# Arguing about Asylum

## The Complexity of Refugee Debates in Europe

Niklaus Steiner

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# Chapter One

# Introduction

Few issues in Europe today are as controversial as the granting of political asylum. While the general ideal that politically persecuted people ought to receive asylum is widely accepted, the source of the controversy lies in the details—what precisely constitutes "political persecution?" how can an asylum application be judged fairly? and to what extent should domestic constraints influence asylum decisions? are all difficult questions that bring to light the complex mix of political, cultural, moral, legal, economic, and ideological motives that shape asylum policies in Europe. This complexity arouses such passionate debates and controversial policies that the asylum issue is consistently in the headlines.

### BRUTAL EXPULSION OF REFUGEE SHOCKS BELGIANS

*An attempt by the Belgian authorities to repatriate a young woman who fled her native Nigeria to escape a forced polygamous marriage has ignited intense controversy over one of the harshest refugee detention and expulsion policies in Europe. . . . Semira Adamu's case is not unique, as some 15,000 "illegals" or "bogus" asylum seekers are expelled by force from Belgium each year. . . . But the spectre of a young woman being forced at gunpoint to return to a marriage with a 65-year-old man who already has three wives has turned her into a symbol of all that is wrong with the fortress-Europe policy—a policy being implemented by all European Union countries, but with particular vigour by Belgium.*

*The Independent* (London) July 30, 1998

Two months later, in the fifth attempt to deport Adamu, 11 Belgian police used a cushion to subdue her as she resisted being strapped into a plane seat, but she fell into a coma and died several hours later of a brain hemorrhage.

Asylum in Europe has not always been this way. Until the late 1970s, the granting of political asylum caused little controversy in Europe because few people applied for asylum. Those who did were usually well-educated Eastern Europeans, whom the West found economically and ideologically

useful. The attitude and simplicity with which Europe dealt with asylum-seekers is reflected in the following press account:

### 20 RUMANIANS FLEE TO THE
### WEST IN CROP-DUSTER PLANE

> *Twenty Rumanians, fleeing to the West in a state-owned crop-dusting plane, flew undetected across Hungary today and landed in an Austrian cornfield. They asked for political asylum and were taken to a refugee center while their requests were processed. The escape, from one of Eastern Europe's most restrictive countries, was reportedly led by an agricultural engineer. . . . Austrian officials said the flight appeared to have been carefully planned, and they praised the Rumanian pilot for his skill in bringing the plane down safely.*

*New York Times* July 4, 1980

Asylum in Europe changed dramatically from the late 1970s to the mid 1990s as the world's refugee population soared from two million to 15 million.[1] Better communication and transportation links helped people from all over the world reach Europe where they have been applying for asylum in unprecedented numbers. Within a decade, annual political asylum applicants in Europe increased ten-fold, from 60,000 to 600,000, with the majority of these applicants coming from countries as diverse as the former Yugoslavia, Romania, Turkey, Poland, Sri Lanka, Iran, Lebanon, Zaire, Pakistan, and India. This rise in the number of asylum-seekers, their diverse countries of origin, and the decline of communism have all led to making asylum such a highly controversial issue in Europe today.

Yet, despite being at the forefront of contemporary European politics, asylum has received only scant attention from political scientists. This oversight is regrettable because asylum is intimately linked to other controversial European issues including the rise of far-right parties, the restructuring of the welfare state, and the integration of Europe into the European Union. Not only has political science in general overlooked asylum in Europe, but so has its sub-field of international relations, despite the obvious links between asylum and issues that are integral to the field such as sovereignty, foreign policy, and legitimacy. This gap in the literature must be filled because, as Weiner writes, "migration and refugee issues, no longer the sole concern of ministries of labor or of immigration, are now matters of high international politics, engaging the attention of heads of states, cabinets, and key ministries involved in defense, internal security, and external relations."[2]

Studying asylum also demonstrates weaknesses in the dominant paradigms that seek to explain state behavior on the basis of the rational pursuit of assumed national interests.[3] While it is of course uncontroversial to argue that states consider their interests when setting asylum policies, this issue demonstrates the difficulty of objectifying national interests. In his

**Figure 1    Annual Asylum Applicants in Western Europe**
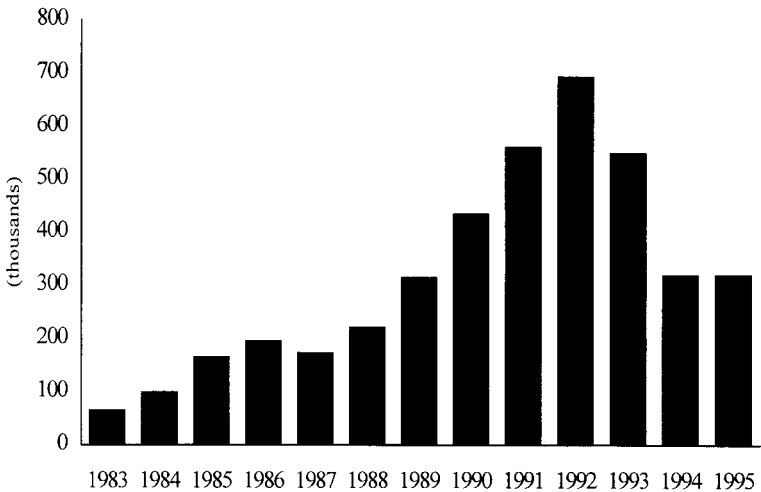


*Source:    United Nations High Commissioner for Refugees, 1995.* The State of the World's Refugees: In Search of Solutions. *Oxford: Oxford University Press; United Nations High Commissioner for Refugees. 1997.* The State of the World's Refugees: A Humanitarian Agenda. *Oxford: Oxford University Press.*

