi's (2009) *What's the problem represented to be* method of policy analysis, constructivist theory and Gammeltoft-Hansen's (2017) negative nation branding concept to answer the two research questions: "Which strategy can be identified behind the asylum politics of the new German government?" and "What role does Germany's identity play in its asylum politics strategy?"

The *What's the problem represented to be* method is used to analyze three of the asylum policies introduced since 2022: the Act on the Acceleration of Asylum Court Proceedings and Asylum Procedures, the Act to Improve Repatriation, and the *Bezahlkarte*. Based on these bills, this thesis identified a strategy in which Germany seeks to uphold its humanitarian responsibility towards asylum seekers while simultaneously pursuing the goal of decreasing the number of asylum seekers in the country. This tension between humanitarianism and deterrence plays out through a 'good' vs. 'bad' asylum seeker binary, in which the category of the 'bad' asylum seeker is continually expanded while the 'good' category is used as a theoretical. It is further

complicated by the introduction of liberal measures for ‘productive’ asylum seekers challenging the deterrence-based strategy.

Due to these tensions, Germany is unable to communicate the ‘hard-line’ anti-immigration branding needed in order to efficiently fulfill its goal of reducing the number of asylum seekers, as argued by the negative national branding concept. Clashing strategy goals, legal geographical limitations and coalition-internal tensions produce contradictory policy outcomes, which affect the overall strategy's coherence, making consistent branding impossible. However, the new policies provide the political foundation for such a branding. Thus, this research concludes that Germany’s humanitarian identity hinders the country from successfully pursuing part of its strategy goals. However, right-wing political shifts are pushing for a reconstruction of the German identity and thus altering the country’s receptiveness to international human rights norms. While this thesis concluded that it is unlikely that this will result in an identity shift during the current legislative period, the policies provide the foundation for it in the future. An identity shift away from humanitarian norms could not only impact Germany’s asylum policies but also affect other policy fields, as well as potentially contribute to or mirror a broader change in the European Union’s identity.

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1. Introduction

With her now infamous *Willkommenspolitik* (welcome politics), opening Germany's borders amid the 2015 'refugee crisis'¹ former chancellor Angela Merkel clearly positioned Germany in opposition to the majority of other European Union (EU) member states' restrictive responses (Funk, 2016). Although Merkel's choice was highly controversial within the country, this attitude went on to shape German asylum politics. Going beyond the EU's minimum standards, Germany has been known to have one of Europe's most open asylum policies (ibid.). This can be seen as a reflection of the country's humanitarian identity, established in direct opposition to its fascist past, as well as a demographic change resulting in a pressing labor shortage.

Internationally, Merkel's politics were widely applauded. However, nationally, she was met with growing opposition. Spurred on by the securitization of irregular migration in 2015, xenophobic anti-immigrant perspectives gained solid ground and became a firm part of the German political landscape in the form of the right-wing populist party *Alternative für Deutschland* (AfD) (Funk, 2016). In line with this national reaction, Germany introduced the use of direct as well as indirect deterrence measures, establishing border controls, reducing welfare benefits, and utilizing informational campaigns abroad to deter future asylum seekers (Auswärtiges Amt, n.d.; Cragge, 2016). Nevertheless, Germany's asylum politics remained liberal in comparison to those of other EU countries, continuing voluntary resettlement schemes, resulting in high recognition rates, and allowing asylum seekers to work during the asylum determination process (Ayoub, 2023).

When I moved from Germany to Denmark in 2022, I was shocked by the different approach to asylum politics. While both countries use direct and indirect deterrence measures, the Danish government also makes no secret about the fact that they do not welcome refugees with open arms (Gammeltoft-Hansen, 2017). In a university class I first learned about the negative nation branding (NNB) concept, the idea that Denmark is using branding techniques to construct a 'hard-line' immigration image to deter asylum seekers from entering the country by showcasing deliberately low reception and living standards (Gammeltoft-Hansen, 2017).

At the time, this seemed a stark contrast to Germany, which, in the past, has been careful to adhere to human and refugee law to emphasize its humanitarian obligations (Green & Hess,

¹ Just like Marino (2021), I use this term in quotations to critique the understanding of the events of 2015 as a crisis of migrants rather than a crisis of solidarity.

2016). However, this emphasis seems to have been declining in recent years and continues to do so under the new government, which was inaugurated in 2022, replacing Merkel and the Christian Democratic Party (CDU/CSU) after 16 years in government. The opposition party, AfD, continues gaining support, driving the government to adopt more restrictive immigration attitudes (Kinkartz, 2024). At the end of 2023, the government proposed a new asylum policy to switch financial welfare for asylum seekers from a cash-based to a card-based system, the *Bezahlkarte* (Knight, 2024). This proposal gained much public critique as it was argued to be an attempt to restrict the freedom of asylum seekers in Germany to deter future arrivals (ibid.).

As pointed out above, the use of indirect deterrence measures in Germany is nothing new. However, the *Bezahlkarte* was introduced in the context of a more general right-wing turn of German asylum politics. Increased deportations, planned off-shore asylum processing (Kinkartz, 2024), and the uncovering of a meeting between right-wing groups, individuals, and politicians, planning the “re-migration” of all “foreigners” in Germany (Bensmann et al., 2024) provide the background for this policy. Due to this general shift to the right, the introduction of such measures shines in a very different light. According to Gammeltoft-Hansen (2017), measures like these form the basis for NNB and could indicate the beginning of such a strategy in Germany, especially since AfD and CDU/CSU politicians have only recently expressed interest in and admiration for the Danish system (Lau, 2024). An NNB strategy in Germany could have significant consequences. It would signal a decline in the importance the country places on its humanitarian identity, which has dictated much of its domestic and international political positioning.

Nevertheless, Germany is a part of the EU’s Common European Asylum System (CEAS) and is, therefore, much more limited in its domestic asylum politics than Denmark. Given its previous welcome politics, Germany is also caught in its own humanitarian identity, which is difficult to circumvent without losing legitimacy. To understand the current German asylum politics, how identity influences it, and if the country is in the process of shifting its identity, this research will analyze the asylum policies of the new government since 2022 and answer the two research questions:

1. Which strategy can be identified behind the asylum politics of the new German government?
2. What role does Germany’s identity play in its asylum politics strategy?

I will use Bacchi's (2009) *What's the problem represented to be* (WPR) method to gain more comprehensive insights into three recent German asylum bills, based on which I will seek to identify a strategy. I will then apply a constructivist lens as well as the NNB concept to these WPR findings to answer the second research question. Using the NNB concept will allow me to investigate Germany's asylum strategy specifically in the context of its branding and identity. Constructivist theory will further enable me to understand how this identity influences the strategy and if it is indeed shifting. Furthermore, I will highlight the interdependence of Germany's national policies and the CEAS, as well as the role of domestic actors, in the form of parliament parties, to gain a nuanced understanding of the policy strategy's context. The answers to both questions will additionally enable me to theorize on the future development of German identity and asylum politics.

Thus, the thesis is structured as follows: First, the background chapter will provide insights into the EU's and Germany's history of asylum politics, concentrating on the 2015 'refugee crisis'. Then, the theoretical framework chapter will discuss constructivist theory and the NNB concept. The following methodology chapter will lay out the rest of the research design, present the WPR method, the data sources and selection, and a section reflecting on limitations and biases. In the WPR analysis chapter, the WPR method will be applied to the three chosen bills, and a summary of the chapter's findings will be presented. In the analysis chapter, the WPR findings will then be discussed to answer the first research question, which, in combination with the chosen theory and concept, will be used to answer the second question. A conclusion chapter and bibliography will follow this.

2. Background

This thesis aims to examine the current direction of Germany's asylum politics and the influence of identity on its development. However, before this is possible, the case of Germany must first be contextualized. As Germany is a member of the EU and the CEAS, it is impossible to understand its asylum policies as separate from those of the EU. Thus, this chapter will first outline the history of the EU's refugee regime, focusing on its response to the 2015 'refugee crisis', which is often argued to be the trigger for the current asylum policies of the EU. Since this thesis focuses on identity, I will briefly discuss relevant aspects of the EU's identity and how these become important for its asylum politics before delving into the significant historical events that have shaped the current political situation in Germany. I will discuss Angela

Merkel's welcome politics and the specificities of German history and identity that have contributed to it. Lastly, I also include a brief development of Germany's policies since 2015, specifically in connection to the change in government in 2022.

2.1 The EU's Refugee Regime since 2015

The global refugee regime is founded on two international treaties, the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. These two instruments provide the definition of a refugee, clarify their rights and obligations, and set out principles for the asylum determination process (Castles et al., 2020). The global refugee regime further comprises many bilateral and multilateral international agreements, human rights conventions, and principles. One of these is the CEAS, which is the main instrument of the EU's asylum regime. The CEAS encompasses multiple directives, regulations, and agencies that together form the basis of the member states' national asylum policies, as well as the common agreements and instruments (Directorate-General for Migration and Home Affairs, n.d.). The participating states are bound by the CEAS but also have national asylum policies implementing or reaching beyond the EU's directives. Some member states' national policies have also been found to be in breach of the CEAS standards, Hungary being a current example (Hungarian Helsinki Committee, 2023).

Migration has been a politicized topic in the EU for a long time. Politicians coined the first 'migration crisis' in Europe after the fall of the Iron Curtain, which saw the movement of millions of asylum seekers from the East to the West of Europe (Castles et al., 2020). This was followed by a general increase in migration from the Global South towards Europe caused by conflict, as well as technological advancements simplifying movements across the globe (ibid.). Rising numbers in asylum applications culminated in what has become known as the 2015 'refugee crisis', a significant and largely uncontrolled increase in asylum requests and arrival numbers in the EU during 2015 and 2016, mainly attributed to the Syrian civil war (Marino, 2021).

Lavenex (2019) argues that the EU's reaction to the 'refugee crisis' uncovered the tensions between its 'normative power' identity, emphasizing human rights norms, and its 'statist' identity, emphasizing the need for security. Due to its multilateral nature, the identity of the EU is not clear-cut but rather a negotiation between the 27 member states as well as the EU itself

as an international organization. However, a few fundamental principles serve as the cornerstones of its identity. The EU's official website declares its constitutional values as human dignity, freedom, democracy, equality, the rule of law, and human rights (Directorate-General for Communication, n.d.). These values inform the EU's external relations, and internal and foreign policy (Manners, 2002) and lay the basis for its humanitarian or 'normative' identity. At the same time, the EU's aim to offer "freedom, security and justice without internal borders, while also taking appropriate measures at its external borders to regulate asylum and immigration and prevent and combat crime" (Directorate-General for Communication, n.d.) indicates its 'statist' identity.

The EU's asylum policies have always been shaped by the goal of controlling, managing, and decreasing asylum migration. However, the 'refugee crisis' significantly increased these efforts. The securitization theory is often used to explain this development. In general terms, securitization theory posits that through speech acts by politicians and media, previously neutral topics can be linked with security issues and thus legitimize extraordinary policy responses (Asderaki & Markozani, 2021, p. 181). Asderaki and Markozani (2021) argue that the securitization of irregular migrants in the EU reached its peak in 2015 to 2016. Media and politicians alike discussed the increase in arrival numbers as 'floods' or 'waves' of migrants endangering the core European values and its political and economic security (ibid.). The EU's response to the 'crisis' has often been described as a movement towards a Fortress Europe: a fortification of the EU's external borders. Only recently, in May 2024, the EU adopted a new Pact on Migration and Asylum (European Commission, 2024a). Many human rights organizations see this pact as a major restrictive policy step. Amnesty International, for example, has voiced severe criticism, arguing that the pact could lead to a significant restriction on the right to asylum and other human rights violations (Amnesty International, 2024).

Gammeltoft-Hansen and Tan (2017) believe that there is a general shift to restrictive asylum policies in the Global North. They argue that what is observable today is "a [refugee] regime fundamentally based on the principle of deterrence rather than human rights protection" (p. 28). They have termed this turn to restrictive politics the *deterrence paradigm*. The authors argue that policymakers of European countries share the belief that asylum seekers can be deterred with restricted entry and asylum measures without breaching international refugee and human rights law (Gammeltoft-Hansen & Tan, 2017, p. 31). According to the authors, such measures can be divided into *direct* and *indirect deterrence measures*. While *direct deterrence measures* deter persons from physically reaching the territory of a state, *indirect deterrence*

measures discourage asylum seekers from wanting to enter a territory in the first place by, for example, restricting their rights and freedoms, prolonging the asylum process, or introducing mandatory detention for all arrivals. While the concept of Fortress Europe is often discussed in terms of direct deterrence measures, Gammeltoft-Hansen (2017) has identified a turn to indirect deterrence measures among EU states. He identifies such policies in Sweden, Norway, Germany, France, and Denmark. Within the field of indirect deterrence measures, Gammeltoft-Hansen (2017) also distinguishes the strategy of negative nation branding. NNB goes beyond only policy change to include strategies to establish an identity as a ‘hard-line’ anti-immigration country that is unwelcome towards asylum seekers. Denmark’s ‘hard-line’ identity contradicts the EU’s continuous emphasis on its humanitarian identity. However, while the country is part of the EU, it has also opted out of the CEAS and is thus not bound by the EU’s asylum directives and regulations and their humanitarian core.

2.2 The Development of German Asylum Politics

Supranationally, Germany’s asylum regime rests on the 1951 Refugee Convention and the CEAS. Nationally, the main pillars are the right to asylum for persons persecuted on political grounds enshrined in the Constitution Article 16(a), the *Asylgesetz* (Asylum Act), which regulates the asylum determination process in Germany, the *Aufenthaltsgesetz* (Residence Act), which stipulates the different rights to residency and the *Asylbewerberleistungsgesetz* (Asylum Seekers Benefits Act), which defines the benefits asylum seekers are entitled to (Bundesministerium des Innern und für Heimat, n.d.a).

Germany has been known to have favorable asylum policies compared to other EU countries. While many other member states were closing their borders in 2015, previous Chancellor Angela Merkel famously opened the country’s borders for asylum seekers on the Balkan route with the words “*Wir schaffen das*” (“We can do this”), thereby overriding previous EU agreements (Funk, 2016). The temporary border opening allowed roughly one million persons to cross into Germany, many of whom traveled onwards to Scandinavian countries (ibid.). The country’s following welcome politics were characterized by efforts to shorten asylum processing times and implement integration measures beyond those proposed by the CEAS (Ayoub, 2023). Nevertheless, while Germany has been applauded for expanding individual rights, the state has also continued to restrict the right to asylum and the freedoms of asylum

seekers and refugees, intensifying the efforts in 2015 (Crage, 2016). Crage (2016) thus describes Germany's asylum policies as a double-edged sword.

Germany's contradictory approach to asylum politics is founded in its tumultuous history. The country has long refused its identity as an immigrant country. As Green and Hess (2016) point out, Germany has a history of citizenship rooted in the *jus sanguinis* principle (p. 316), emphasizing the *Volksgemeinschaft* (national community) as an ethnically homogenous group (Alexopoulou, 2020). According to the German *Erinnerungskultur* (culture of remembrance), the country has never had any experience with foreigners, a recollection of Germany's history which omits its colonial history, the fact that before WWI, the German Empire was the biggest immigration country after the US and the movement of displaced people from Eastern Europe into Germany post-WWII (Alexopoulou, 2020, p. 19). Thus, East and West Germany were still largely seen as ethnically homogenous in the 1950s, a belief continued into the 1960s and the start of the West German 'guestworker' scheme (Green & Hess, 2016). When it became clear that the guestworkers, coming mostly from Italy and Turkey, started settling down, the government quickly shut down the scheme. Only after the reunification in the 1990s did Germany reluctantly accept its position as an immigrant country (ibid.).

However, if Germany is so hesitant towards immigration, then how can one explain the country's initial openness to asylum migration during the 'refugee crisis'? Dudek and Hayes (2020) argue that Germany's asylum policies have been significantly shaped by the country's historical experience and collective memory of the Nazi regime. According to the authors, the recent encounter with the horrors of fascism led to the country's comparatively open measures and the lack of radical right-wing populism determining asylum politics.

From a constructivist lens, this same history has shaped German identity and thus its response to the 'refugee crisis'. Karp (2018) argues that Germany's identity is characterized by the rejection of its recent past. With no history to build on, Germany has relied heavily on the EU as a source of its identity (Karp, 2018, p. 60). The country has especially identified with the EU's humanitarian and 'civilian' nature as well as with its values of democracy and the rule of law. In an attempt to signal the absence of a threat to other European countries, Germany has conducted politics through international institutions, diplomatic relations, and humanitarian action. It branded itself as an "international actor for the common good" in exact opposition to the power politics and self-interested action connected with the Nazi regime (Karp, 2018, p. 70).