discussion of asylum, Shacknove subdivides "national interests" shaping asylum into *political stability, economic stability,* and *foreign policy concerns.*[4] While it may be tempting to assume that asylum policies are simply the outcome of a rational cost/benefit analysis of these three interests, objectively determining refugees' effects on a country's politics, economy, and foreign policy is not easy. Regarding *political stability,* one might argue for a restrictive asylum policy because cultural homogeneity promotes political stability or alternatively for an open policy because foreigners contribute to political stability.[5] Regarding culture, does cultural heterogeneity enrich a society, as Dowty argues, or does it dilute national culture and identity, as Patrick Buchanan, Jean-Marie Le Pen, and Jörg Heider argue?[6]

Regarding *foreign policy,* granting asylum to a refugee is an explicit critique of another state's treatment of its citizens, so states are often quick to accept refugees from foes, but hesitant to accept them from friends. Such an asylum policy was common during the Cold War.[7] The United Nations High Commissioner for Refugees (UNHCR) writes that even when the number of asylum-seekers rose significantly after the Hungarian Uprising in 1956 and the crushing of the Prague Spring in 1968, the West accepted without question 200,000 Hungarians and 80,000 Czechoslovakians.[8]

Similarly, Britain under a Conservative government accepted no Chileans
in the aftermath of the 1973 coup, but then a Labour government accepted
3,000 in an organized program between 1974 and 1979, and six months
after Thatcher's Conservative government came into power in 1979 the
program was shut down again.[9] And the United States in the 1980s gen-
erally admitted Nicaraguans and Cubans, but rejected El Salvadorans and
Haitians. In many cases outside of the Cold War context, however, asylum
policies cannot simply be explained as the result of relations between send-
ing and receiving countries. Many sending countries such as Sri Lanka,
Ghana, or Nigeria are difficult to categorize as either friends or foes. Even
more perplexing from a foreign policy viewpoint is that a country such as
Germany accepts significant numbers of refugees from Turkey, a NATO
ally. Clearly in the last two decades (and especially since the end of the
Cold War), the distinction between "good" refugees and "bad" refugees has
virtually disappeared, and Europe now simply faces people who seek its
protection.

Regarding *economic stability,* I have found no study that considers the
economic impact of refugees on receiving countries. The debate over the

**Figure 2a   Number of Asylum Recipients and Unemployment Rates in
Switzerland**

economic impact of *immigrants,* however, is still unresolved. Furthermore, there are conflicting opinions about whether economic stagnation causes resentment toward foreigners (whether refugees or immigrants). On the one hand, Joly and Layton-Henry stress the importance of economic hardships to explain the tension over asylum in Europe. On the other hand, in her study of Germany, Britain, Canada, and the United States, Hoskin found that, except in the United States, public opinion toward immigrants was weakly related or unrelated to economic variables of any kind, and she concludes that immigration, like many issues, stirs up both rational and irrational sentiments that defy easy prediction. Finally, one might expect a country to admit fewer refugees when unemployment is high or to admit more when the country is wealthy, but as Weiner notes, Israel admits many more refugees than does Japan, and he correctly concludes that an economic cost/benefit analysis is insufficient for understanding the complex issue of asylum.[10]

That asylum does not simply reflect the economic calculations of the three countries under consideration is clear. Figures 2a–2c compare the

**Figure 2b   Number of Asylum Recipients and Unemployment Rates in Germany**

······ Unemployment ——— Asylum Recipients

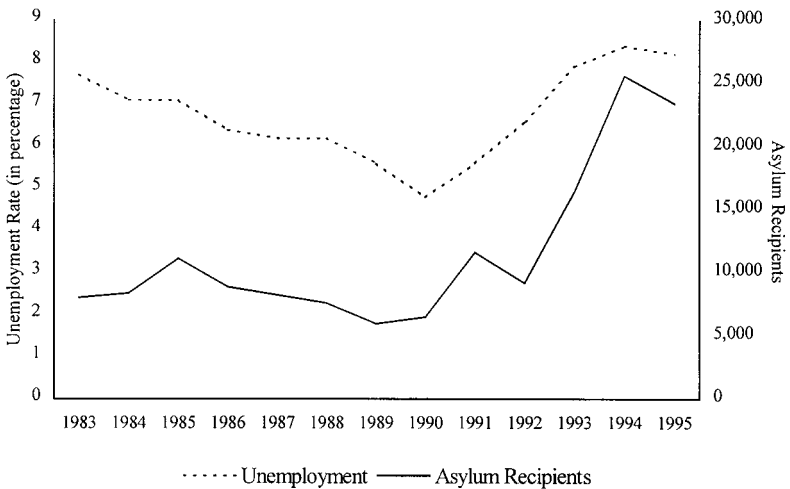*Note:    West Germany 1983–1990, Unified Germany 1991–1995*
*Source:    United Nations High Commissioner for Refugees, 1997. The State of the World's Refugees: A Humanitarian Agenda. Oxford: Oxford University Press; U.S. Department of State. Annual. World Refugee Report. Washington, DC: Bureau for Refugee Programs; United Nations. 1998. Economic Survey of Europe, No. 2. Geneva: Economic Comission for Europe.*

unemployment rates and the number of asylum recipients in Switzerland, Germany, and Britain between 1983 and 1995. One might expect these countries to grant asylum less often when unemployment is high and to grant it more often when unemployment is low, but such a negative relationship does not exist. Theories that are fixated on rational states pursuing objective national interests are clearly insufficient for understanding asylum in Europe today, and we must broaden our lens to consider other motives.

The limited number of scholars who do focus on asylum generally agree that asylum is shaped by a complex configuration of national interests, international norms, and morality. Loescher, for example, believes "The formulation of refugee policy involves a complex interplay of domestic and international factors at the policy-making level and illustrates the conflict between international humanitarian norms and the sometimes narrow self-interest calculations of sovereign nation states." Collinson writes "A moral, legal or humanitarian obligation to offer protection to refugees . . . will, in practice, always be balanced against the political and economic interests and concerns of potential asylum states." Similarly,

**Figure 2c   Number of Asylum Recipients and Unemployment Rates in Britain**

Shacknove argues "Refugee policy has always been at least one part State interest and at most one part compassion. Appeals based solely upon compassion, solidarity or rights are only occasionally successful." And Joly concludes "[Ethical factors] generally play some part when supranational values are accorded sufficient importance or when a particular conjuncture allows the refugees' interest to coincide with other interests at stake in the variegated fabric of national and international factors at play."[11] This literature then generally assumes that asylum policies are the result of a tug-of-war between international norms and morality loosening asylum on the one hand and national interests tightening it on the other. While intuitively sound, I have found little work that systematically explores this struggle and so this book is a step toward exploring this alleged tug-of-war that shapes asylum in Europe.

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

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

This research covers the period from the late 1970s, when asylum was just beginning to cause political ripples, to the mid 1990s, when it had become one of the dominant issues in Europe. Germany, Britain, and Switzerland offer a wide variation in European asylum policies: Germany's policy has been among the most generous, Britain's has been among the most restrictive, and Switzerland's has been in between. This difference in generosity is evident when comparing the number of asylum recipients in each country. Due to differences in country size, comparing absolute numbers is of course misleading and the scale needs to be adjusted. It seems fair

to argue that the more often a country grants asylum, the more generous is its asylum policy.[12] This generosity can usefully be measured in terms of capital and human resources, so that a relevant comparison of these three countries considers how many refugees receive asylum in relation to each country's GDP (Figure 3) and to its population (Figure 4). Both of these comparisons show that Germany has been somewhat more generous in granting asylum than Switzerland and significantly more so than Britain. UNHCR has made a similar comparison with similar results.[13]

Given the spatial and temporal variation in the asylum policies of these three countries, parliamentary debates capture a whole range of arguments built upon concerns for national interests, international norms, and morality, and this range nicely demonstrates the complexity of asylum in Europe.

From the outset, it must be clear that this book deals with *refugees* not *immigrants,* and this distinction is crucial to make.[14] While both may be considered a subset of international migration, an *immigrant* is an individual who voluntarily migrates from one country to another, usually for economic betterment. The difficulty of defining a *refugee* has long been a focus of refugee scholars and needs not detain us here. Instead, it is important to understand how the three states under consideration define a refugee. In assessing whether an individual is a refugee and therefore deserves asylum, Switzerland, Germany, and Britain all use the criteria laid down by Article 1 of the 1951 UNHCR Refugee Convention. Accordingly, all three states consider refugees to be individuals who face persecution because of their *race, religion, nationality,* or their *membership of a particular social group,* or *political opinion*. The asylum controversy in Europe revolves around the fact that economic hardship is *not* a criterion for being recognized as a refugee. The crux of the matter is that European states claim that the vast majority of those seeking asylum today are in fact not persecuted refugees but are opportunistic immigrants who abuse the asylum process with illegitimate claims. This charge is vehemently denied by those who believe Europe is becoming a fortress and turning its back on people who deserve protection.[15]

This controversy over so-called "real refugees" vs. "economic refugees" has blurred the issues of asylum and immigration. At times, this blurring may simply reflect carelessness, as when the *New York Times* (1/19/96) reports that a home for asylum-seekers in Germany has been burned and refers to the building as a "home for foreigners seeking asylum," a "home for foreigners," and an "immigrants' home." Other times, however, this blurring of terms may be done deliberately, especially by supporters of a more restrictive asylum policy. Collinson explains that by positing *asylum* in terms of *immigration,* governments are implicitly downplaying the humanitarian aspects of the refugee problem and thereby hoping to defuse the public's sensitivity to help.[16] We see this blurring of terms and shifting