Additionally, part of Germany's welcome politics has been attributed to the country's labor shortage caused by an aging population and decreasing birth rate (Dudek & Hayes, 2020). Already in 2014, the country introduced legal reforms simplifying the access to the labor market for refugees (Maroufi, 2017). The openness to asylum seekers in 2015 can, therefore, partly be understood as an attempt to fill labor needs and sustain economic growth (ibid.). Thus, the country's strong commitment to human rights, in combination with the rejection of its nationalist past and a growing labor shortage, might have set the tone for its initial response to the 2015 'refugee crisis'.

However, Dudek and Hayes (2020) also argue that with the passing of time and the death of victims and witnesses of the Third Reich, the collective memory is fading. According to the authors, this has allowed for right-wing populism to manifest in the form of the AfD, leading to a radicalization of asylum politics. The AfD, established in 2013, has made anti-immigration attitudes the main pillar of its political campaigns and has since pressured the government to moderate its asylum policies. However, while Germany experienced a late surge of right-wing populist parties compared to other EU states, it is also important to note that xenophobic perspectives have been present since the times of the Empire (Alexopoulou, 2020). As a response to the Third Reich, it was assumed that racism vanished with the fall of the Nazi regime, even though racist knowledge and structures remained (pp. 9-10). Thus, while populist right-wing perspectives institutionalized rather late on a political level, xenophobia was widespread in the society even if still seen as a taboo (ibid.).

Consistent with Dudek and Hayes' (2020) argument, the legislative period of the new government, inaugurated in 2022, consisting of the Social Democratic Party (SPD), the Green Party (BÜNDNIS 90/DIE GRÜNEN), and the liberal-conservative Free Democratic Party (FDP) has seen asylum policies perceived as restrictive. Under the slogan "*ein Neustart der deutschen Migrationspolitik*" (a new start for German migration politics), the current government has launched a number of new immigration policies (Bundesministerium des Innern und für Heimat, 2023b). As part of the new asylum politics, the government has introduced measures critiqued by media and civil society organizations as using deterrence logic: welfare benefits have been further reduced, cash benefits replaced with more easily controlled payment cards, safe country of origin lists extended, and large-scale deportations financed (Pieper, 2024; PROASYL, 2024c; Knight 2024). Especially the introduction of the *Bezahlkarte* and the new chancellor Olaf Scholz's aim to increase deportations sparked major public debate (Hickmann & Kurbjuweit, 2023; Knight, 2024). As part of the 'new start for

German migration politics' the policies indicate a possible change in Germany's asylum politics strategy. Given that the country's previous strategy has been connected to a humanitarian and civilian identity, this thesis seeks to understand the direction of the current German asylum politics and the role identity plays in it. However, before delving into this possibility, the next two chapters will present this research's theoretical framework and methodology.

3. Theoretical Framework

This research uses a constructivist approach to analyze Germany's policy strategy. Constructivism, as a social theory focusing on identity and the *logic of appropriateness*, is often used to describe states' behavior and is, therefore, useful for understanding policy strategies. The thesis also utilizes the NNB concept by Gammeltoft-Hansen (2017) to analyze the findings of the WPR method and open up a new perspective.

In the next section, I will, therefore, first give a background on constructivist theory and how it is incorporated into this research. Constructivist theory is a major field of study and includes various strands. However, I will only consider those aspects relevant to this research. In the second section of this chapter, I will discuss important concepts. I will first present the concept of nation branding for context and then dive into the conceptualization of NNB and its positioning in constructivism.

3.1 Theory: Constructivism

Constructivism is one of the established theories of International Relations. However, it is not a substantive theory that predicts patterns in behavior but rather a social theory describing the relationship between actors and structures, like the behavior of states on the international stage (Barnett, 2019). There are many different forms of constructivism, but all share a common core: the importance of ideas and norms. Constructivists argue that a constructed reality exists next to the material reality inhabited by material objects. This constructed reality is shaped by knowledge in the form of symbols, rules, concepts, identities, and categories. Individuals interpret the meaning of the material reality based on their knowledge. This knowledge changes

based on the context one is in, but those who can create and change it hold power, more specifically, discursive power.

Another common assumption of constructivism is that agents and structures constitute each other. Hence, agents, like states, do not produce the structure and are thus independent of it, but they are also not just the outcome of a structure. Constructivists argue that agents are constituted within the structure through social interactions but also influence and change the structure themselves (Barnett, 2019).

Most important for this research is the constructivist view on identities. Instead of seeing anarchy or material power as the source of order in the international realm, Hopf (1998) argues that identities provide order. These identities can be multiple and are mutually constructed in relation to other states' identities and domestic politics. States' identities signal to others what they will do in any situation. They serve as a basis for prediction and are essential to understanding interactions in the international sphere. This is because identities form and constrain states' choices, as legitimacy is essential to them. Barnett (2019) writes, "all actors crave legitimacy, the belief that they are acting according to and pursuing the values of the broader international community, for reasons of identity and interest" (p. 198). Legitimacy is what makes states cooperate and what gives a state influence. Losing legitimacy by acting against one's identity can have high costs. Thus, states worry about the legitimacy of their actions. This is described as the *logic of appropriateness*, which stands in contrast to the *logic of consequences* (Barnett, 2019), the realist and liberalist logic which argues that states make decisions based on material cost-benefit calculations instead of norm compliance.

What identity and norms a state subscribes to and what is appropriate behavior is context-specific and, again, constructed by actors and their relationship to others. It is often argued that states comply with human rights because of the logic of appropriateness. A long history of international organizations, treaties, and interactions have established human rights norms that states are socialized into and that are ultimately internalized. States, therefore, comply with human rights because they become part of their identity (Barnett, 2019).

However, according to Checkel (1999), constructivist approaches to norm diffusion and the logic of appropriateness often overlook the significance of actors' agency within a given structure. The author underscores the necessity of considering domestic norms and policymakers to comprehend why international norms' constitutive effects differ across countries. This approach broadens an analysis to view a state not as a singular unit but as a

complex entity shaped by different actors that influence national politics. Checkel (1999) argues that “domestic norms shaping the preferences of key agents predict the degree to which they resonate and have constitutive effects in particular states” (p. 91). Through internalization and social learning, domestic agents can adopt different interests and, therefore, change their receptiveness to international norms (Checkel, 1999).

As constructivist theory seeks to understand state behavior, it is well suited to analyze policy strategies. Asylum politics is one of the topics that, even on national levels, is governed by international norms and identities and, as such, the logic of appropriateness. Constructivist theory enables me to place these aspects at the forefront of the analysis. As this research analyzes the national level, Checkel’s (1999) reflections on how domestic norms and actors play a role in adopting international ones become relevant. The current German government is a coalition government and an unstable one at that. In the past two and a half years of their term, the three governing parties have exhibited quite contradictory ideologies and goals. Therefore, using Checkel (1999) will give insight into how policy strategy is created in an unstable government coalition.

In addition, using the WPR approach means incorporating a post-structuralist lens into the research by deconstructing the discourses that constitute asylum policies. This will enable me to understand the foundations of the policies and identify the strategy underlying them. I will discuss this in greater detail in the methodology chapter.

3.2 Concept: Negative Nation Branding

Nation Branding

The concept of negative nation branding is derived from *nation branding*, which is when a country uses a long-term conscious strategy to manage its identity in the international arena to pursue a certain set of goals (Anholt et al., 2008). The concept of branding was created based on cooperations before it was applied to nations. Anholt et al. (2008) define a *brand* as a combination of characteristics such as a name, symbol, or design that are recognizable to a consumer and take on meaning when linked to a company to differentiate it from its competition. Branding, then, is “the process by which companies distinguish their product offerings from those of the competition” (p. 14).

Anholt et al. (2008) state that nations have branded themselves for as long as they have existed through flags and coats of arms, and only the term nation branding is fairly new. According to the authors, a nation's brand communicates "dominant values that define the behavioural characteristics of a population, [...] constitution, religions and social mores [...]" (p.16), in other words, its identity. Nations strategically use this branding to achieve economic and political goals. In an increasingly global economy, competition is rising, and states want to increase their competitiveness, stimulate investments, as well as attract tourists and talent (Anholt et al., 2008). Therefore, identity is an intrinsic set of characteristics that define a nation: its values, constitution, or religion. Branding is a strategic process through which these characteristics are communicated.

Branding strategies can, for example, be cultural diplomacy, tourism, or political, technological, and social innovations (Dinnie, 2008). For this thesis, the influence of political innovations in terms of policies is particularly important. The relationship between a country's identity, branding, and policies is dynamic and intertwined. National identities are relatively stable, even though they can develop over time. Branding, on the other hand, although it relies on a consistent strategy, can be adapted more easily to a country's changing goals by introducing new policies. Other branding strategies like diplomatic efforts or information campaigns can also be used to communicate these policy shifts. Over time, changes in policies and branding can lead to a wider shift in identity as new policies and goals represent new values. On the other hand, branding changes can also follow an identity shift to ensure truthful representation.

Nations aim to build credibility and gain political influence by truthfully communicating their identity. Like a successful brand that delivers on promised values, a state can build a reliable brand through truthfulness, which is important for international relations and the economy. A prolonged mismatch between branding and identity risks losing credibility along with legitimacy, both of which are key for international relations. As such, nation branding has become essential for states (Anholt et al., 2008; Dinnie et al., 2008).

Negative Nation Branding

Gammeltoft-Hansen (2017) observed a general tendency towards the expansion of the use of indirect deterrence measures among European countries. Unlike direct deterrence measures

that aim to hinder asylum seekers from reaching a country's territory, indirect deterrence measures aim to discourage them from wanting to come to the country. These policies aim to make the asylum system seem less attractive and decrease the protection standards so that prospective asylum seekers will choose a different country of refuge. For such indirect deterrence measures to be effective, asylum-seekers must know them before they claim asylum (ibid.). However, according to Gammeltoft-Hansen (2017), studies have shown that asylum-seekers have imperfect knowledge of the exact policies or conditions in different European countries. What is argued to be more effective is when countries brand themselves as unwelcome toward asylum seekers rather than just changing their policies.

This is what Gammeltoft-Hansen (2017) calls negative nation branding. Instead of seeking to achieve a positive image, as is the goal in nation branding, NNB describes using branding strategies to create and present a negative image towards a target group, in this case, asylum-seekers. As with nation branding, the vital aspect is how others perceive the country. The author describes countries using Facebook campaigns and newspaper ads to create a hostile image and, ultimately, identity. A general 'hard-line' anti-asylum identity is more effective in deterring asylum seekers who do not have in-depth knowledge of asylum systems. However, as described above, branding can only be successful if it is based on truth (Anholt et al., 2008). Thus, NNB needs restrictive asylum systems, meaning both direct and indirect deterrence policies, which can be used as the basis for this branding. Therefore, a country's legal geography becomes important. The ability to implement such policies is influenced by memberships in international agreements and supranational organizations like the EU, limiting a state's national decision-making power.

Both Gammeltoft-Hansen (2017) and Brekke (2004) have found short-term effects of the NNB strategy in Denmark, arguing that the country has had significantly lower asylum numbers than the rest of the EU since 2001, coinciding with the usage of this strategy (Gammeltoft-Hansen, 2017, p. 114). Still, these successes are also tied to high costs. As stated previously, nation branding is a tool to establish credibility and legitimacy, which is essential for relationships in the international sphere. If the country in question has an identity that is otherwise based on liberal norms, an NNB strategy can lead to a clash in perceptions. This, in turn, can reduce the country's credibility and have costly effects on international trade and diplomacy (Gammeltoft-Hansen, 2017). Gammeltoft-Hansen (2017) describes how Denmark introduced policy and branding changes as part of their NNB strategy. Due to the country's traditionally liberal and humanitarian identity, this shift resulted in a loss of credibility. However, in the long term, the

new policies reshaped the country's identity to reflect the 'hard-line' anti-immigration stance communicated through its NNB strategy.

Nation Branding through a Constructivist Lens

The concepts of nation branding and negative nation branding are easily situated in a constructivist worldview. Constructivists see identities as a vital part of international politics. Identities create legitimacy and influence state behavior. The nation branding concept assumes the same. A state's branding depends on its identity, which is essential for credibility and political influence. To be effective, a country's brand must fully overlap with its identity. For example, to successfully implement an NNB approach, a country needs to communicate a consistent and truthful 'hard-line' identity. An NNB strategy that contradicts a state's identity may fail to achieve its intended goals and could create instability, undermining its legitimacy.

Furthermore, branding relies heavily on discourse. Symbols, narratives, and other discursive strategies are seen as methods to shape identities and, thus, branding. This overlaps with the constructivist view that identities are not fixed but can be changed and constructed through discourse. International norms also play a big role in both constructivism and nation branding. As explained in a previous section, constructivism emphasizes the role of international norms and values in influencing states' behavior. As these norms form state identities, adherence to the same is essential to maintain legitimacy. In nation branding, this logic is equally important. A country's branding must align with its identity, which is largely influenced by these international norms.

4. Methodology

In this research, I aim to answer the questions, "Which strategy can be identified behind the asylum politics of the new German government?" and "What role does Germany's identity play in its asylum politics strategy?" For this purpose, I will conduct a qualitative case study of Germany, specifically focusing on its asylum policies since 2022. These will be investigated using Bacchi's (2009) WPR approach to policy analysis to gain insight into their underlying logics and answer the first research question. The results will then be analyzed using the theory and concept presented above to answer the second research question.

Flick (2022) argues that a research design can be seen as “a setting of the agenda for a study” (p. 11). It gives insight into the research plan and the reasoning behind it. A research design must include the research question, the method used to answer it, the sample and selection of the studied units, the goals of the study, as well as a theoretical framework and the practical conditions such as the available resources (p. 12). Having established the research questions, theoretical framework, and goal of this study in the last chapters, this chapter will lay out the rest of the research design. In the following sections of this chapter, I will first explain the research approach, logic, and case selection. I will then provide insight into the research method, the WPR approach, and its post-structuralist lens, as well as clarify the data selection. Lastly, I will touch upon the limitations and biases of this research.

4.1 Considerations and Decisions in Research Design

In this thesis, I will explore Germany’s current asylum policies to understand their logic and strategies. Therefore, I will use a qualitative rather than a quantitative approach. A quantitative approach using numerical data would not be able to give detailed insight into the ‘why and how’ of such policies. Meanwhile, conducting a qualitative study creates the possibility of zooming in on the specifics of a case. According to Flick (2022), the basic methodological designs in qualitative research lie on two axes (pp. 8-9). One reaches from a case study, the in-depth research of one unit of analysis, to a comparative study, focusing on specific aspects of multiple units of analysis and comparing these. The second axis concerns the role of time in the research. It ranges from a historical retrospective study to a longitudinal study (ibid.).

This research is a case study. Although the EU is a part of the analysis, this is only because it is important to contextualize the case of Germany. The EU itself is not the focus of analysis. Neither is Denmark. Rather, this research uses the NNB concept, as generalized from the case of Denmark by Gammeltoft-Hansen (2017), as an analytical tool. As such, Denmark appears in this thesis to illustrate the NNB concept, not as a unit of analysis itself. On the temporal axis of Flick’s (2022) diagram, this study falls more or less in the middle. I will analyze Germany’s asylum politics as they are today, specifically focusing on those policies decided on by the current government since 2022. Therefore, I will also provide insight into public debates around policies in the last two years. As part of the WPR method, I will also analyze the genealogies of certain discourses. This requires explorations of the EU’s recent past.

Of course, the choice of Germany as the case for this research was not objective. As a German citizen living in Denmark with working experience in both asylum systems, I have become familiar with both countries' approaches to asylum politics. As the Scandinavian countries continuously converge in asylum politics, with Sweden and Norway taking inspiration from Denmark's policies and factoring in the right-wing shift in German asylum politics, I wondered if this policy transfer from Denmark will also occur towards the south.