**Figure 3   Number of Asylum Recipients per $1 Billion GDP**
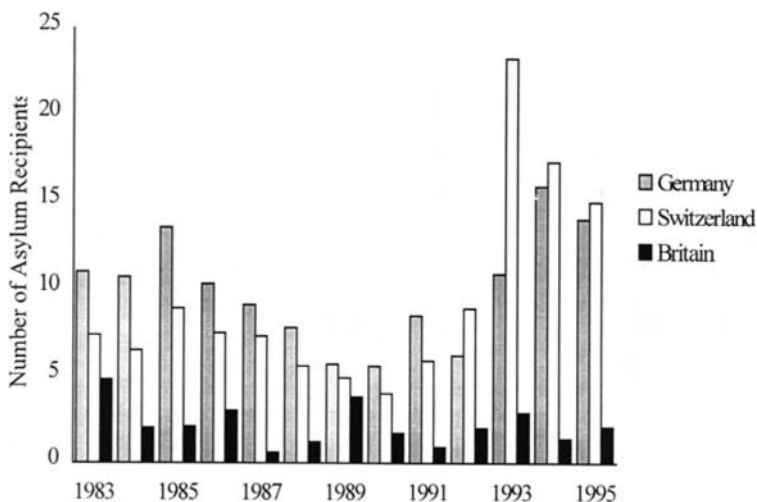
of obligations in German where the word *Flüchtling* (refugee) swells up sympathy within us and motivates us to help, so some supporters of tighter asylum policies tend to avoid this term and instead use the pejorative *Asylant* (asylee), which inspires little sympathy and sounds remarkably like such negative terms as *Spekulant* (speculator), *Simulant* (malingerer), and *Querulant* (querulous person). This fluid terminology is no trivial word-game. Instead, it demonstrates the power of language to set the political agenda. Therefore to understand politics we need to pay attention not only to the actions of political actors but also to their rhetoric, and for this reason it is rhetoric that is the empirical basis of this book's exploration of asylum in Europe.

I must also stress that my intention is not to offer a causal explanation for the variation in asylum policy outcomes; instead, I offer a better understanding of the complexity of asylum by considering the interaction of national interests, international norms, and morality in asylum debates.[17] Working with Switzerland, Germany, and Britain gives me a broad empirical basis for exploring this complexity. By offering a better understanding of asylum, I hope to lay the groundwork for future research that can offer

**Figure 4   Number of Asylum Recipients per One Million Inhabitants**
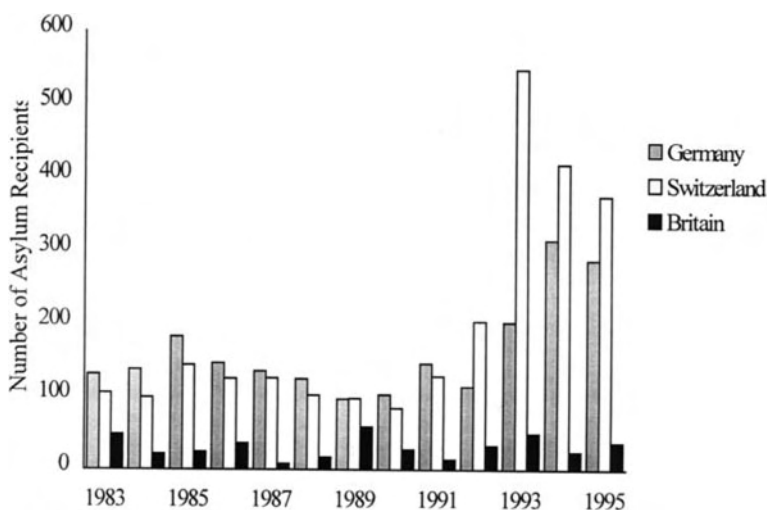
causal explanations, but such research is currently hampered by our over-simplified view of asylum.

When describing the moral pull to shape asylum, the literature tends to argue that the obligation to have a loose asylum policy rests on religious or philosophical foundations, specifically on Judeo-Christianity or Liberalism. That is not to say that these two moral codes are the only ones that can be used to argue for looser asylum because certainly moral arguments based on other religions and ideologies exist, but relying on Judeo-Christianity or Liberalism to argue for looser asylum is most common in the asylum literature.

Refugee advocates who base their moral arguments on Judeo-Christianity rely on various notions found in the Old and New Testaments. Elliott is typical when he writes "The Bible in an important sense is a book written by refugees for refugees."[18] These advocates point out that refugees pervade the Bible, and this prominence is mirrored by commands to help them. In addition to the central Biblical command to *love your neighbor as yourself,* Judeo-Christian refugee advocates cite numerous Biblical passages that refer specifically to refugees and strangers: Leviticus 19: 33–34 (*When*

*an alien resides with you in your land, you shall not oppress the alien. The alien who resides with you shall be to you as the citizen among you; you shall love the alien as yourself, for you were aliens in the land of Egypt*), Hebrews 13: 1–2 (*Continue to love each other like brothers, and remember always to welcome strangers, for by doing this, some people have entertained angels without knowing it*), and Matthew 25: 31–46, which warns that Christ judges favorably those who help strangers and condemns those who do not. Ferris concludes "Christ's own homelessness and his universal message create a Christian imperative for responding to refugees and exiles."[19]

Judeo-Christian refugee advocates in the asylum literature also refer to broader Biblical notions of justice and aid for the weak. Ferris argues that the Bible dictates the Christian responsibility to help the poor, the marginalized, and the powerless, which she writes aptly describes most refugees. Similarly, Wallis, in defending his action within the U.S. sanctuary movement, cites Matthew 5: 9 (*Blessed are the peacemakers, for they will be called children of God*) and writes "We do not know when the poor will see justice, but we do know that our God stands among the poor and invites us to join him there."[20]

Precisely such religiously based moral arguments persuaded the villagers of Le Chambon, France to harbor thousands of refugees during World War II. This action was inspired by their pacifist Huguenot minister, André Trocmé, and it was the villagers' firm religious faith that shaped their moral commitment to shelter refugees. Georgette Barraud, who ran a hostel that harbored many refugees, attributes this rescue to the village's religious conviction: "I helped simply because they needed to be helped. . . . The Bible says to feed the hungry, to visit the sick. It's a normal thing to do."[21] Le Chambon's action cannot be understood apart from its moral convictions rooted in its religious beliefs, and it cannot be explained by cost/benefit analysis or rational self-interest.[22]

While some refugee advocates in the literature build their moral arguments for looser asylum on Judeo-Christian convictions, others rely on the philosophical ideals of Liberalism. Despite Liberalism's variation across time and space, it has always rested on two basic tenets: *equality* and *liberty*. Liberal moral arguments on behalf of refugees claim that *equality* promotes cosmopolitanism and demands a (more) open world and that *liberty* demands free(er) movement of people and less state control over the individual. Because of this link between equality, liberty, and asylum, Carens argues that "the exclusion of so many poor and desperate people seems hard to justify from a perspective that takes seriously the claims that all individuals are free and equal moral persons."[23]

Regarding *equality,* Goodin writes that, at least in the Anglo-American democratic tradition, the two concepts of egalitarianism and universalism

urge the freer movement of people. He writes that egalitarianism holds that distributions of life prospects ought to be roughly equal, or at least substantially more equal than they are now, and universalism holds that our focus, in making those comparisons, ought to be upon people in general and not only on people living within a particular political jurisdiction.[24] Singer and Singer argue for a refugee policy based on utilitarianism, which they consider a plausible basic moral principle and the most fundamental form of the principle of equality.[25] Regarding the ideal of cosmopolitanism and multi-culturalism, Cohen and Joly argue that refugees offer Europeans a rich and exciting cultural life and that Europeans ought not turn their backs on this opportunity.[26]

Not only does the ideal of *equality* call for more open asylum policies, but so does the ideal of *liberty,* according to liberal refugee advocates in the literature. While equality supports asylum by promoting universalism, liberty supports asylum by defending the individual's right to move and by constraining state power. It was only with the substantial rise of state power in the nineteenth century that an individual's movement could begin to be controlled, especially with the introduction of passports. Dowty calls current restrictions on individual movement a new kind of serfdom, and Carens argues, "Liberals objected to the way feudalism restricted freedom, including the freedom of individuals to move from one place to another in search of a better life. But modern practices of citizenship and state control over borders tie people to the land of their birth almost as effectively. If feudal practices were wrong, what justifies the modern ones?" Carens further notes that while international movement is restricted we are free to move within states and would be appalled if this movement were restricted, and he concludes that the radical disjuncture that treats the freedom of movement within states as a moral imperative and freedom of movement between states as merely a matter of political discretion makes no sense from a perspective that takes seriously the freedom and equality of all individuals.[27]

It is important to note that few Liberals argue for an asylum policy that follows absolutely the ideals of equality and liberty. Already Kant in "Perpetual Peace" justified some control over borders in order to protect oneself from external threats. He writes that because the earth is a finite area, people must necessarily tolerate strangers and "no-one originally has any greater right than anyone else to occupy any particular portion of the earth;" yet he notes that some strangers, like the European imperialist, are treacherous and that China and Japan, "having had experience of such guests, have wisely placed restrictions on them."[28] Similarly, Carens writes that while freedom of movement is both an important liberty in itself and a prerequisite for other freedoms, restrictions may sometimes be justified

because they will promote liberty and equality in the long run or because they are necessary to preserve a distinct culture or way of life.[29]

It was Liberalism that was the cornerstone of Britain's unmatched asylum policy in the nineteenth century. Remarkably, Britain did not exclude or expel a single refugee between 1823 and 1905. Porter explains:

> Britain took in anyone: men whose causes she disliked and feared as well as those she sympathized with; republicans and socialists as well as liberals, autocrats as well as constitutionalists, men who wished her no good as well as those who worshipped her for taking them; even firebrands and madmen and murderers . . . . Like all the best British freedoms, this policy of asylum was maintained, not by law, but by the absence of laws.

Indeed, from the 1820s to 1905, with the exception of a brief period at mid-century, Britain simply had no laws to keep foreigners out. Porter argues that British policymakers believed that foreigners were harmless "and it was very much against the spirit of nineteenth-century Britain to regulate things which were harmless."[30]

In addition to describing the role morality plays in this apparent tug-of-war shaping asylum in Europe today, the asylum literature also stresses the role of international norms. The literature generally assumes that international norms, like morality, pull to loosen asylum. I deliberately use the term *international norm* instead of *international law,* because there is considerable dispute among legal scholars about the extent to which asylum has been codified in international law.[31] There is little doubt, however, that asylum has become an important international norm. Norms are standards of behavior that are expected of actors in a given context. This use of *norms* follows Weber's use of the term *conventions.* Weber distinguishes between *customs, conventions,* and *laws,* all of which, he writes, belong to the same continuum with imperceptible transitions leading from one to another. On the one end of this spectrum is a *custom,* which he defines as "a typically uniform activity which is kept on the beaten track simply because men are 'accustomed' to it and persist in it by unreflective imitation." In the middle is a *convention,* which exists "wherever a certain conduct is sought to be induced without, however, any coercion, physical or psychological, and, at least under normal circumstances, without any direct reaction other than the expression of approval or disapproval on the part of those persons who constitute the environment of the actor." On the other end of the spectrum is a *law,* which is similar to a convention, but relies on coercion to affect behavior.[32]