Despite starting with such a hypothesis, this thesis does not follow a deductive logic but an abductive one. This type of logical reasoning starts with a theory and a hypothesis. However, the goal is not simply to accept or reject this hypothesis. An abductive approach allows the data collection and analytical process to lead to new and surprising insights, creating new hypotheses. Starting with the hypothesis that the German asylum policies are becoming more restrictive and following in Denmark's NNB footsteps, I will apply the WPR method to recent policies to identify important logic and assumptions. These will then be analyzed using a constructivist approach and the NNB concept. However, for such research, it is crucial to avoid getting stuck on rejecting or accepting the hypothesis. Analyzing whether or not Germany is following an NNB strategy is less intriguing than using the concept to understand the nuances of Germany's strategy: how it aligns with, diverges from, and incorporates other aspects beyond NNB. The NNB concept is a tool to gain insights into Germany's approach and the role identity plays in it. The use of constructivist theory will then allow me to dive deeper into the exploration of this identity's importance. Using an abductive logic broadens the analysis, preventing it from being confined to aspects confirming the NNB strategy and allowing the identification of other significant elements.

4.2 Research Method

The WPR Method

This thesis focuses on the role of identity in policy strategy. Constructivism and the NNB concept have been chosen as two frameworks that emphasize the role of identity in state behavior. However, one cannot simply read policies to understand what strategy a government is pursuing and by which factors this is influenced, as their intent is rarely obviously stated. Rather, a critical approach is necessary to uncover the underlying logics that lead to these policies.

The method chosen for this research is Bacchi's (2009) *What's the problem represented to be?* approach, founded in post-structuralist thinking. Post-structuralism and constructivism share many assumptions, such as the understanding of the world as socially constructed, the agency-structure relationship, the influence of discursive power, and the need to challenge essentialism (Barnett, 2019; Hansen, 2019). However, the two theories differ in their analysis goals. Constructivists emphasize the importance of language and discourse and are interested in how they construct knowledge and identities and influence states' behavior, whereas post-structuralists seek to deconstruct these discourses and understand the power relations within them. The interwoven nature of discourse and power is one of the main focuses of post-structuralism (ibid.).

Bacchi (2009) emphasizes the need to look beyond any given policy to understand the underlying assumptions, narratives, and power relations that play into it. The author perceives the social world not as comprised of fixed 'real' facts but rather as a constructed reality shaped by policies. Bacchi (2009) argues that public policies are considered valuable to society because they address problems that need 'fixing'. Therefore, we are governed through problematization rather than policies. In the author's eyes, governments conduct politics by identifying problems and then implementing policies to solve them (ibid.).

The WPR approach seeks to question this practice. Bacchi (2009) argues that problems in the objective way policies present them do not exist. Rather, they are constructed through policies. As Bacchi (2009) writes, "policies are problematizing activities" (p. xi). By implementing a policy regulating an activity or a group of persons, policymakers identify these as problems to be solved. How they are regulated reveals underlying assumptions about the activity or group of persons. Bacchi (2009) sees a need to question these problematizations as a way to participate in the governing process. The author argues for a problem-questioning paradigm to replace the current problem-solving one. Therefore, she created an analysis tool to uncover the core problem representation in a policy. This involves six questions to ask and answer about a policy.

The first question to answer is: "What's the problem represented to be?" Policies do not always follow only one aim. Therefore, the problem representation can be multiple and contradictory. Bacchi (2009) emphasizes that the goal of the WPR method is not simply to identify the problem but, having identified it, to challenge its deeper-seeded assumptions.

The second question Bacchi (2009) asks is: “What presuppositions or assumptions underlie the representations of the problem?” Here, the author is interested in the underlying logic of the problem representation. With assumptions and presuppositions, the author does not mean individual biases or policymakers’ beliefs but the unexpressed knowledge on which the policy is based. Bacchi (2009) aims to study which binaries, key concepts, and categories the policies are based upon and how each is defined.

The third question of the WPR approach is: “How has this representation of the ‘problem’ come about?” This question aims to trace the origins of this problem representation. When was this particular activity or group of people established as a problem, by whom, and through which mechanisms? Here, Bacchi (2009) seeks to analyze the power relations within knowledge creation. The author asks which social groups can construct problems and which are constructed as the problem.

The fourth set of questions are: “What is left unproblematic in this problem representation? Where are the silences? Can the ‘problem’ be thought about differently?” Here, Bacchi (2009) aims to put the problem representation in a larger context. The questions seek to understand which aspects of the situation are left unsaid by framing the problem in this specific way and if there are other ways of framing it.

The fifth question asks: “What effects are produced by this representation of the problem?” Bacchi (2009) distinguishes the effects into three categories. *Discourse effects* are those that influence public narratives. How does the problem representation influence the narrative about a situation or a group of people? The *subjectification effects* are those effects that change the subjectivity of the persons involved. Through subjectification, narratives can be embodied and can change the self-image of a group. Lastly, Bacchi (2009) also writes of *lived effects*, which she defines as direct material effects.

The last question Bacchi (2009) asks is: “How/where is this representation of the problem produced, disseminated and defended? How could it be questioned, disrupted and replaced?” This question is related to the third question of the WPR approach. It looks into how the problem representation gains legitimacy. One should analyze through which mechanisms, what audience is reached. The question also seeks to determine if and how this problem representation might be challenged. Bacchi (2009) emphasizes again that discourses are complex and can be contradictory. In this question, I will also focus on the role of the different parties in parliament in defending or challenging problem representations. This will assist me

in gaining insight into how domestic actors are influencing and creating these complex discourses.

Figure 1: Own representation of Bacchi's (2009) WPR method

| Question | Description |
|--|---|
| What's the problem represented to be? | What activities or groups of people are problematized through the policy? What does the policy aim to 'fix'? |
| What presuppositions or assumptions underlie the representations of the problem? | What is the underlying logic of the problem representation? Which binaries, key concepts and categories is it based upon? |
| How has this representation of the 'problem' come about? | When was this particular activity or group of people established as a problem, by whom, and through which mechanisms? |
| What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently? | Which aspects of the situation are left unsaid by framing the problem in this particular way? Could the policy have targeted other problem representations? |
| What effects are produced by this representation of the problem? | Which discursive, subjectification and lived effects are produced by the policy? |
| How/where is this representation of the problem produced, disseminated and defended? How could it be questioned, disrupted and replaced? | How did the problem representation gain legitimacy? Through which mechanisms does it reach its audience? Are there actors challenging the problem representation? |

The three analyzed bills rely on many of the same problem representations and assumptions. To avoid repetitions I will, therefore, reference previous answers to the WPR questions in the analysis of the second and third bill. This will provide the space to analyze those problem representations that are not present in the others.

The WPR method alone will not answer this thesis' research questions. Using it allows me to uncover the problem representations of the chosen bills, which assumptions they are built upon, which reality they are seeking to construct, and how domestic actors, namely parliament

parties, influence these problem representations. Based on this data, I will be able to understand, firstly, what strategy is being used, and, secondly, I will be able to explore how Germany is presenting itself through this strategy. Using constructivism and the NNB concept will enable me to introduce the aspect of identity to this analysis. The NNB concept will allow me to explore the tensions identified in Germany's policy strategy through the WPR analysis from a branding perspective and theorize about the impact of these on the strategy's effectiveness. Lastly, constructivist theory will allow me to explore the origins of these tensions and their potential future implications.

Data Sources

In order to conduct a WPR analysis, Bacchi (2009) recommends using legislative as well as related texts, such as "parliamentary debates, ministerial pronouncements, related government reports and media statements" (p. 20). Therefore, this analysis is based on official legislative texts published by the German government. Legislative proposals detailing the reasoning behind bills will act as the foundation for exploring their problem representations. Plenary debates will also be used for this purpose and to study the roles of different parliamentary parties. Additionally, I utilize official informational websites that summarize and explain policies, like those of the European Commission, as well as those published by German ministries. German media articles and statements by pro-asylum civil society organizations like PROASYL are used to contextualize the policies. I also conducted bibliographic research on academic articles to provide the theoretical and historical context in which to place this analysis.

I have used multiple sources to get an overview of the asylum legislation enacted since 2022. Primarily, I used the *Bundesgesetzblatt*, the official federal online database for announced bills (Bundesanzeiger, n.d.; Bundesministerium der Justiz & Bundesamt für Justiz, n.d.). I also used the search engine provided by the Interior Ministry to search for all migration-related reports of the current legislation period (Bundesministerium des Innern und für Heimat, n.d.b). To find all documents, including legislative proposals and plenary protocols, I employed the document section of the German parliament's website (Deutscher Bundestag, n.d.). I collected information in June and July of 2024 and will, therefore, not include any decisions, regulations, bills, or updates after the 12th of July.

Data Selection

As explained previously, this research analyzes German asylum policies from January 2022 to July 2024. The year 2022 marked a significant shift in government. The SPD replaced Merkel's CDU/CSU as the strongest party after 16 years. Two of the three parties in the current government coalition (SPD, BÜNDNIS 90/DIE GRÜNEN, and FDP) had been in government in the previous 16 years (Bundesregierung, n.d.). The SPD has previously been the weaker coalition partner of the CDU/CSU in three legislative periods and the FDP once. The Green Party had last been in the governing coalition from 1998 until 2005. The present coalition has never before governed the country in its current constellation (ibid.). I have not encountered any analysis that specifically marks the transition in government as a significant change in asylum politics. However, the new government has introduced some perceived restrictions in asylum politics under the motto 'a new start for German migration politics'. Due to the need to narrow the focus to fit into the scope of this thesis, I have, therefore, decided only to analyze the new government's strategy. A change in government always brings a change in priorities, and it seems like a natural time to start this analysis. This does not imply that the previous government did not introduce or opposed restrictive asylum policies.

To further narrow the focus, this research is conducted on the national level of analysis and, therefore, only takes into consideration policies decided on by the national government. I have chosen to do this even though Germany has a federal system that allows the different states a degree of autonomy in their asylum politics. I will consider the roles of the different parliamentary parties, treated as unitary actors, in the implementations of the different bills based on the national parliament's plenary debates. Apart from the governing parties, this means exploring the standpoints of the opposition parties CDU/CSU, AfD, and the Left Party (Die Linke). In 2023, the Left Party faction of the parliament was disbanded due to the exit of multiple politicians to form a new party, the *Bündnis Sahra Wagenknecht* (BSW). Since the beginning of 2024, both the Left Party and the BSW have been recognized as 'groups' within the parliament (Deutscher Bundestag, 2024a). Because the BSW is so young, only one short speech was found in the analyzed material. Thus, based on a lack of data, the BSW is mostly excluded from the analysis.

This thesis does not provide the space to conduct a WPR analysis of all asylum policies decided on since 2022. Therefore, I have chosen three policies that will be examined closely: the Act

on the Acceleration of Asylum Court Proceedings and Asylum Procedures, the Act to Improve Repatriation, and the *Bezahlkarte*. In contrast to the other two Acts, the *Bezahlkarte* is only one policy introduced as part of a larger legislation (Gesetz zur Anpassung von Datenübermittlungsvorschriften im Ausländer- und Sozialrecht, 2024). However, the measure was included in this bill only in the second legislative proposal and had little to do with its overarching aim to establish new guidelines for the storing and sharing of asylum seekers' data. The *Bezahlkarte* was added in a so-called 'omnibus procedure' (Deutscher Bundestag, 2024b), a tactic in which several policies are combined in a single legislation, which can then be voted through as one. Thus, it can be seen as a separate policy with distinctive goals and problem representations and will be treated as such.

Of course, more immigration bills and regulations have been enacted since 2022. However, I have chosen these three as I think that they will provide the most insights into the problem representations of the new German government. They are all primarily targeted at asylum seekers and, on surface-level consideration, introduce both direct and indirect deterrence measures. The latter is important since this thesis aims to gain an in-depth understanding of the actual strategy behind the perceived restrictive turn of Germany's asylum politics and explore the role of the country's humanitarian identity in it. I will examine the rest of the legislative period's immigration bills superficially in the analysis to provide a context for the three chosen bills. I will not include those legislations concerning Ukrainian refugees since they have gained access to the territory based on a different legal framework than asylum seekers and have also been moved to be included in the general Code of Social Law (SGB II/XII) rather than the Asylum Seekers Benefits Act.

Even the three bills selected are too complex to analyze all of their policies. Especially the first two contain a multitude of measures and an in-depth analysis of them all would go beyond this thesis's scope. Therefore, I have chosen to analyze the main aspects of multiple bills instead of the entirety of a single one. I have done this to provide a better insight into the government's general strategy, which is often only visible over multiple years. Thus, I have chosen to analyze a bill from late 2022, a bill from early 2024, and a policy decided on in mid-2024. I believe that gaining an understanding of the continuations among these three sources will help me to better answer the research questions than looking at only one bill in great detail.

Since the NNB concept relies on the use of branding techniques like informational materials and campaigns, I will also provide a brief exploration of Germany's use of such techniques in

the analysis. However, since the primary focus of this thesis is the role of identity, this will not take a lead role. Rather, it provides more examples to illustrate the impact of Germany's identity on its policy strategy.

4.3 Limitations and Biases

As with all research, this thesis is limited in its scope. I cannot provide an in-depth analysis of all asylum policies since 2022. Therefore, I cannot provide a fully comprehensive insight into Germany's asylum strategy. The strategy identified in these three bills might not be mirrored in the rest of the asylum policies. To somewhat counteract this limitation, I will briefly consider the measures of the other asylum policies enacted by the new government since 2022 in the analysis to see if they fit into the strategy identified by this thesis. However, such a superficial exploration cannot provide the same reliability as a detailed analysis could. Furthermore, as Bacchi (2009) states, policies can be very contradicting. They are the outcome of negotiations between multiple parties. Even within the governing coalition, opinions vary widely. Therefore, a conscious policy strategy might not even exist. Nevertheless, this thesis provides a starting point that can be used to further dive into the complexities of the German asylum policy strategy. Additionally, this research is only able to briefly touch on the role of productivity in Germany's asylum politics strategy. While undoubtedly important, an in-depth analysis of this topic calls for a differently focused approach.

Additionally, Germany's federal system further diversifies the strategies and approaches within the country. Only focusing on a national level of analysis creates the risk of missing out on possibly essential domestic policies and strategies. However, this does not negate the importance of understanding the general direction in which the country is moving, as it is one of the most influential countries in the EU. Moreover, of course, no generalized statement can be made from the outcomes of this research. This is not the goal of this case study, which is meant to give an insight into Germany specifically. Due to the limitations of this research, I am also not able to conduct a more in-depth analysis of the CEAS, its recent Migration Pact and Germany's role in it. This is undoubtedly crucial information to gain a better understanding of the EU's impact on Germany's strategy. Thus, this thesis will identify trends in German politics that can act as a starting point for future research.

Furthermore, this thesis can be argued to take a narrow theoretical approach. Concentrating solely on NNB instead of other, more common, relevant theories like the securitization theory, limits the analysis. However, this was a conscious decision. NNB is an interesting and possibly significant concept for the asylum politics of the EU. Denmark's hard-line, anti-asylum branding stands in direct opposition to the EU's identity and, considering general European trends does not appear to be an outlier. Therefore, the concept is potentially important for EU politics, especially if this is a practice adopted by other member states in the future. Thus, the analysis of German policies strictly from an NNB perspective is limiting in some ways. However, it provides a perspective that the other theories in this field cannot.

Lastly, as mentioned in the section above, I have chosen to analyze three bills perceived as restrictive. This choice can potentially create bias and hinder a full understanding of the policy strategy by leaving out those bills with other policy outcomes. Especially since I will be choosing which aspects of each bill I define as the main ones and thus will already decide before the analysis which measures are relevant. However, this thesis aims to identify the actual strategy behind the perceived restrictiveness of the 'new start for German migration politics' and to explore the role that the country's humanitarian identity plays in it. Thus, an analysis of exactly these bills is essential. Acknowledging these biases, I strive to take a balanced approach to this topic, placing the analyzed policies in a wider context to get a fuller picture of the government's strategy.

5. WPR Analysis

In this chapter, I will dive into a WPR analysis of the three chosen bills: The Act on the Acceleration of Asylum Court Proceedings and Asylum Procedures, the Act to Improve Repatriation, and the *Bezahlkarte*. Each bill will be analyzed using Bacchi's six WPR questions. At the end of the chapter, I will present a summary of the chapter's most important findings, which will then be used as data for the final analysis chapter.

5.1 The Act on the Acceleration of Asylum Court Proceedings and Asylum Procedures

What is the problem represented to be?

The Act on the Acceleration of Asylum Court Proceedings and Asylum Procedures (also ‘Asylum Proceedings Acceleration Act’) proposed by the coalition government and ratified in 2022 aimed to accelerate asylum court and general asylum case proceedings (Drucksache, 20/4327, 2022). The law was accepted by the coalition against the votes of the opposition parties (Plenarprotokoll, 20/74, 2022). It sought to accelerate proceedings by standardizing case law, simplifying legal practices, and by eliminating the misuse of delay tactics during asylum court procedures (Gesetz zur Beschleunigung der Asylgerichtsverfahren und Asylverfahren, 2022). Additionally, it states that in the case of a denied asylum application, the Federal Office for Migration and Refugees (BAMF) does not have to assess the prohibition of deportation based on other human rights laws (non-refoulement) if this has already been done in a previous decision. The Act also introduced the funding of authority independent asylum counseling and removed the cancellation and withdrawal clause stipulating an automatic review of all positive asylum decisions after three years (ibid.).

The Act’s legislative proposal primarily problematized the long duration of asylum court proceedings following a rejected asylum applicant’s complaint to the administrative courts. According to the proposal, the standard proceeding time amounted to 26,5 months in 2022, overwhelming the courts and slowing down the asylum procedure (Drucksache, 20/4327, 2022). One of the causes of this problem is represented as the ‘complicated’ court proceedings. Through a simplification of the legal practices, the Act sought to accelerate and thus relieve the administrative courts, all while sustaining Germany’s humanitarian position and the rule of law (Plenarprotokoll, 20/66, 2022, pp. 7688-7689). The fact that these practices have been changed in the name of the rule of law implies that they are not deemed vital for the workings of the asylum system. Rather, they are presented as complications that stand in the way of the just implementation of this system. The targeted practices were primarily those that involved the collaboration of plaintiffs or third parties. These included the common practice of in-person hearings or the need to postpone hearings until all parties, including the plaintiffs’ counsel, are present. Also targeted were time-consuming mandatory bureaucratic practices of the courts and the BAMF, such as the inspection of the deportation ban or the cancellation and withdrawal clause. These practices were thus represented as a problem, causing the extended duration of the court proceedings and overall overwhelmed asylum structures, but also as superfluous for a fair asylum system.

Additionally, asylum seekers themselves were represented as the problem. Firstly, the number of asylum seekers arriving in Germany was problematized. In the legislative proposal, the long

duration of the current asylum court procedures was argued to lead back to the increase in asylum applications and subsequent complaints during the 2015 and 2016 ‘refugee crisis’, many of which were still pending at the end of 2022 (Drucksache, 20/4327, 2022). In general, the problematization of a slow asylum procedure is based on the necessity to rapidly distinguish those asylum seekers who need protection from those who do not, to facilitate the return of the latter, and decrease the number of asylum seekers in the country. The FDP and the SPD stated this in a plenary discussion (Plenarprotokoll, 20/66, 2022, pp. 7688-7689).

Secondly, by introducing measures to prevent the plaintiff from delaying court proceedings, the Asylum Proceedings Acceleration Act suggested that this is a common issue. This implies that asylum seekers frequently misuse judicial tools to delay or prevent a final negative decision. Thus, the Act portrayed asylum seekers as ‘false’ refugees who are trying to cheat their way into staying in Germany. Further, as most simplified legal practices concern third parties, namely the asylum seekers and their representatives, the Act also suggests that it is these parties, rather than the courts, that cause extended proceeding durations.

Thirdly, the Act also presented asylum seekers as the cause for the high number of complaints. In 2022, over 30% of all persons receiving a negative asylum decision complained (Drucksache, 20/4327, 2022, p. 1). As expressed by the Green Party during the plenary debate, the independent asylum counseling is thus aimed at increasing the quality of asylum decisions (Plenarprotokoll, 20/66, 2022, p. 7744). At first glance, this suggests that the asylum decisions are of low quality and perhaps the asylum procedure is faulty. However, in the same speech, the solution for an increase in quality is named as the improvement of knowledge among asylum seekers. The independent asylum counseling aims to educate asylum seekers on the asylum procedure to increase their acceptance of and trust in the asylum decisions in an attempt to lower the number of complaints (Plenarprotokoll, 20/66, 2022, p. 7744). Therefore, although the independent asylum counseling is a measure welcomed by pro-asylum organizations, the measure solely problematizes asylum seekers.

What presuppositions or assumptions underlie the representations of the problem?

As Bacchi (2009) points out, all policies and problem representations are based on constructed knowledge. In order to engage with policies, one must critically examine the problem representations’ underlying assumptions. I have identified multiple presuppositions

underpinning the Asylum Proceedings Acceleration Act, the first being the unwavering belief in the rule of law.

The Act's problem representations focus on the complexity of the legal practices, the number of asylum seekers in Germany, their delay tactics, as well as their lack of knowledge and trust. What is not questioned is the fairness and the legitimacy of the BAMF, the administrative courts, and the asylum system in general. The SPD stated in a plenary discussion that asylum law's purpose is not charity, and not showing toughness (Plenarprotokoll, 20/66, 2022, p. 7689). Rather, it is about implementing rights swiftly, fairly, and in accordance with the rule of law (ibid.). Thus, the basis of these problem representations is the assumption that the asylum law and the decisions made based on it are fair and just. The cause of the high number of complaints is identified as asylum seekers' lack of knowledge rather than erroneous asylum decisions.

Furthermore, the problem representation of the complicated court proceedings reveals the assumption that the German parliament always follows the rule of law. Pro-asylum organizations have criticized the simplified legal practices as placing efficiency over the respect for asylum seekers' rights (PROASYL, 2022). However, due to the fundamental assumption that in a democratic parliament, like the German one, all decisions taken follow the rule of law, this criticism is rejected. The Asylum Proceedings Acceleration Act is the product of such a parliament and, thus, any changes it introduces in German asylum law are in accordance with the rule of law.

However, it is important to note that asylum law in Germany and internationally cannot be simply accepted as an objective piece of legislation. It was established based on historical experiences and a Western- and nation-centric view of the world (Malkki, 1995). It is based on an insider vs. outsider binary, which assumes that there are those persons who have the right to a territory and those who do not (Malkki, 1992). Within this view, governments are positioned as the legitimate authority over the nation, possessing the right to distinguish between insider and outsider.

To make that decision, the German government is utilizing a 'good' vs. 'bad' or 'deserving' vs. 'undeserving' asylum seeker binary. While there is a general acceptance that 'deserving' asylum seekers can be accepted as insiders to a certain extent, the need for asylum processes illustrates the assumption that these need to be separated from the 'undeserving' which cannot be accepted (Clark et al., 2024, pp. 150-153). This binary is often combined with the idea of

‘real’ refugees vs. irregular immigrants. Those deserving asylum are understood or referred to as refugees. They are positioned in a hierarchy above the ‘bad’, ‘undeserving’, irregular immigrants, which have not experienced such persecution. The ‘bad’ asylum seeker has no right to stay in the host country and needs to be removed. This binary is also intertwined with the agent vs. victim binary. The ‘good’ asylum seeker is portrayed as a victim who has fled violence and oppression and requires assistance. The ‘bad’ asylum seeker, on the other hand, is understood as someone who has enacted agency in order to migrate (ibid.).

The ‘good’ vs. ‘bad’ asylum seeker binary is central to the Asylum Proceedings Acceleration Act. It is the foundation for the need for an asylum procedure. Furthermore, the image of the ‘bad’ asylum seeker is central to the problematization of asylum seekers. In this Act, asylum seekers are almost exclusively discussed in terms of this category. They are portrayed as persons not ‘deserving’ protection and are, therefore, illegal immigrants misusing the asylum system.

The ‘good’ vs. ‘bad’ binary is also intertwined with the assumption that asylum seekers are overwhelming German authorities and thus threatening the country. By referencing the ‘refugee crisis’ when discussing overwhelmed structures, the legislative proposal links the problem of the long court proceedings to the general discourse of ‘masses’ of asylum seekers established during that time. The Interior Ministry notes in a statement on its website that the importance of the Act lies in its function to identify those persons who do not have the right to stay and encourage them to leave in order to be able to provide the right to stay to those which need protection from war and terror (Bundesministerium des Innern und für Heimat, 2023a). Thus, the Act implies that German structures are endangered by the amount of ‘undeserving’ asylum seekers in the country. Only if these are removed can the country fulfill its humanitarian responsibility to provide protection to the ‘deserving’ ones. However, within this problem representation, the category of the ‘bad’ asylum seeker is pushed to the front, while the category of the ‘good’ asylum seeker remains theoretical.

How has this representation of the ‘problem’ come about?

In her third question, Bacchi (2009) urges to examine the development behind the problem representation by providing genealogies for relevant themes. While trust in the rule of law is foundational for this problem representation and undeniably very interesting, in line with the research goal of this thesis, I will focus on the genealogy of the ‘good’ vs. ‘bad’ asylum seeker

binary. To start mapping the history of the ‘good’ vs. ‘bad’ asylum seeker binary, I will begin with the creation of the category of the refugee itself. While people have always been on the move and sought protection and refuge, the political subjectivity of the refugee we speak of today only emerged in the last 100 years. Malkki (1995) argues that the political category of the refugee was officially institutionalized during the post-WWII era through the 1951 Refugee Convention. The refugee was understood as a European political refugee, displaced by WWII or fleeing its aftershocks in the East. As such, this subject carried significant ideological value during the Cold War, exemplifying Western ideologies by leaving the communist East for the capitalist West (Johnson, 2011).

The Eurocentricity embodied in the refugee figure was challenged in the 1960s when decolonization, civil wars, and conflicts in the Global South started generating refugee flows towards Europe (Johnson, 2011, pp. 1021-1022). As part of the Cold War’s global scale, these new refugees, too, were utilized to embody either the moral superiority of the superpowers or the inhumane politics of their enemy. However, the figure of the refugee from the Global South was no longer a political individual but was rather understood in terms of “mass movements, economic opportunism and threats to security” (Johnson, 2011, p. 1023). With the end of the Cold War, this new figure became entrenched as the refugee shifted from a political tool to a security problem. This went hand in hand with an economic crisis during which economic uncertainty and xenophobia coincided to increase the suspicion towards asylum seekers’ motives (Johnson, 2011). In opposition to the deserving post-WWII political refugees, these new refugees from the Global South were seen as making deliberate economic choices to take advantage of European resources. Thus, while political asylum was declining and asylum seekers from the Global South were met with general mistrust, a humanitarian form of asylum was on the rise in Europe (Fassin, 2005). Those rare individuals in need of international protection now needed to set themselves apart from the masses of (illegal) economic migrants by proving their suffering.

Therefore, the process of distinguishing ‘bad’ and ‘good’ asylum seekers became increasingly politicized. The 2015 ‘refugee crisis’ and the narrative of Europe’s collapse in the face of an overstrain on its resources and values led to a deepening of this binary. The ‘good’ asylum seeker, a victim who is fleeing war, violence, and oppression, is set in contrast to the ‘bad’ asylum seeker, an agent pursuing improved economic opportunities and taking advantage of the refugee regime to get to these. Therefore, it is the ‘bad’ asylum seekers that are endangering Europe, and they have to be denied access. As such, asylum law and the asylum process

emerged as the only tools to differentiate the two, and the state as the only body with the authority to make this distinction. In the setting of the ‘refugee crisis’ the large numbers of asylum seekers became synonymous with the ‘bad’ asylum seeker. While there are individuals who are referenced as ‘deserving’ asylum seekers, as a group, asylum seekers are understood as economic opportunists and illegal immigrants (Fassin, 2005).

What is left unproblematic in this problem representation? Where are the silences? Can the ‘problem’ be thought about differently?

The Asylum Proceedings Acceleration Act represents complicated court proceedings and asylum seekers as the cause of the long duration of asylum court proceedings. However, as pointed out by the *Republikanischer Anwältinnen- und Anwaltverein* (association of the republic’s lawyers) in the Act’s public hearing, 40% of the complaints lodged with the administrative courts are successful, suggesting that mistakes are being made in the original asylum procedures (Protokoll-Nr. 20/23, 2022, p. 5). Thus, it could also be argued that the long duration of the proceedings is caused by mistakes made by the BAMF during the asylum procedure, which warrants complaints and thus extends the process. Nevertheless, the Act does not identify a problem with the quality of its work. These silences can be traced back to the previously mentioned trust in the rule of law. The asylum law and asylum procedures as tools to distinguish the ‘good’ asylum seeker from the ‘bad’ one are not being questioned but are perceived as one of the foundations of the system of international protection. To think about the problems differently would involve questioning these hegemonic discourses, providing the legitimization of the refugee regime.

What effects are produced by this representation of the problem?

The discursive effects are the “limits on what can be thought or said” produced by a problem representation (Bacchi, 2009, p. 69). In the case of the Asylum Proceedings Acceleration Act, the problem representations mostly reproduce the discourse about ‘good’ vs. ‘bad’ asylum seekers and thus continue to limit the narrative to only highlight those asylum seekers framed as irregular immigrants. As such, it becomes difficult to see or value the individual asylum seeker, lost in the discourse of the uncontrollable ‘masses’. It also produces the narrative that the government needs to effectively weed out and return the ‘bad’ asylum seekers in order to

safeguard the German structures and provide protection for the ‘deserving’ ones. By focusing on the necessity of fast court proceedings to protect the ‘deserving’ asylum seekers, the Act sets Germany in the position of an overwhelmed humanitarian state instead of the state restricting judicial rights. This is further emphasized by suggesting that all decisions taken by the parliament are in adherence with the rule of law.

At the same time, this Act also breaks the narrative that the state is the only legitimate authority in the asylum determination process. While the validity and legitimacy of the state in these matters are usually presented as self-evident, the Asylum Proceedings Acceleration Act loosens this assumption. Although the Act finds the problem of the high number of court proceedings in asylum seekers themselves, parts of the proposed solutions are created as checks and balances for the state. The introduction of independent asylum counseling opens up the narrative for the possibility that the state cannot always execute the asylum determination process in a qualitative and fast manner and needs to be checked by external organs.

“Subjectification effects are those that accompany the ways in which subjects are constituted within particular problem representations” (Bacchi, 2009, p. 69). The Asylum Proceedings Acceleration Act reproduces asylum seekers as persons standing outside of German society and as a strain on the country’s resources, reinforcing the image perpetuated since 2015. The Act highlights persons that have received a negative asylum decision and constitutes them at the same time as persons lacking knowledge but also as persons attempting to ‘cheat their way in’. Thus, asylum seekers are constructed as agents, using their agency to take advantage of German resources and systems. This subjectification pits the insiders, the German citizens, against the outsiders, the asylum seekers, but it also divides this outside group in itself. Long asylum court proceedings are constituted as interfering with the rights of ‘real’ refugees, which reinforces the idea of asylum seekers as irregular immigrants. The asylum court proceedings are being shifted from a legitimate judicial tool to a pathway exploited by irregular immigrants, another way in which asylum seekers’ agency is problematized.

As many critics of the Asylum Proceedings Acceleration Act like PROASYL (2022) pointed out, this Act has significant lived effects for asylum seekers, specifically for their rights during the asylum determination process. In an attempt to simplify legal structures, the right to legal counsel and individual personal hearings were restricted, decreasing the quality of asylum hearings and decisions. Furthermore, the loosening of the examination of deportation bans for each asylum seeker could lead to deportations in which the life of a person is put in danger

(ibid.). However, the same simplification process also introduced positive effects for asylum seekers, removing automatic reviews of positive asylum decisions without cause. Furthermore, due to the firm belief in the legitimacy of the asylum system, which led to the blame for high complaint numbers being solely placed on asylum seekers, the Act introduced an independent asylum counseling. A measure considered to be very liberal by opposition parties (Plenarprotokoll, 20/66, 2022, pp. 7687-7690). In the context of the Act's stated goal, media outlets have reported that the length of the asylum court proceedings does not seem to have decreased as a result of the Act ("Neues Gesetz beschleunigt Asylverfahren offenbar nur geringfügig," 2023).

How/ where is this representation of the problem produced, disseminated and defended? How could it be questioned, disrupted and replaced?

As discussed in the literature chapter and the previous sections, the problem representation of the asylum seeker is dominant not just in Germany but in the whole of the EU. The Asylum Proceedings Acceleration Act is only one part of a larger narrative of insiders vs. outsiders and 'good' vs. 'bad' asylum seekers. This problem representation has primarily been established by the securitization of asylum seekers through politicians as well as the media's links between irregular migration and threats to the EU (Asderaki & Markozani, 2021). As such, the Asylum Proceedings Acceleration Act mostly builds on a discourse already popular in Germany.