A norm's lack of coercive power raises the important issue of compliance. Franck notes that in the international system, norms are usually not

enforced yet they are mostly obeyed, which raises the question of why powerful states obey norms. He suggests that the answer lies in a norm's legitimacy, which "has the power to pull toward compliance those who cannot be compelled."[33] Similarly, Kratochwil writes that actors comply to norms not only because compliance may serve a particular interest, but also because humans are generally rule-governed and have been socialized to "respect the law."[34] Furthermore, while acknowledging that actors often do not comply with norms, scholars argue that such violations do not negate the importance of norms.[35] Nadelmann adds that it is often difficult or impossible to determine why actors conform or deviate from norms, and he rightly concludes that our understanding of norms is limited by our inability to adequately penetrate the human consciousness.[36] We need not obsess too much over the issue of compliance; instead we must look beyond only the *behavior* of actors and focus also on their *language*. Kratochwil and Ruggie stress that "the rationales and justifications for behavior which are proffered, together with pleas for understanding or admissions of guilt, as well as the responsiveness to such reasoning on the part of other states, all are absolutely critical component parts of any explanation involving the efficacy of norms."[37] Again, parliamentary debates are ideal for this purpose.

The commitment and the expression of norms can be either *implicit* or *explicit*. Kratochwil writes that in a group whose culture and history is similar, norms can remain implicit, but when differences exist or when actors "cannot await the emergence of a settled practice because of the compelling character of the coordination dilemma," norms must become explicit.[38] Precisely because of differences among actors and because of the urgency of the problem, international asylum norms are today explicitly expressed in dozens of regional and international agreements.

This principle of granting asylum to refugees, which has ancient Biblical and Greek roots, entered the modern era when 250,000 Huguenots fled France after the Revocation of the Edict of Nantes in 1685. The term "refugee," however, did not arise in international treaties until the nineteenth century, and only in the twentieth century did international organizations emerge to aid them. The first such international refugee effort was made by the League of Nations, which dealt with the millions of people rendered stateless by the collapse of the Russian, Ottoman, and Austro-Hungarian empires after World War I. Ferris believes that the League's effort illustrates the emergence of an international consensus that it is the responsibility of the international system, not just of receiving countries, to provide for the well-being of refugees. Collinson writes that the League's work on behalf of refugees established three important standards: it identified refugees as a particular group of migrants who deserve inter-

national protection; it introduced a corollary obligation for states to help them; and it institutionalized the principle of asylum.[39] With the collapse of the League and the onset of World War II, the international refugee regime fell apart, but was then reestablished after the war.

Today, for Switzerland, Germany, and Britain, the most significant international refugee standards are the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol, the 1948 Universal Declaration of Human Rights, and the European Human Rights Convention. As of 1999, 137 states were party to the 1951 Convention and/or 1967 Protocol, including Britain, Germany, and Switzerland (even though it is still not a member of the United Nations). These agreements uphold the two most important international asylum norms: the definition of a refugee, and the principle of *non-refoulement*.

The 1951 Convention puts forth the most widely accepted definition of a refugee. This definition originally only addressed European refugees displaced by World War II and its aftermath, but as decolonialization and nation-building in the 1950s and 1960s created increasing numbers of refugees in other parts of the world, UNHCR broadened the definition through its 1967 Protocol. It is worth noting that even before the formation of UNHCR in 1951, the creation of India (1947) and Israel (1948) alone had produced millions of refugees outside of Europe. Today, Article 1 of the Convention defines a refugee as any person who:

> owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

Most scholars and refugee advocates agree that this definition is not optimal, but there is little consensus on how to improve it. Among the most important sources of controversy are that the definition does not define "persecution" or "well-founded fear," and this vagueness gives states considerable flexibility to define who is (and who is not) a refugee. Despite its shortcomings, Switzerland, Germany, and Britain all use the criteria laid down by this international norm when assessing whether an individual is a refugee.

The other crucial international asylum norm is the principle of *non-refoulement*. It, too, is written into the 1951 Refugee Convention as Article 33 and states:

> No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom

would be threatened on account of his race, religion, nationality, member-
ship of a particular social group or political opinion.

This norm has been remarkably effective in protecting refugees from
being deported by European states. Even more striking is that in many
cases, states have also applied this principle to asylum-seekers, which ex-
ceeds the expectations of this norm. It is this respect for *non-refoulement*
that has been central to the tension over asylum: although Europe today
denies asylum to most asylum-seekers, it does not often deport those it
rejects for fear of violating *non-refoulement*. The strength of this interna-
tional norm has led states into the uncomfortable (and perhaps untenable)
position of declaring that most asylum-seekers are not in enough danger
at home to be granted asylum, yet they are in too much danger to be re-
turned home. Deportations of rejected asylum-seekers are relatively rare
and rejected asylum-seekers instead are often allowed to remain, but with
only limited status and rights.

In addition to these two fundamental asylum norms, asylum in Europe
is also shaped by broader human rights norms, because the refugee prob-
lem is fundamentally a human rights problem. This link between asylum
and human rights was explicitly established by the 1948 Universal Decla-
ration of Human Rights, which states in Article 14: "Everyone has the
right to seek and enjoy in other countries asylum from persecution."
Noteworthy is that an early draft of this Article had declared the right to
seek and *to be granted asylum,* but states objected to this looser notion,
which they felt infringed on sovereignty, and so the wording was changed
to give only the right to seek and *to enjoy asylum.* Refugees thus have no
legal right to asylum and states are under no legal obligation to grant asy-
lum. In other words, when states do grant asylum, they are following an
international norm, not an international law.