During the plenary debate, almost all parties referenced these problem representations in one way or another. Even though the opposition parties voted against the Act, the AfD and the CDU/CSU also reproduced them (Plenarprotokoll, 20/66, 2022, pp. 7687-7690). Both parties emphasized the threatening number of asylum applications and referenced overwhelmed structures as an issue. However, the AfD sets all asylum migration equal to illegal immigration endangering the social state and health system (p. 7687). The CDU/CSU, like the Act itself, sees the need to reduce asylum migration to provide help for those who deserve it (p. 7690). However, both parties voted against the Act because they thought it to be too liberal. They see the need for further restrictions, either by a full asylum stop or an extension of the safe countries of origin respectively (Plenarprotokoll, 20/66, 2022, pp. 7687-7690). The coalition parties all voted for the Act and, thus, endorsed the problem representations. The SPD and the FDP emphasized the need to relieve the German structures to provide protection to those that 'deserve' it by identifying those that do not and returning them (ibid.).

The Green Party set itself apart by, while arguing for the Act, also problematizing the suffering asylum seekers have to endure (Plenarprotokoll, 20/66, 2022, p. 7744). In the plenary discussion, the Green Party stated to have been the primary driver behind the independent asylum counseling and the removal of the cancellation and withdrawal clause (ibid.). Therefore, with this speech, the party both defended the Act's problem representation by arguing for its implementation but also specifically emphasized the two measures that stand in contradiction to the overall restrictive policy outcomes.

The problem representations were more obviously challenged elsewhere. The Left Party did so in the plenary debate. They called out the Act for placing efficiency above the quality of asylum decisions as well as restricting asylum seekers' rights by sustaining a special law for asylum seekers, which would be illegal if applied elsewhere (Plenarprotokoll, 20/66, 2022, pp. 7744-7745). Many German pro-asylum organizations, like PROASYL, also challenge the problematization of asylum seekers and the problem representation of complex structures safeguarding asylum seekers' rights as 'complicated', through their political and activist work. A big part of this is done by asylum seekers themselves, through organizations, or through wider protests. The use of the asylum decision complaint procedure can be seen as a challenge to the narrative of the executive as the authority over outsiders vs. insiders in itself.

5.2 The Act to Improve Repatriation

What is the problem represented to be?

In January 2024, the Act to Improve Repatriation introduced a variety of measures that aimed to relieve the BAMF and the municipalities, mainly through increasing the number of repatriations and deportations as well as through restricting and decreasing human smuggling (Gesetz zur Verbesserung der Rückführung, 2024). For this purpose, the Act allowed for the search of common areas as well as rooms of third parties in shared accommodations to apprehend a deportee, removed the need to inform a detained person of their impending deportation, and increased time limits for deportation detentions, now also possible for individuals whose asylum determination is still in progress. It increased the waiting time for welfare benefits, expanded the definition of human smuggling, and increased its penalty (ibid.). Further, the Act improved the access to the labor market for asylum seekers and persons with

a *Duldung*². It also continued the access to a *Duldung* for *Ausreisepflichtige* (individuals obligated to leave the country, like rejected asylum seekers) who are in employment and have entered Germany before the 31st of December 2022, or are in education, have a passport and are able to secure their own livelihood (ibid.).

The Act represents the low number of deportations in contrast to the high number of asylum requests as the problem leading to overwhelmed municipalities and ministries (Drucksache, 20/9463, 2023, p. 1). The Interior Minister Nancy Faeser, who led this legislative proposal, attributed low deportation numbers to rejected asylum seekers who go underground, misuse legislation, or misrepresent their identities during the asylum process (Plenarprotokoll, 20/141, 2023, p. 17768). Time-intensive bureaucratic processes are also represented as a problem (Plenarprotokoll, 20/141, 2023, p. 17769). As such, the Act seeks to simplify previous repatriation and deportation regulations, suggesting that these have hindered or prolonged the process in the past. Faeser states that the strain on the authorities prevents Germany from executing its responsibility of providing protection for those who ‘deserve’ it (ibid.). As these high numbers of asylum seekers are set in opposition to those individuals who ‘deserve’ protection, it is suggested that they are not refugees but rather illegal immigrants. Furthermore, it is suggested that rejected asylum seekers commonly use illegal measures to evade their deportation. Therefore, the ‘masses’ of asylum seekers understood as illegal immigrants are argued to be overwhelming the German structures and causing a lack of protection for the few ‘real’ refugees.

The improved and continued access to the labor market for *Ausreisepflichtige*, in contrast, suggests a different solution to the same problem. Again, overwhelmed structures are problematized. However, the solution lies in granting *Ausreisepflichtige* access to the labor market, enabling them to support themselves and reduce reliance on welfare benefits, thereby alleviating the migratory pressure on authorities. The FDP declared this in the Act’s plenary discussion (Plenarprotokoll, 20/141, 2023, pp. 17773-17774). Further, it was stated by the SPD that this would also contribute to solving the labor shortage Germany is experiencing (p. 17776). The Green Party took a different approach, arguing that this would provide more pathways to residency, problematizing the current lack of the same (pp. 17770-17771). Thus, in contradiction to the other problem representations where extended asylum seekers’ rights

² A *Duldung* (toleration) is a temporary suspension of deportation. Persons with a *Duldung* do not have a right to residency but rather are in a liminal space where they are not able to be deported but also do not have the right to stay (PROASYL, 2024b).

have been framed as the problem, here, their extended labor rights are seen as the solution to the same problem.

In addition to the overwhelmed structures, the Act problematizes criminal asylum seekers. In her speech, as well as in the legislative proposal, Faeser specifically focuses on the deportation of those *Ausreisepflichtige* involved with organized crime, particularly Islamist terrorism, introducing it as grounds for expulsion with an indefinite ban on entry and residence in the EU (Plenarprotokoll, 20/141, 2023, p. 17768). Although this measure is not aimed exclusively at asylum seekers, the particular attention paid to this fairly small part of the Act adds to the problematization of the asylum seeker, suggesting that there is a substantial part of asylum seekers who pose a danger to the country.

Furthermore, the Act also presents human smuggling as a problem, arguing it to be one of the drivers of irregular migration and aiming to criminalize the practice further. Whereas in other problem representations asylum seekers were portrayed as the problem, here they are portrayed as the victims of profit-greedy smugglers taking advantage of their ignorance (Deutscher Drucksache, 20/9463, 2023, p. 40). The Act to Improve Repatriation even goes beyond former smuggling definitions, including assisted border crossings over land routes *without* a financial return when done multiple times and for multiple migrants. Therefore, it is problematizing acts that could previously be categorized as humanitarian work.

What presuppositions or assumptions underlie the representations of the problem?

Like in the previously analyzed Act, the Act to Improve Repatriation also relies on the distinction between the ‘deserving’ and the ‘non-deserving’ asylum seeker. It justifies the deportation of the ‘non-deserving’ while still portraying Germany as a country committed to humanitarianism and international protection. ‘Bad’ asylum seekers are portrayed as a danger to this humanitarianism by jeopardizing the protection of the ‘good’ ones. This danger is not only coming from rejected asylum seekers evading deportation but also from the generally high number of asylum applications. Therefore, ‘bad’ asylum seekers are not only understood as those who have been rejected but generally all asylum seekers. Through this binary, the Act even legitimizes the restriction of certain constitutional rights to improve the efficiency of deportations, like the right of the inviolability of the home (PROASYL, 2023). As such, ‘bad’ asylum seekers are excluded from society socially, legally, and physically. Since the ‘good’ vs. ‘bad’ binary has been discussed in the previous section, I will not go into further detail here.

I will also not consider the simplification of bureaucratic processes to aid deportation. This problem representation shows similarities to the simplification of legal practices explored above. The changes are accepted as adhering to the rule of law, although they have been harshly criticized as restricting asylum seekers' rights (PROASYL, 2023). Since the assumptions behind such a problem representation have already been examined, I will instead focus on other underlying assumptions in this legislation.

While the Asylum Proceedings Acceleration Act distinguished between 'good' and 'bad' asylum seekers, it primarily focused on the 'bad' asylum seeker as someone deemed 'undeserving' by the asylum procedure instead of a 'real' refugee fleeing violence and persecution. The Act to Improve Repatriation, however, extends the notion of the 'bad' asylum seekers to criminals. The legislative proposal discusses this crime specifically in terms of organized, politically motivated crime (Drucksache, 20/9463, 2023, p. 42). In the plenary discussion, Faeser narrows it down further and states that these measures are primarily directed at Islamist terrorists (Plenarprotokoll, 20/141, 2023, p. 17768). The self-evident way in which organized political crime is connected to asylum seekers displays an underlying assumption that they can be equated to potential terrorists. The connection between asylum seekers and Islamist terrorism stems from the construction of asylum seekers as primarily Muslim persons from the Middle East. The Islamophobia at the core of this Act constructs Islam as a danger to European values and democracy and automatically connects Islam with potential terrorism. The connection between asylum seekers and crime is also another way in which their agency is problematized. This discourse only allows asylum seekers agency in terms of crime, in this case, terrorism.

These narratives assume that asylum seekers are illegal immigrants who threaten Germany and need to be removed. However, this Act also includes an almost contradictory assumption. By improving access to the labor market, it is suggested that when asylum seekers, even those who have been rejected, have agency in terms of productivity (employment or education), they contribute to the solution of the problems rather than their cause. 'Productive' asylum seekers are being given temporary residency and are thus deemed 'deserving' of being included on the 'inside' to a certain extent. Thus, productivity allows asylum seekers to leave the 'bad' category. However, they are not included in the 'good' asylum seeker category, as they are not granted refugee status. Instead, the binary is challenged as a third category is introduced, that of the 'productive' asylum seeker. The centrality of productivity can be traced back to the beginning

of the ‘refugee crisis’ when it played a significant role in the liberal policies of the German welcome culture.

Another key concept used in this Act is human smuggling. Smuggling is understood as a driver of irregular migration and a crime. It is put in contradiction to benevolent humanitarian aid and is understood as a ruthless and unethical business that places money over human lives (Watson, 2015). Additionally, removing financial incentives as part of the smuggling definition shows an understanding of all unauthorized border crossings as criminal behavior, regardless of the motivation, which contradicts the 1951 Refugee Convention. Categorizing smuggling as inhumane as Faeser does criminalizes all asylum seekers who make use of it. At the same time, it places the asylum seeker in the position of the victim, who is being taken advantage of by the smugglers. The different problem representations in this Act create a tension between the subject of the asylum seeker as a criminal agent endangering Germany, a ‘productive’ agent contributing to society and as a victim of smuggling.

How has this representation of the ‘problem’ come about?

Given that a genealogy of the ‘good’ vs. ‘bad’ asylum seeker is already discussed in the last section, I will not repeat it here. Instead, I will discuss the ways that this Act’s problem representations expand on the category of the ‘bad’ asylum seeker through the aspect of criminality. Therefore, I will examine the genealogy of the concept of smuggling and the subject of the asylum seeker as an Islamist terrorist. Furthermore, I will not investigate the centrality of productivity as a measure of inclusion in society. While being highly interesting, it would derail the focus of this thesis.

Watson (2015) argues that human smuggling has not always been considered a crime in Europe. Stories from persons assisting East Germans to flee to the West are still celebrated as heroic. Especially during Nazi Germany and the Cold War, human smugglers were understood as humanitarian actors risking their lives for the freedom of others (ibid.). Only in 2000, the Protocol Against the Smuggling of Migrants by Land, Sea, and Air codified the movement of persons across international borders against the knowledge of the state and in return for financial compensation as a crime (ibid.). Watson (2015) sees the criminalization of smuggling as an attempt to regain control over the ambiguity created by the 1951 Refugee Convention. The Convention declared that states may not penalize refugees for illegal border crossings. All persons who cross a border without authorization and subsequently seek asylum must first go

through the asylum determination process to establish if they can or cannot be sanctioned. Thus, the convention removed part of states' control over their borders. In an attempt to regain this control, the tool of movement was criminalized rather than the border crossing itself. Consequently, the complexities of the smuggling economy were reduced to profit-driven inhumane practices driving irregular migration and causing mass deaths of migrants en route (ibid.).

The removal of the profit aspect of smuggling further leads to a definition solely based on the unauthorized manner of the border crossing (Watson, 2015, p. 45). As such, the humanitarian aspect of smuggling is being erased, giving way to an oversimplified worldview in which all persons crossing borders with the help of smugglers and the smugglers themselves can be criminalized (ibid.) Watson (2015) further posits that this plays into a victim vs. agent binary in which only impassive, agency-less refugees waiting for resettlement deserve protection, while those who actively decide to migrate with the help of smugglers automatically are categorized as 'bad' asylum seekers.

Now, I turn to the genealogy of the asylum seeker as an Islamist terrorist. I will pick up where the genealogy of the 'good' vs. 'bad' asylum seeker of the last section left off. As Galantino (2022) shows, the migration-terrorism nexus was established following the events of 9/11, but was cemented in German discourse with the European terror attacks in 2015 and 2016.

The 2011 Arab Spring and the increased numbers of asylum seekers arriving in the EU from Middle Eastern countries consolidated the image of an asylum seeker as a Muslim person in Germany (Galantino, 2022). These asylum seekers arrived in an already Islamophobic German culture (Kalmar & Shoshan, 2020), which, following the idea of the 'clash of civilizations', believed Islam to be foundationally incompatible with European values of democracy and freedom (Galantino, 2022). Galantino (2022) shows how the taboo of connecting asylum seekers to terrorism during the early humanitarian reaction to the 'refugee crisis' was weakened with media coverage of each European terror attack. By the end of 2016, the media-encouraged fear of Islamist terrorists posing as asylum seekers to cross European borders turned into a general suspicion of all asylum seekers (ibid.). This migration-terrorism nexus has been a constant in German politics and media since 2016, sparking right-wing cries for the exclusion of Islam from German society, as well as right-wing violence against persons racialized as Muslim (ibid.).

What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently?

The Act to Improve Repatriation claims that the German state is overwhelmed by the number of *Ausreisepflichtige* in the country. It reduces this problem to asylum seekers framed as illegal immigrants, who, although obliged to leave the country, go underground or use second asylum applications or other legislative tools in order to circumvent deportation. Therefore, the Act aims to make deportations more effective. However, what the legislative proposal does not discuss is that the majority of *Ausreisepflichtige* (201.000 of 251.000 in October 2023) live in Germany with a *Duldung*, meaning that it is not possible to deport them due to asylum-unrelated human rights concerns (PROASYL, 2024a). The Green Party also pointed out this out in the plenary discussion (Plenardiskussion, 20/141, 2023, p. 17770).

Given the high number of non-deportable persons with a *Duldung*, an alternative problem representation is that the asylum process is not able to encompass all those who are protected under human rights law. Those who receive a *Duldung* instead of refugee status are unable to successfully integrate into society due to their uncertain status and are dependent on regular permit renewals and government support, which causes an overstrain of the German institutions (PROASYL, 2024b). An alternative problem representation could be the insufficient refugee definition, which is unable to provide protection in this day and age, as well as the insufficient protection provided by a *Duldung*. The introduction of labor market access for persons with a *Duldung* seems to be a measure oriented towards such a problem representation.

Additionally, the focus on the threat of Islamist terror and crime leaves out the fact that no data backs up the claims that asylum seekers pose an increased risk of crime (Galantino, 2022). The problem could be reframed to target the growing Islamophobia in Germany, leading to increasing violent attacks and discriminative actions against persons racialized as Muslims (Kalmar & Shoshan, 2020).

Furthermore, the criminalization of smuggling silences the connection between smuggling routes and border control measures. Instead of problematizing smuggling as the cause of migrant deaths, one could frame the restrictiveness of border controls as the cause of more dangerous and risky journeys (Watson, 2015). The Act focuses on smugglers as the drivers of irregular migration and thus conceals the fact that smugglers are only a part of the migrant economy influenced by many factors.

What effects are produced by this representation of the problem?

As stated in the last section, discursive effects are the limitations on thought created by a problem representation. Similar to the Asylum Proceedings Acceleration Act, the Act to Improve Repatriation strengthens the ‘good’ vs. ‘bad’ asylum seeker binary. The Act is reproducing the narrative of criminal asylum seekers taking advantage of German resources. Particularly, this Act reproduces the image of asylum seekers as agents in the form of potential Islamist terrorists. It limits how we think about asylum seekers, for they cannot be considered neutral, diverse actors with different motivations and histories. However, the Act also produces a contradictory narrative in which asylum seekers in education or employment are understood as benefitting German society. Here, their agency is constructed as positive and the foundation for access to residency. This discourse clashes with the binary produced through other problem representations present in the Act.

Additionally, the Act adds to a narrative of smuggling that simplifies the phenomena of migration so that states cannot be thought about as drivers of smuggling. In contrast to the other problem representation, asylum seekers are put in the position of victims. Thus we are not able to think of asylum seekers as informed agents using smugglers as a tool to reach their destination or of unauthorized border crossings as humanitarian action, supporting asylum seekers in their decision to leave a dangerous place (Galantino, 2022).

In terms of subjectification effects, the Act to Improve Repatriation constitutes asylum seekers both as agents and victims. The migration-terrorism nexus produces the asylum seeker as a possible terrorist, using the cover of refuge to enter Germany. At the same time, through the focus on smugglers as criminal actors, asylum seekers are also constituted as victims who are being taken advantage of. The combination of asylum seekers as criminal actors and victims creates a subjectification in which all action by asylum seekers is constituted as a threat and the only ‘right way’ to act is to wait for an authority to make decisions for and about them. Breaking with this subjectification, asylum seekers are also understood as contributing to society if their agency is used in a ‘productive’ way, in terms of education or employment.

According to PROASYL (2024a), the lived effects of the Act are infringements on asylum seekers’ constitutional rights and detention practices questionable in terms of the rule of law. The detention of persons still in the asylum application process, the violations of the constitutional right of the impunity of the home, as well as the ability of the police to deport persons or put them in detention without previous notice and during night hours, are seen as

some of the most serious infringements (PROASYL, 2023). Further, the narrative of the migration-terrorism nexus has in the past caused an increase in xenophobic and Islamophobic attacks on asylum seekers, refugees, and persons racialized as Muslim, which spiked in 2016 (Galantino, 2022; Kalmar & Shoshan, 2020). Thus the continuation of this narrative is likely to have real-life effects on asylum seekers' safety, as well as their opportunity to be part of the German society without experiencing discrimination. On the other hand, the improved access to the labor market and other employment- or education-based *Duldungen* create additional pathways to residency, even though they do not provide long-term security.

How/ where is this representation of the problem produced, disseminated and defended? How could it be questioned, disrupted and replaced?

Like the Asylum Proceedings Acceleration Act, the Act to Improve Repatriation is part of a larger narrative disseminated by European governments and media outlets. The migration-terrorism nexus was especially influenced by the media (Galantino, 2022), while the criminalization of smuggling is argued to have been produced by European governments to regain control of their borders (Watson, 2015).

This Act, too, was accepted through a majority vote by the coalition parties against the votes of the CSU/CSU and AfD, as well as a few Green Party members. Thus, the coalition members are part of producing and defending the problem representations. Specifically, the FDP and the SPD endorsed the Act in the plenary discussion (Plenardiskussion, 20/141, 2023, pp. 17767-17785). The three parties diverge when defending the increased access to the labor market, where the Green Party disrupts other problem representations. The party also challenges the narrative that increased deportations will relieve the municipalities (ibid.).

The CDU/CSU and AfD both defend and disseminate the Act's problem representations (Plenardiskussion, 20/141, 2023, pp. 17769-17770, 17771-17773). Both parties claim asylum seekers are responsible for the strain on German structures and resources. Specifically the AfD also defends the framing of asylum seekers as criminals (Plenardiskussion, 20/141, 2023, p. 17773). However, both parties see the Act to Improve Repatriation as too liberal, as they question the benefits of employment and education-based *Duldungen* for the German systems and society.

Furthermore, the problem representation is being questioned and disrupted by refugee activist movements, civil society organizations, as well as opposition parties, like the Left Party, which argued strongly against the criminalization of asylum seekers and the infringement of their rights in the Act's plenary discussion (Plenardiskussion, 20/141, 2023, pp. 17774-17775).

5.3 The Bezahlkarte

What is the problem represented to be?

The *Bezahlkarte* was introduced by the *Gesetz zur Anpassung von Datenübermittlungsvorschriften im Ausländer- und Sozialrecht* (2024), the Act on the Adaptation of Data Transmission Regulations in Alien and Social Law (DÜV-AnpassG). The DÜV-AnpassG enshrined the use of the *Bezahlkarte*, a card-based welfare system replacing the previous cash-based system on the national level. However, it left the decision of its implementation and the procedural decisions, such as where the card can be used and how much cash can be withdrawn up to the federal states. The states were already able to implement the *Bezahlkarte* under specific circumstances, which allowed for non-cash allowances, before the implementation of this Act. The new regulation introduced the *Bezahlkarte* as a viable alternative for all Asylum Seekers Benefits Act beneficiaries, lifting the previous priority of cash payments.

In a plenary discussion, Faeser, who led this proposal, named two problems the *Bezahlkarte* aimed to solve. She stated that, firstly, the policy will restrict illegal smuggling as it is not possible to transfer money internationally using the *Bezahlkarte* (Plenarprotokoll, 20/164, 2024, pp. 21035-21055). Secondly, she argued that it would relieve the overwhelmed welfare authorities by ensuring higher efficiency. Thus, they will be able to provide better integration services to those asylum seekers who need protection.

In the same plenary discussion, CDU/CSU politician Stephan Stracke added two more problems he hoped the *Bezahlkarte* would address (Plenarprotokoll, 20/164, 2024, p. 21038). He stated that a cash limit included in the *Bezahlkarte* would decrease Germany's pull factor and thus decrease secondary movements to the country from EU border states. While no national cash limit was introduced, the federal states have since decided on a 50€ monthly cash limit. Furthermore, he argued that the card would prevent welfare beneficiaries from sending money to their families outside of Germany to facilitate their migration journey. Lastly, in a

legislative proposal to implement the *Bezahlkarte* on a national level, which was voted out in favor of the DÜV-AnpassG, the CDU/CSU argued to restrict the usage of the *Bezahlkarte* in certain businesses (Drucksache, 20/8729, 2023), specifically in gambling establishments. While this version of the policy was not ratified, the restriction of businesses was created as a possibility for federal states in the current policy and has been implemented, for example, in Bavaria (Bayerisches Staatsministerium des Innern, für Sport und Integration, 2024).

Like the two other acts, the introduction of the *Bezahlkarte* problematized asylum seekers. The number of asylum seekers in Germany is argued to overwhelm authorities and municipalities to the detriment of ‘real’ refugees. Asylum seekers are also presented to misuse their welfare benefits. Instead of using the money for essential items, the policy suggests that asylum seekers use it to gamble or to support illegal immigration by paying smugglers for themselves or family members. Therefore, the policy also represented smuggling as a problem to solve. The *Bezahlkarte* is portrayed as a solution to the ‘inhumane’ business of smuggling by cutting off its financing (Plenarprotokoll, 20/164, 2024, p. 21037). Faeser stated that the *Bezahlkarte* is a clear yes to supporting persons that need protection and a clear no to the financing of smugglers (ibid.). Thus, a clear contradiction is created between being an asylum seeker in need of protection and being an asylum seeker who facilitates ‘irregular migration’ by using smugglers to enter the country or giving money to others to do the same.

Lastly, the policy also represented cash-based welfare benefits as a problem by framing it as a pull factor. The policy suggested that the high number of asylum applications in Germany is a direct result of favorable welfare policies. The asylum seekers in this narrative are framed as economic opportunists, seeking out host countries that will provide them with welfare.

What presuppositions or assumptions underlie the representations of the problem?

The introduction of the *Bezahlkarte* is again based on the narrative of ‘good’ vs. ‘bad’ asylum seekers. In this policy, ‘bad’ asylum seekers are understood as those misusing welfare benefits in order to finance their own or others’ illegal border crossings. Furthermore, the ‘bad’ asylum seeker does not use the tax-funded welfare benefits ‘productively’ by spending it on food, clothes, and other essential items. Instead, the money is used to finance frowned-up habits such as gambling. Thus, it is implied that asylum seekers are economic migrants who are wasting citizens’ hard-earned money.

Problematizing the usage of welfare money for non-passive purposes is one way in which asylum seekers are excluded from the ‘good’ category—for example, an asylum seeker who gambles clashes with the idea of the victim. The victim is supposed to have fled with nothing and is thus wholly reliant on the support of the government. Spending money for purposes of entertainment signals that an asylum seeker is not living on the edge of survival. If you are in a position to spend money on non-essential items, you cannot at the same time be a victim. Thus, gambling signals agency. Furthermore, by financing border crossings, asylum seekers also constitute themselves as agents in charge of their own migration journey. As discussed in the last sections, this does not fit into the image of a ‘real’ refugee.

The latter assumption also connects with the notion of smuggling as a crime. What is interesting here is the tension between asylum seekers as victims as well as agents. In this problem representation, the agency of an asylum seeker to pay a smuggler excludes them from the category of a ‘good’ asylum seeker. However, when smuggling was discussed in the previous section, it was through the lens of asylum seekers as victims. This tension leads to smuggling being criminalized through a humanitarian angle as a danger to asylum seekers. At the same time, once they arrive in Germany the agency of crossing borders with the use of smugglers excludes asylum seekers from the ‘good’ category.

A new assumption in these problem representations is that of the pull factor. This rests on the idea that liberal policies in European countries motivate asylum migration and ‘pull’ asylum seekers towards them. High cash-based welfare benefits are seen as one of these pull factors. A change in these policies is assumed to decrease the ‘pull’ and result in fewer asylum applications. Here, asylum seekers are again understood as agents. The Act of deciding on a destination based on different possible advantages clashes with the idea of the ‘good’ asylum seeker/victim who flees out of an emergency situation with no other alternative left. Thus, the idea of asylum seekers being attracted by pull factors adds to the image of them as ‘undeserving’.

How has this representation of the ‘problem’ come about?

The previous sections have discussed both the genealogy of the ‘good’ vs. ‘bad’ asylum seeker and the criminalization of smuggling in this context. Therefore, I will refrain from repeating myself here. Rather, I will briefly dive into a genealogy of the use of problem representation of pull factors.

The idea of the pull factor stems from Lee's (1966) push and pull model and Ravenstein's economic migration model before that (Garelli & Tazzioli, 2021). In easy terms, Lee's model describes a theory of migration in which negative and positive effects push migrants out of their 'origin' country and pull them towards the 'destination' country. Push factors in the origin country could be declining economies, insecurity, war, and lack of education, while pull factors in destination countries could be robust economies and job markets or political security. The push-and-pull model assumes migrants to be rational agents that make decisions based on cost and benefit calculations. It also assumes they have sufficient knowledge on which to base these calculations. While Lee (1966) argues that such rationality is not given for all migrants, the author does base most of the model on this assumption.

Abdou (2020) argues that the use of the pull factor as a prominent political and media frame of asylum migration in the EU has been prominent since the 1990s. Migration has been dominantly discussed in terms of pull factors, with the belief that migrants are attracted to welfare systems, liberal asylum policies, and strong economies. The model gained further prominence during the 'refugee crisis' in the context of the EU's Mediterranean border (Garelli & Tazzioli, 2021). Garelli and Tazzioli (2021) argue that EU member states' governments, as well as EU agencies like FRONTEX have used the argument to target and criminalize humanitarian and solidarity actions, such as sea rescue practices. Thus, since the 'refugee crisis', the model has had a resurgence in political and media framings in order to argue against liberal asylum policies (ibid.).

What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently?

The introduction of the *Bezahlkarte*, like the Asylum Proceedings Acceleration Act, relies on a framing in which asylum migration is seen as inherently bad. Most of the issues that the *Bezahlkarte* is supposed to 'fix' are those that facilitate more asylum migration to Germany, such as the payment of smugglers, the pull factors, and the financing of future migrants. As asylum migration is seen as inherently bad, what becomes irrelevant is that the *Bezahlkarte* is a severe restriction of asylum seekers' freedoms, especially if the federal states decide to exercise the use of geographical and business-specific restrictions. It also leaves out the fact that, even in the context of smuggling, asylum migration is a legal form of migration under the 1951 Refugee Convention. Thus, when reframing the problem from a perspective in which

seeking asylum is a right, the criminalization of smuggling becomes a problem that restricts the right to asylum.

What effects are produced by this representation of the problem?

The *Bezahlkarte* adds another layer to the framing of the ‘bad’ asylum seeker in the ‘good’ vs. ‘bad’ asylum seeker discourse prominent in all analyzed Acts. In this problem representation, the ‘bad’ asylum seeker comes to Germany solely to get access to welfare and subsequently uses it to encourage further irregular migration or wastes it on ‘unproductive’ purposes. Such a problematization influences how German society thinks about asylum seekers. Similarly, it reproduces the pull factor narrative, limiting the way in which migration motives are thought about. Relying on the push-pull model simplifies migration motives to individual country characteristics and reduces asylum seekers to economic opportunists. This welfare chauvinistic approach excludes other ways of thinking about migration, which include migrants’ complex motives and stories.

Within the policy, all asylum seekers are constituted as ‘unproductive’ agents, which excludes them from the ‘good’ and ‘deserving’ categories. Through the problem representations of the *Bezahlkarte*, the problematization of asylum seekers agency is expanded. By problematizing any kind of agency that extends past the bare survival level, the subject of the asylum seeker is almost entirely equated with the category of the irregular immigrant.

The lived effects of the *Bezahlkarte* are controversial. While some municipalities argue that the cards’ introduction has already prompted many asylum seekers to leave the country or start working, integration officials doubt that these movements can be solely attributed to this policy (“Schwierige Abwägung zwischen Kosten und Nutzen,” 2024). Furthermore, the introduction of the *Bezahlkarte* has created considerable bureaucratic effort and costs. Other indirect costs are argued to be the restriction of asylum seekers’ freedoms and a limitation on integration through a constraint on movement (ibid.).

How/ where is this representation of the problem produced, disseminated and defended? How could it be questioned, disrupted and replaced?

The problem representations in this policy are produced, disseminated, and defended through politicians, parliamentary debates, the media, as well as academic sources relying on the push-and-pull model. Thus, existing prejudices and narratives are reproduced and added to the larger discourse.

The DÜV-AnpassG and hence the *Bezahlkarte* were accepted by a majority consisting of the coalition parties, the AfD and the BSW, against the votes of the Left Party, the CDU/CSU and a few Green Party members (Plenarprotokoll, 20/164, 2024, pp. 21054-21055). In the plenary discussion concerning the *Bezahlkarte*, all parties except the Left defended the problem representation of the overwhelmed German structures (pp. 21035-21055). The FDP, CDU/CSU, BSW, and AfD mostly reproduced the Act's problem representations. All four parties argued that the measure would decrease the pull factor and stop 'unproductive' spending of welfare benefits. However, the CDU/CSU argued strongly against the lack of a cash limit and, therefore, voted against the Act (ibid.).

On the other hand, the Green Party, the SPD, and the Left Party challenged the use of the pull-factor narrative, arguing that there are many other factors motivating asylum migration (Plenarprotokoll, 20/164, 2024, pp. 21054-21055). Neither the Green Party nor the SPD offered differing problem representations or went into greater detail about the Act's other problem representations. Instead, they concentrated on arguing that the *Bezahlkarte* must not be used to exclude anyone from participating in society, but without criticizing the measures in the Act (ibid.). Only the Left Party challenged the idea that asylum seekers send welfare money to smugglers and the argument that the *Bezahlkarte* will decrease bureaucracy (Plenarprotokoll, 20/164, 2024, p. 21049). Instead, the party problematized the exclusion of asylum seekers from society through this measure and the restriction of freedoms it causes.

The problem representations are also questioned, disrupted, and replaced by pro-asylum civil society actors. The *Bezahlkarte* created a major discussion within the public, leading many organizations like PROASYL to openly challenge the problem representations (PROASYL, 2024c).

5.4 WPR Findings

By using the WPR method, I was able to uncover the problem representations of the chosen bills and some of their underlying assumptions and presuppositions. Many assumptions are

present in all three sources and can thus lay a basis for understanding Germany's asylum policy strategy and what role the country's identity plays in it. I will summarize these insights in this section to provide a better overview. In the next chapter, I will apply the chosen theory and concept to the findings presented here to answer the research questions.

All three bills are based on the acceptance of the authority of a nation's government to decide who is an 'insider' and an 'outsider' to its society. The belief in this fact gives legitimacy to the asylum determination process. Building on this presupposition, all of the Acts share the underlying assumption of asylum migration as a problem. I have argued in section 5.1 that the understanding of asylum migration as inherently bad has a historical background in the shift from the refugee as a European political individual to refugees as 'masses' of persons from the Global South. The fear of instability caused by this image of 'masses' of asylum seekers has intermingled with the fear of economic decline and terrorist attacks to create a general view of asylum seekers as a threat to Germany. In all bills, asylum migration is predominantly discussed in terms of high numbers overwhelming the German structures, be it the asylum courts, the BAMF, or other authorities. Each one problematizes the high number of asylum seekers in the country and seeks to lower it. The approaches differ from facilitating faster asylum procedures to increasing deportations, providing other pathways to residency, or decreasing pull factors.