Just as *norms* and *laws* are not interchangeable, we must also be care-
ful to differentiate between *norms* and *morality.* Certainly there is a great
deal of confluence between norms and morality; respecting the principle
of *non-refoulement,* for example, conforms not only to an international
norm but also satisfies moral principles. Yet, it is a mistake to use norms
and morality interchangeably because norms can also be amoral or im-
moral, i.e., they may either not involve moral principles or they may
contradict them. In the case of asylum, one may argue that the norm that
defines a refugee is amoral because it is concerned with placing practical
limits on who to help rather than with establishing moral criteria for
helping those deserving protection. Or one may take it a step further and
argue that the definition is immoral because it leaves deserving people
unprotected.

Such arguments raise a second difference between norms and morality in asylum: the scope of the commitment. A norm is understood to be limited to a given set of actors in a given context, but a moral commitment is perceived to be independent of any particular group or context and has universal ambitions. To understand this difference, we again turn to the refugee definition. UNHCR limits its refugee definition to people meeting certain criteria, and this norm's scope notably excludes individuals who face economic hardship, discrimination based on gender and sexual orientation, environmental degradation, terrorism, or warfare. Moral principles, in contrast, may advocate broadening the refugee definition to also protect people fleeing such harm. Furthermore, morality may argue that politics, economics, race, gender, the environment, and warfare can be so intertwined that an attempt to distinguish "political refugees" from other types of fleeing people is not only futile but immoral.

Related to this issue of scope is the third difference between norms and morality. Because they are contextual, norms are more easily changed than moral standards. The changing nature of norms is plainly evident in asylum. As noted, the refugee definition of the 1951 Convention does not protect people fleeing gender discrimination and warfare, but a few states have begun to change this norm. In a much publicized 1996 case, for example, Fauziya Kasinga became the first woman to receive asylum in the United States based on her fear of genital mutilation in her native Togo. And to protect people fleeing warfare, the Organization of African Unity expanded the UNHCR definition in 1969 to cover "every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality." Similarly, in response to the refugee crisis in Central America, the 1984 Cartagena Declaration broadened the UNHCR refugee definition to include anyone who has fled their country because of "generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."

We are now ready to begin our exploration and evaluation of the apparent tug-of-war between national interest pulling to tighten asylum, and international norms and morality pulling to loosen it. As readers may come to discover in the course of sifting through the empirical evidence, it is important to note not only what parliamentarians say, but also what they do not say. Attention to this void will reveal that no parliamentarian argues that granting asylum benefits the host country. Parliamentarians only debate whether specific asylum legislation serves national interests, but neither side claims that the general principle of asylum promotes such

interests. This begs the obvious question: Why is asylum maintained if parliamentarians do not see it as serving national interests? This is a provocative question, which I address briefly in the Conclusion, and I hope to point asylum research in a new direction. For now, however, let us stay with the main task at hand: demonstrating asylum's richness and complexity by qualitatively examining and contextually interpreting the arguments articulated by parliamentarians in asylum debates.

## Chapter Two

## Switzerland:
## The 1979, 1986, and 1994
## Parliamentary Asylum Debates

### Introduction

When debating asylum, Swiss parliamentarians often refer to Switzerland's long tradition of granting asylum to refugees. Swiss asylum benefited several thousand French Huguenots who fled to Geneva, the birthplace of their Calvinist faith, after the St. Bartholomew Massacre in 1572. Another 20,000 Huguenots came to Switzerland following the Revocation of the Edict of Nantes in 1685, and while initially hospitable the Swiss confederation, which had a largely poor, rural, and religiously divided population of only 1.5 million, soon showed "compassion fatigue," a term commonly used to describe today's attitude toward asylum.[1]

Throughout most of the nineteenth century, asylum played a central role in Swiss foreign policy, bringing the country to the brink of war a number of times. In the aftermath of the French Revolution, Jacobins found refuge in Switzerland, and the Restoration put Switzerland under increasing pressure, especially from Austrian Chancellor Metternich, to rid itself of these refugees. In 1823, fearing foreign intervention, the Swiss Diet (*Tagsatzung*) ordered the cantons to restrict the freedoms of these refugees and of the liberal press who sympathized with them. Asylum, however, was solely a cantonal matter, and some cantons refused to enforce this order and even issued false papers to protect them. The reactionary powers (especially France, Prussia, and Austria) continued to view Switzerland as a dangerous breeding-ground for revolutionaries, but open conflict in the 1820s never erupted, mainly because Britain (under the liberal Prime

Minister Canning) forcefully countered the powers.[2] By the end of the decade, a Swiss liberal/nationalist backlash, which saw the 1823 restriction as a threat to freedom and as a cave-in to foreign reactionaries, forced its annulment.

The following year, this liberal/nationalist movement swept in the *Regeneration,* a youthful movement that, brimming with the optimistic spirit of the Enlightenment, was less radical and anti-clerical than elsewhere in Europe and was instead mainly concerned with restructuring the cantonal constitutions. Kohn argues that while the 1830 revolutions failed in Italy, Germany, and Poland because they sought national unity over individual liberty, Swiss liberals worked for individual liberty first and then, strengthened by it, worked toward national unity, which they achieved in 1848.[3] From these failed 1830 revolutions, refugees from all over Europe fled to numerous Swiss cantons, where they continued to work to overthrow their own (and other) states. At the center of this refugee group was Giuseppe Mazzini, the Italian nationalist whom Metternich once called the most dangerous man in Europe. With a plan to invade Savoy and overthrow the King of Sardinia, Mazzini in February 1834 managed to collect several hundred Polish, German, and Italian refugees near Geneva and began marching on Annemasse, Savoy, but the plan soon unraveled. This adventure brought a flood of threats from Austria, the German Diet, Russia, the Grand Duchy of Baden, Bavaria, the Kingdom of the Two Sicilies, Württemberg, Prussia, and Sardinia. Again, the *Tagsatzung* ordered refugees expelled, but the most any liberal canton did was deport them to Britain instead of sending them home as demanded.