Although this assumption is central to all three bills, it is also challenged in the Act to Improve Repatriation. Here, 'productive' asylum seekers are perceived as a way to solve the labor shortage, an idea that had already influenced the welcome politics in 2015. Furthermore, they are additionally seen as a solution for the strain on asylum and welfare systems. Completely breaking with the other problem representations, the Green Party also problematized the limited pathways to residency in this Act, focusing on the assumption that asylum seekers do have a right to stay. This assumption is not mirrored by any other coalition parties and does not reappear in the other analyzed bills.

The understanding of asylum seekers as inherently problematic is facilitated by the use of the 'good' vs. 'bad' asylum seeker binary. The 'bad' asylum seekers, which are overwhelming Germany, are constituted in opposition to the 'good' asylum seekers, persons who actually need protection and to whom Germany has a humanitarian responsibility. In the bills, the 'good' asylum seeker remains a theoretical category used to constitute its opposite. The category of 'bad' asylum seekers, on the other hand, is reproduced and extended with each problem representation. The Asylum Proceedings Acceleration Act constitutes this category in terms of

‘masses’ of asylum seekers misusing judicial tools to extend their illegal stay in Germany. Through the Act to Improve Repatriation, asylum seekers are constituted as criminals. They are suggested to frequently go underground to circumvent their deportation or to either have committed or plan on committing politically motivated crimes. The *Bezahlkarte* policy constitutes asylum seekers as economic opportunists drawn to Germany due to its liberal welfare policies, as illustrated by the pull-factor narrative. They are also suggested to be misusing or wasting welfare benefits.

The distinction between the ‘good’ and the ‘bad’ asylum seeker is made along the victim vs. agent binary. In the modern understanding, the refugee is a victim of persecution and violence awaiting the protection of a government. Enacting any agency excludes asylum seekers from the victim category and thus moves them to the other available one, that of the irregular immigrant. The bills problematize different forms of agency, for example, active participation in the asylum determination process through complaints, refusal of deportations, the agency associated with committing crimes, choosing and financing migration journeys, or spending money on entertainment.

The ‘bad’ asylum seekers are argued to endanger the protection of the ‘good’ asylum seekers by overwhelming the German structures and thus hindering integration processes. However, even in the form of the victim, the asylum seeker is problematized. In the problem representation of smuggling, the asylum seeker is constituted as the victim. However, as the act of smuggling is considered a crime, the asylum seeker is automatically seen as an irregular immigrant. Simultaneously, in the problem representation of the *Bezahlkarte*, asylum seekers’ agency of financing smugglers puts them into the category of ‘bad’ asylum seekers. Thus, the category of the victim/ ‘good’ asylum seeker is made less attainable. At the same time, framing smuggling as inhumane constructs Germany as a humanitarian state that fights this practice instead of an actor in driving it by enforcing stricter border controls.

The ‘good’ vs. ‘bad’ as well as the victim vs. agent binary is again challenged in the Act to Improve Repatriation. The idea of the tolerated ‘productive’ asylum seeker adds another category removed from either ‘good’ or ‘bad’. A ‘productive’ asylum seeker is neither a victim that ‘deserves’ protection nor an economic opportunist that needs to be removed. Instead, the ‘productive’ asylum seeker uses their agency in a way that contributes to German society through education or employment, which, as long as they continue doing this, grants them tolerance on the ‘inside’. A parallel can be drawn to the *Bezahlkarte*, where the opposite, the

‘unproductive’ asylum seeker, is constituted as someone wasting welfare benefits. A tension is created between the asylum seekers’ criminal agency, ‘productive’ agency, and victimhood. While the ‘productive’ asylum seeker category creates more liberal residency measures, as the Green Party emphasizes, it is also a result of the government’s goal to reduce migratory pressure on Germany’s structures.

Central to all the bills’ problem representations is the assumption that the parliament’s decisions follow the rule of law. The fairness and accuracy of the asylum system are taken for granted. It provides the legitimization for the ‘good’ vs. ‘bad’ asylum seeker binary and, thus, the restrictions of freedoms for those on the wrong side. Based on the certainty of the rule of law, changes to previous structures are legitimized by framing them as complicated. The changes themselves are always assumed to follow the notion of the rule of law as they simplify systems and argued to be aimed at enabling better protection for the ‘deserving’ asylum seekers and streamlining the fair asylum process. The argument can be identified in the Asylum Procedures Acceleration Act, which seeks to simplify legal practices, in the Act to Improve Repatriation, which changes policies obstructing efficient deportations, and in the *Bezahlkarte* policy, which reduces welfare authorities’ bureaucratic efforts.

The assumption of the rule of law has created interesting policy outcomes. For example, in the case of the independent asylum counseling, the high number of complaints could be perceived to indicate a flaw in the system. However, as the asylum system is understood as inherently just, the problem is assumed to lie with the asylum seekers’ lack of knowledge and trust. Paradoxically, this creates a liberal measure that implies that the government is not the only body with authority in the asylum system. Furthermore, the practice of simplifying previous processes has produced liberal policies next to restrictive ones. The same problem representations used to legitimize efficient deportations, et cetera, also legitimized removing the cancellation and withdrawal clause in the Asylum Procedures Acceleration Act.

The asylum process itself is mostly left unquestioned by the policies. The independent asylum counseling marks the exception. The bills also do not problematize the restriction of asylum seekers’ rights, the push-pull model, the growing Islamophobia, or Germany’s role in the increase of human smuggling, although some of these have been challenged in and outside of plenary debates. The bills make asylum seekers the scapegoats for larger issues and thus perpetuate a discourse in which they inhabit a very limited space. Asylum seekers are not understood as individuals but ‘masses’ hindering the effort of the humanitarian German state

to protect ‘real’ refugees. When established as victims, they are included in the criminalization of the perpetrators (the smugglers) or are used as a theoretical category. The ‘good’ asylum seeker is established as a prop rather than a real individual. The ‘good’ asylum seeker does not use illegal channels of entry but waits for official resettlement options. The ‘good’ asylum seeker goes through the asylum process without questioning the government. Lastly, the ‘good’ asylum seeker does not use welfare benefits for ‘unproductive’ purposes.

These problem representations are rooted in common European narratives and discourses. As shown in the last sections, they have been produced and disseminated by media outlets as well as politicians. Other narratives have roots in academia, like the reliance on a simplified version of the push-and-pull model. However, all of them are rooted in historical shifts of understanding caused or intensified by narratives produced during and in the lead-up to the ‘refugee crisis’.

In the context of the German parliament, the WPR analysis also uncover some patterns. All three bills are voted through by the coalition parties, against the votes of the opposition parties, with the exception of the *Bezahlkarte*, where the AfD and the BSW also voted in favor. The FDP, CDU/CSU, and the AfD mostly reproduce the problem representations of the Acts in the plenary discussions, although the CDU/CSU and AfD argue that the proposed solutions are too liberal in most cases. The SPD also defends the problem representations of the first two Acts, however, stays vague when discussing the *Bezahlkarte*. Instead of defending or challenging the problem representations of the Act, the SPD focuses on what the *Bezahlkarte* does not try to do, exclude asylum seekers from society. The Green Party uses similar rhetoric, although this is noticeable in all three plenary discussions. In the discussion of the Asylum Procedures Acceleration Act, the Green Party does not challenge any problem representations but focuses solely on the independent asylum counseling and the removal of the cancellation and withdrawal clause, the two measures that break with the restrictive policy outcome of the rest of the Act. In the discussions about the Act to Improve Repatriation, the Green Party even partly disrupts the problem representations, arguing that the new measures will not relieve the German structures. However, all three coalition parties validate the problem representations by defending and voting for the bills.

The bills’ problem representations are disrupted by other actors. The Left Party, in particular, constantly questioned them during parliament debates. Civil society groups like PROASYL,

which I have used frequently to contrast the government standpoints, as well as asylum seekers themselves, are also active in contradicting these problem representations.

6. Analysis

6.1 Constructed Realities and Policy Strategies

Constructivist theory emphasizes the importance of norms and ideas. It argues that all persons interpret the material reality based on a constructed reality informed by their knowledge. This knowledge can be shaped through popular discourses, definitions, categories, and subjectivities. Bacchi (2009) argues that it is also (re)produced through policies and their problem representations. The author claims that countries govern through such problematizations. Governments problematize situations and groups of people strategically and then implement policies to solve these problems. Thus, the problem representations and underlying assumptions that are (re)produced by a government through its policies can reveal much about the strategy it is pursuing.

In the last chapter, I have gained insight into some of the problem representations and knowledge the current German government employs in its asylum politics. The policies mostly reproduce already existing knowledge. Therefore, what becomes interesting is which knowledge is chosen to be reproduced and what reality is constructed through it.

The WPR method acted as the tool to uncover this knowledge. With its help, I was able to conclude that in each bill, Germany is constructed as a humanitarian state honoring the rule of law and seeking to protect the ‘good’ asylum seekers. Thus, the legislation introduced by the government is constructed in the same way. All asylum policies are assumed to be fair and based on the wish to protect the ‘real’ refugees. This goal is obstructed by the large amount of ‘bad’ asylum seekers, which overwhelm the German structures. Therefore, the ‘good’ asylum seekers can only be offered protection if the number of ‘bad’ asylum seekers is reduced. The bills seek to do this by decreasing pull factors, as well as effectively identifying them and then facilitating their return. In the production of the ‘bad’ asylum seeker category, almost all agency of asylum seekers is problematized. Furthermore, through the emphasis on smuggling, asylum seekers as victims are also problematized. Thus, the ‘good’ asylum seeker category becomes almost impossible to achieve and acts more as a ‘theoretical’ in order to produce its opposite. Asylum seekers are almost entirely constituted as an economic and security threat, and

therefore, all asylum migration is established as inherently bad. Thus, other issues, like the restriction of freedoms and its impact on human smuggling, as well as growing Islamophobia, are excluded from the narrative.

However, as Bacchi (2009) points out, problem representations can be complex and contradictory. While the narrative above is prevalent, it is also challenged by other problem representations in the same bills. The independent asylum counseling, although presented as solving a problem on the side of the asylum seeker, nevertheless opens up for a discourse questioning the government's monopoly to conduct the asylum determination process. Furthermore, the use of the category of the 'productive' asylum seeker disrupts the 'good' vs. 'bad' binary and opens a discussion in which asylum seekers can be viewed as beneficial to society and as possessing the right to stay.

Given that this is the reality that the bills are constructing, I will now seek to answer this thesis' first question: "Which strategy can be identified behind the asylum politics of the new German government?" Germany is trying to maintain its commitment to asylum and humanitarian law. Every bill emphasizes the government's responsibility towards those who need international protection. However, the government also emphasizes the need for a change in direction to decrease the number of asylum seekers in the country. Therefore, the policies seek to restrict the category of the 'good' asylum seeker and thus the access to the German territory and rights within. At the same time, it is opening up a third lane for 'productive' outsiders to become valuable to the German society, and thus, be tolerated. These themes, humanitarianism, productivity, and deterrence, create a tension within the policy strategy.

Additionally, the policy outcomes also reveal tensions. One can identify a deterrence-based direction to the asylum policies of the new government. While the general right to asylum is upheld, the surrounding system is in the process of being tightened. Asylum seekers' rights during the asylum determination process were limited, deportations made easier by, for example, restricting constitutional rights, welfare benefits reduced, and its spending restricted. On the other hand, 'productive' asylum seekers were removed from the 'good' vs. 'bad' binary and, as such, given alternative pathways to residency separate from the asylum system. Further, policies like the independent asylum counseling and the removal of the cancellation and withdrawal clause do not fit the restrictive policy outcomes. As pointed out in the chapter above, these are products of the same problem representations that are used to legitimize more

restrictive policies but happen to produce liberal outcomes. Thus, it is likely that the tensions in the policy strategy manifest as contradictory policy outcomes.

Unfortunately, there was no space in this thesis to analyze the other asylum policies of the new government, however, signs of a similar strategy can be identified when superficially examining them. The Act on the Introduction of the Right of Residence Opportunities provided one-time access to a stable temporary residency for persons who had lived in Germany with a *Duldung* for more than five years in 2022 (Gesetz zur Einführung eines Chancen-Aufenthaltsrechts, 2022). The Act aimed to allow them to fulfill the requirements for permanent residency with the security of the permit. The Act also made it more difficult for all persons not eligible for this special opportunity-residency permit to receive a regular residency permit, tied to education or employment in the future (ibid.). The Act on the Further Development of Skilled Labor Immigration simplified the immigration for skilled laborers and introduced a one-time *Spurenwechsel* (lane change) (Gesetz zur Weiterentwicklung der Fachkräfteeinwanderung, 2023). Asylum seekers who arrived in Germany before the 29th of March 2023 were able to retract their asylum application to apply for a work visa. Additionally, the government introduced controls at the borders of Poland, the Czech Republic, and Switzerland, extending the temporary border control practice that started in 2015 (Fachinger et al., 2023). Lastly, multiple policies in 2024 introduced reductions of welfare benefits (Drucksache, 20/9092, 2023; Gesetz zur Anpassung des Zwölften und des Vierzehnten Buches Sozialgesetzbuch und weiterer Gesetze, 2023) and extensions of the safe country of origin list (Gesetz zur Bestimmung Georgiens und der Republik Moldau als sichere Herkunftsstaaten, 2023).

While not having analyzed these bills, the themes of humanitarianism, deterrence, and productivity are prevalent. The right to asylum is not targeted by any policies, however, there is an emphasis on shifting asylum migration to labor migration. Asylum seekers who were already in the country in 2022 and 2023 are not the target of removals but are rather encouraged to withdraw their asylum applications. The future-oriented legislations reduce asylum seekers' access to welfare and the possibility of seeking asylum. Therefore, these bills present a similar tension between emphasizing international protection, restricting asylum migration, and encouraging labor migration. Together, these bills showcase 'a new start for German migration politics', a strategy in which the number of asylum seekers is reduced. Those who are in the country already are sought to be either deported or shifted to labor migrants, while future asylum seekers are aimed to be deterred through direct and indirect deterrence policies. At the

same time, the right to asylum is upheld, ensuring the protection to those deemed ‘deserving’. However, one would need to analyze the additional Acts’ problem representations for a nuanced understanding of how they overlap or diverge from the policy strategy identified here.

6.2 Branding and Identity in German Asylum Politics

Having identified a strategy behind the new German government’s asylum policies with the help of the WPR method, I will now explore the second research question: “What role does Germany’s identity play in its asylum politics strategy?” To answer this question, I chose to utilize constructivist theory and the NNB concept. Both frameworks emphasize the role that identity plays in achieving a strategy goal but also the role it plays in restricting governments’ policy possibilities. The NNB concept specifically focuses on the role of branding and identity in countries’ restrictive asylum politics. To successfully implement an NNB strategy, a state must truthfully and consistently communicate its ‘hard-line’ position. Therefore, the concept becomes useful in analyzing Germany’s turn to restrictive asylum politics, a country with a historically humanitarian identity.

Negative Nation Branding

Based on the problem representations uncovered using the WPR method, it is obvious that Germany is not employing NNB at this time. Most importantly, the country is not pursuing a consistently restrictive strategy necessary for such long-term branding. A consistent theme in all analyzed bills is the emphasis on Germany’s humanitarian responsibility. While the goal of each bill was to reduce the number of asylum seekers in the country, this was always legitimized by separating them from the group of ‘good’ asylum seekers who are stressed to deserve government protection. Further, the need for labor immigration, as well as parties’ humanitarian agendas, created liberal policies for ‘productive’ asylum seekers. Gammeltoft-Hansen (2017) argues that asylum seekers do not have in-depth knowledge about different countries’ asylum systems and, therefore, are more likely to respond to one consistent brand. By upholding its responsibility towards the ‘good’ asylum seeker and emphasizing the contribution of the ‘productive’ asylum seeker, Germany does not present such a straightforward brand. As I argued above, the narrative presented by its policies is inherently contradictory. Following Gammeltoft-Hansen’s (2017) logic, Germany’s emphasis on

humanitarianism within its general strategy goal of deterring asylum migration would prevent the successful communication of this goal to future asylum seekers.

This is illustrated in Germany's branding techniques. The *Auswärtige Amt*, the German Federal Foreign Office (AA) produces informational campaigns online and locally in popular origin and transit countries to inform about the dangers of fleeing one's country or migrating irregularly (Auswärtiges Amt, 2024). Already in 2017, the AA introduced the 'Rumors About Germany' website, which next to warning about the dangers of irregular migration and correcting rumors told by smugglers, also informs about legal migration routes, Germany's work to improve crisis situations in origin countries and possibilities of voluntary return (Auswärtiges Amt, n.d.; Drucksache, 19/1117, 2018). Although it is firm on presenting irregular migration to Germany in a negative light, it also informs about the ways persons can receive asylum in the country and the benefits they can receive (Auswärtiges Amt, 2017a, 2017b). The website is still in use, however, it has not been updated recently and does not include the newest legislations like the *Bezahlkarte*. The new EU Pact on Migration also includes the continuation of "informational campaigns on the dangers of unsafe and irregular migration" (European Commission, 2024b). While there is little information on these new informational campaigns, previous EU campaigns have been framed to deter migrants (Trauner et al., 2022, p. 13). These framings follow a humanitarian narrative that aims to protect from the dangers of irregular migration and smuggling (ibid.). These campaigns have also been used to inform about "how to stay safe during a migratory journey" and to "raise awareness on the needs and risks of migrants [in host communities], thereby promoting tolerance" (p. 8).

Thus, Germany can be argued to, independently and as part of the EU, use branding strategies to deter asylum seekers or irregular migrants as they are often framed. However, the 'Rumors about Germany' website does not seem to be a prioritized tool, as changes in legislation from the last years have not been added. Furthermore, due to its and the EU's commitment to humanitarian responsibility, Germany is not able to use this platform as a consistent negative branding strategy. In reality, the country still has an asylum system that provides protection for those that it deems 'deserving'. It is not possible for the country to convey any other message through such information campaigns, even if deterrence is the ultimate strategy goal. Therefore, informational campaigns frame deterrence strategies through humanitarian narratives (Trauner et al., 2022) emphasizing the difficulty of receiving asylum in Germany and the inevitability of voluntary or forced returns for rejected asylum seekers (Auswärtiges Amt, 2017a). These branding strategies mirror the tensions found in the policy strategy.

However, Germany is aiming to deter as well as deport ‘bad’ asylum seekers. By using the ‘good’ vs. ‘bad’ binary, the country is trying to circumvent their humanitarian commitment to achieve this goal. Asylum seekers are being problematized for their illegal arrival, their assumed economic and terroristic motives, and their agency during the asylum determination process. The continual expansion of the ‘bad’ asylum seeker category and the limitation of their rights legitimized by the country’s constitutional identity points to a trend towards further deterrence and restriction. As such, it can be argued that Germany is laying the groundwork for pursuing an NNB strategy in the future. Anholt et al. (2008) argue that new policies can be a tool to shift brands by communicating “simple truths” (p. 23). Germany’s new policies convey an anti-asylum discourse which has been popular in the country for many years, despite its previously more liberal policies. The new policies emphasize the restriction of these liberal asylum policies to reduce the ‘pull factor’ and, therefore, deter asylum seekers. In speeches and plenary debates, coalition politicians also frame these policies as a strategy shift. The ‘new start’ of migration politics could also emphasize a ‘new start’ in branding strategy and possibly identity. By introducing restrictive asylum policies, these bills may be creating the necessary legislative reality for Germany to truthfully brand itself as a ‘hard-line’ country.

The Role of Identity

If the long-term strategy of the German government is, in fact, the goal to deter future asylum seekers, why is it continuing to emphasize the right to asylum? Through a constructivist lens, the tension within Germany’s policy strategy can be explained by identity. The logic of appropriateness argues that states will act in accordance with their identity because any other actions would endanger their legitimacy. As argued at the beginning of this thesis, in response to its recent history, much of Germany’s identity has been constructed through its connection to the EU. Thus, like the EU’s, Germany’s identity is founded on values of humanitarianism, civility, democracy, and the rule of law (Karp, 2018). Within this identity, Germany has been a strong defender of human rights, including the right to asylum, a topic close to the German society at the end of WWII. This aspect of the country’s identity was further entrenched through Merkel’s welcome politics. A hard-line nation branding strategy and subsequent identity shift would directly oppose the identity Germany has inhabited for the last decades. According to the logic of appropriateness, such a disregard would signal instability and damage the country’s legitimacy in the international arena.

Then again, this was also the case for Denmark. According to Gammeltoft-Hansen (2017), the country experienced a loss of legitimacy during the branding changes before ultimately shifting its identity to match its policy and branding strategy. This difference might be explained by legal geography. As much as Germany's identity is tied to the EU's, in contrast to Denmark, the country's national policies are also dependent on the CEAS. The CEAS sets minimum standards for international protection and at its center stands the inviolability of the right to asylum. If Germany were to introduce policies that constrict the general right to asylum, the country would breach these standards. While there are examples of CEAS members who are currently in this position, for Germany to purposefully break EU legislation would contradict another aspect of Germany's identity: that of Germany as the embodiment of the EU. Furthermore, due to its historical experience, Germany's identity might be exceedingly fragile, unlike Denmark's, a country that uses its history as a strong basis for its identity. The rejection of two fundamental tenets, humanitarianism and EU integration, may result in a more significant loss of legitimacy for Germany, as its national identity is intrinsically tied to these principles, leaving it with limited alternative foundations.

However, if legitimacy is so crucial, why would Germany pursue a strategy that, on any level, contradicts its identity and possibly endangers that legitimacy? Furthermore, if a country's identity and thus its politics are formed by international norms, as constructivist thinkers often argue, and the international asylum regime has not changed, how does 'a new start for German migration politics' even come about?

As Checkel (1999) argues, domestic actors can influence a country's receptiveness to international norms and, thus, its identity. The rise of right-wing populism and anti-immigrant discourses and its institutionalization in German politics might explain these questions. As Green and Hess (2016) have argued, the emergence of right-wing populism might be in the process of shifting the entirety of the political spectrum towards the right. As shown in the background chapter, Germany has consistently grappled with its identity as an immigration country. While its asylum policies were perceived as liberal at the beginning of the 'refugee crisis', much of the civil society's reaction was disapproving. Xenophobia and a negative remembrance of the guest-worker scheme combined in a popular anti-immigration stance, which has been growing over the last decade, as illustrated by the rise of the AfD as well as right-wing voices in the CDU/CSU. It is observable in the analyzed bill's parliament debates that both parties are pressuring the coalition to make their policies more restrictive. They largely use the same problem representations as the bills do. However, they often argue for

stricter measures and the AfD is forthright in its belief that the borders should be permanently closed to all foreigners, while the CDU/CSU still uses the image of the ‘good’ asylum seeker as the counterpart to the excludable ‘bad’ asylum seeker. Thus, it is possible that growing right-wing parties and positions in connection to a vanishing public taboo of outward racism and xenophobia are skewing the country’s politics towards the right. Thus, even if international norms are not changing, due to domestic politics, the government’s receptiveness to them is.

In the parliamentary arena, part of the tension in the government’s strategy might also stem from coalition-internal differences. The current coalition has proven to be rather unstable over the last two and a half years, with the three parties following different ideologies. Especially the Green Party has previously, in its position as opposition party, argued for far more liberal asylum politics. In the current coalition, it seems to have been responsible for the independent asylum counseling, as well as the removal of cancellation and withdrawal clause, two of the liberal measures implemented by the bills. In contrast, the FDP and SPD have defended the more restrictive new measures, with the exception of the *Bezahlkarte*. The intra-coalition tension is illustrated in the party’s different problem representations of the employment- and education-based *Duldung* introduced through the Act on the Improvement of Repatriation. It seems that in the case of this policy, the FDP, SPD, and the Green Party embody the tension between deterrence, productivity, and humanitarianism. Thus, while there is a general shift to the right which stands in opposition to the country’s humanitarian identity, it also opposes party ideologies within the governing coalition. This might be another explanation for the tension that is obstructing an NNB strategy.

I have concluded that Germany is not pursuing an NNB strategy at this time due to its humanitarian identity as well as due to domestic governing actors. However, I have also argued that changing domestic norms are shifting the broader political landscape and possibly the receptiveness towards asylum seekers. Following Green and Hess’s (2016) argument, it is possible that Germany’s politics will continue to shift towards the right and the next election could very well change the makeup of the governing coalition. In such an eventuality, how likely is it that Germany would also shift away from its humanitarian identity to more effectively pursue its goal of deterring asylum seekers?

Identity-building is a long-term process, and to not lose legitimacy, Germany would need a slow re-branding process that does not signal insecurity in the international arena. However, constructivist theory also argues that identities are constantly shifting. The country seems to be

pushing the boundaries of its current identity in what might be an attempt to transform it. According to the NNB concept, its current policies will be ineffective without a corresponding hard-line identity. Changing domestic norms and discourses are influencing the country's receptiveness to international norms, leading to a restriction of asylum through an expansion of the 'bad' asylum seeker category. Nevertheless, the current government is still continuously communicating its humanitarian identity. Except for the AfD, the commitment to the right to asylum is a priority to all parties. I would argue that in this legislative period, it is more likely that Germany will continue on its current path, upholding its humanitarian identity by emphasizing the right to asylum while seeking alternative ways to restrict the access to this right. However, policies can build the base for changes in identity, and with a continual rise in right-wing sentiment, the next government could use these bills as the foundation for a hard-line identity.

It is possible that a continuation of the current strategy, in which the country's policies divert from its identity, will also result in a loss of legitimacy. However, this strategy seems to be mirrored by other actors, like the EU. The new Pact on Migration emphasizes humanitarian values, all the while being criticized for restricting the right to asylum. With Faeser being one of the key figures in pushing the new EU migration pact forward, Germany might play a considerable role in this. However, to gain more valuable insights into the CEAS and make better-supported claims in this direction, an analysis of its policies is required. Based on superficial consideration of the Migration Pact, it seems that while there might not be a shift away from the humanitarian identity, there might be a EU-wide shift in what humanitarianism means. Especially to whom it is applied. Thus, while Germany is introducing policies that oppose its humanitarian identity, it does so through the instruments and with the backing of the EU. Therefore, it seems unlikely that the country would suffer a loss of legitimacy in the context of the EU. If the legitimacy of the EU will be called into question remains to be seen. Such a question could provide a starting point for future research.

7. Conclusion

This thesis aimed to identify a policy strategy behind the asylum politics of the current German government and explore the role national identity plays in it. Merkel's welcome politics have long marked the country's asylum policy. Internationally, Germany has been perceived as one of the countries with the most liberal asylum policies in Europe, which ties in with its

democratic, civilian, and humanitarian identity. This identity was established based on Germany's rejection of the Third Reich. With no history on which to build an identity, the country instead looked to the newly established EU to provide one. Thus, the EU and Germany share many core values, including a commitment to human rights and the rule of law, which, in the case of Germany, aimed at signaling the absence of threat.

During the 2015 'refugee crisis' this identity played out through liberal asylum policies that went beyond the minimum standards set out by the CEAS. This has also been argued to be a direct result of a post-Nazi taboo of racism and associated right-wing politics. Nevertheless, while these were political taboos, racist, xenophobic, Islamophobic, and anti-immigrant stances have been consistent in the German public, were exacerbated by the 'refugee crisis' and finally became institutionalized in the form of the AfD.

Germany's recent asylum politics have exhibited a perceived intensification of deterrence measures under the motto 'a new start for German migration politics', argued to be a result of right-wing political pressure. This thesis sought to understand the policy strategy behind these and examine it in context of the country's humanitarian identity. Thus, it aimed to answer these two research questions:

1. Which strategy can be identified behind the asylum politics of the new German government?
2. What role does Germany's identity play in its asylum politics strategy?

To answer them, I used Bacchi's (2009) WPR method to analyze three of the new German government's asylum policies: the Act on the Acceleration of Asylum Court Proceedings and Asylum Procedures, the Act to Improve Repatriation, and the *Bezahlkarte*. The WPR method allowed me to investigate the logics of these bills and understand which reality the government seeks to produce through them.

I found that Germany's asylum policy strategy is rooted in common European discourses, however, also exhibits some foundational tensions. The bills emphasize a commitment to the right to asylum and continue constructing Germany as a humanitarian state dedicated to protecting 'real' refugees. However, the main goal of the bills is to lower the number of asylum seekers in the country, converging in the understanding that asylum migration is inherently bad. This tension is created through the use of the 'good' vs. 'bad' asylum seeker binary in which the 'bad' asylum seeker is produced as a threat to the German structures, the German citizens, as well as the 'good' asylum seeker. To maintain both goals of protecting the right to asylum

and decreasing the number of asylum seekers, the category of the ‘bad’ asylum seeker is expanded while the category of the ‘good’ asylum seeker is used as a theoretical. The bills problematize asylum seekers’ agency as well as their victimhood in order to achieve this. This binary, along with the emphasis on the rule of law, legitimizes the restriction of asylum seekers’ freedoms and even constitutional rights. Another layer of tension results from the introduction of the category of the ‘productive’ asylum seeker, which challenges the ‘good’ vs. ‘bad’ binary and provides the basis for liberal policy outcomes in contrast to the other restrictive ones.

These strategy tensions can be found in the bills’ problem representations and can also be traced back to tensions within the governing coalition. The themes at the center of these tensions are humanitarianism, deterrence, and productivity. Through the tensions in this strategy, problem representations have led to contradicting outcomes, creating, at the same time, restricting deterrence measures, as well as a few liberal policies.

These findings were analyzed using constructivist theory and the negative nation branding concept to answer the second research question. The NNB concept was chosen due to its focus on the connection between identity, branding, and asylum politics. Using the concept enabled me to study how Germany’s restrictive policy goals are impeded by its emphasis on humanitarianism and productivity. The country is not able to communicate a consistent hard-line brand, neither through its policies nor thorough branding strategies like informational campaigns. The latter also does not seem to be a prioritized tool, possibly because of the missing political consistency. However, the country is certainly enacting deterrence measures and framing them as such, which can function as the foundations for both a branding and identity shift.

Furthermore, constructivist theory was employed to further explore the role of identity in the policy strategy. Thus, it was used to understand why Germany is not pursuing an NNB strategy despite its goal to deter asylum seekers, why the country is introducing deterrence measures even though this could endanger its legitimacy, and if it is likely that Germany will shift its identity to effectively deter asylum seekers in the future.

I have argued that Germany’s humanitarian identity prevents it from following an NNB strategy, as in accordance with the logic of appropriateness, it would signal instability, which could lead to a loss of legitimacy. Further, Germany is tied to the CEAS and can thus not commit to a hard-line identity. Breaking EU regulations would also stand in contrast with Germany’s identity as the embodiment of the EU. Both of these aspects are foundational for

German identity, as the country does not have a history to base it on. This might explain why it is difficult for the country to distance itself from these identities to follow an NNB strategy.

However, it is becoming clear that changing domestic norms and actors are influencing Germany's receptiveness to international norms such as human rights and refugee law and are creating the room for the tensions described above. Right-wing agendas seem to push German politics towards the right and break the taboos that enabled the welcome politics in 2015. Thus, the German commitment to humanitarian identity grapples with the rise of anti-immigrant sentiments, resulting in strategy tensions. When exploring the parliamentary arena, this tension can also be explained by the unstable coalition government, where different assumptions and problem presentations clash within the same bills to produce contradictory outcomes. Leading domestic actors are both pushing for more restrictiveness as well as a commitment to refugee law.

I have concluded that it does not seem as though the current government is seeking a completed identity shift during this legislative period. At least all governing parties claim to be committed to Germany's humanitarian identity. However, the strategy that they are pursuing is creating the foundation for such a process. The national election in 2025 will certainly influence the possibility. Until then, the tension that the German asylum policy strategy is exhibiting does not seem create an issue of legitimacy in the EU, as it is part of a more general trend in which humanitarianism is highlighted but restricted.

The development of German asylum politics and identity is potentially significant for other spheres. A wider shift in identity away from humanitarianism could influence the country's politics in various areas, and the analyzed bills certainly seem to be laying the foundation for it. The questions of whether this is already mirrored in other policy areas and how it will develop until and beyond the next election can provide the basis for future research. So can a further exploration of the development of the EU's humanitarian identity in the context of its asylum policy strategy and its influence on the body's legitimacy in the wider international arena.

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