War nearly erupted again in 1838 when cantonal governments and public opinion became infuriated over France's demand for the expulsion of Louis Napoleon, who had in 1832 become an honorary citizen of the canton of Thurgau from where he worked actively against the monarchy of Louis Philippe. With the encouragement of Austria, Prussia, and Russia, France mobilized 25,000 soldiers against Switzerland, but Louis Napoleon himself resolved the crisis by voluntarily leaving for Britain.

Following what has been called "a very civil war" of three weeks and minor casualties between Catholic and Protestants cantons in late 1847, the Swiss federal state emerged.[4] The federal government quickly acted on the question of asylum by issuing a circular on February 28, 1848: "Should refugees, armed or unarmed, of whatever origin, cross the territory of the Eidegenossenschaft, a peaceful sojourn is to be granted them, in accordance with the application of the right of asylum and the laws of humanity."[5] Refugees fleeing the failing revolutions of 1848 elsewhere in Europe soon tested this new, federal asylum policy, much to the irritation of the surrounding reactionary powers. While the majority of the Swiss initially ac-

cepted these refugees enthusiastically and protected them as martyrs of free-dom and liberty, gradually the Swiss perceived the economic and foreign policy implications as a burden. To reduce domestic and international ten-sions, Switzerland distributed refugees among the interior cantons and ex-pelled some leaders, although guaranteeing them safe passage to Britain and North America. Karl Schurz, among the most famous German revolution-aries, first received asylum in Zürich before making his way to the United States, where he distinguished himself at the second battle of Bull Run and at Gettysburg and then became a Senator and a Secretary of the Interior.

In subsequent years, amnesties and political changes abroad reduced the number of refugees in Switzerland significantly, although new groups of refugees would continue to arrive, such as Poles fleeing Russian oppres-sion in 1863. Because Switzerland remained a haven for liberals escaping reaction, a Munich police conference following Felice Orsinis's assassina-tion attempt on Napoleon III in 1858 concluded that unless decisive ac-tion is taken "Switzerland is and remains the most dangerous source of revolution and will continually threaten the peace in Europe."[6] Yet, as had happened numerous times before, Britain stepped in on behalf of Switzer-land and peace was maintained. By the late 1860s, Switzerland's existence was no longer threatened by surrounding powers, in part because the refugee issue had lost much of its controversy.

While admirable in the nineteenth century, Switzerland's asylum policy failed gravely during the World War II era. Official statistics show that be-tween 1939 and 1945, Switzerland harbored about 300,000 refugees, of whom 29,000 were Jews, but these numbers climbed to these relatively high levels only in the closing months of the war. At the outbreak of the war, Switzerland harbored about 7,000 refugees, and after three years of war it had admitted only 8,300 refugees, or about one refugee to 500 Swiss. Rings writes, "8,300 civilian refugees at the end of the third year of war: a relatively small number, considering that outside, in all of Europe, a horrible human massacre had been in gear for months."[7] At the Wannsee Conference in January 1942 the Nazis adopted the Final Solution, and within four months 660 refugees fled into Switzerland. Then came 348 refugees in 13 days. The Swiss government decided this constituted an un-bearable flood and sealed the border with barbed wire, despite being in-formed of the atrocities abroad. It also delivered refugees who had entered Switzerland illegally back to the border to waiting German soldiers. Fed-eral Councilor Eduard von Steiger summed up this Swiss refugee policy as "The boat is full" (*Das Boot ist Voll*).

This 1942 sealing of the border caused enough of an uproar in Switzerland, especially in the press and in the churches, that the govern-ment reopened the border later that year, yet only minimally. By the end

of 1942, Switzerland harbored 16,000 refugees, but granted asylum only to those whom it considered *politically,* not *racially,* persecuted. Being a Jew was therefore not reason enough to receive asylum. Only in August 1944, when the allies had broken the fascist clamps around Switzerland, did the government swing the gates open and numbers begin to climb significantly.

It took 50 years for the Swiss government to apologize officially for its asylum policy during World War II. Speaking for the government at a special session of parliament to celebrate the 50th anniversary of the end of the war, President Kaspar Villiger said, "There is no doubt that with our policy towards the persecuted Jews we have burdened ourselves with guilt. . . . The Federal Council regrets this profoundly and apologises in knowledge of the fact that in the end such failure is unexcusable."[8]

Following World War II, Switzerland joined the international effort to deal with future refugee waves. Despite not being a member of the United Nations, it signed the 1951 UN Refugee Convention as well as the 1967 Protocol, the two most important international documents concerning refugees.[9] Until the late 1970s, granting asylum remained an uncontroversial issue. Switzerland accepted most of the roughly 1,000 annual asylum-seekers without much discussion, either because they had fled communist regimes or because their labor skills were useful to the strong Swiss economy. The only time this number climbed significantly (to over 10,000) was with the arrival of Hungarians after 1956, Czechoslovakians after 1968, and Vietnamese in the late 1970s.

An important change in Swiss asylum policy came with the introduction of the 1979 Asylum Law (*Asyl Gesetz*). This law for the first time clearly defined the term *refugee.* According to this law, to be granted asylum, individuals must be considered refugees, defined as:

> foreigners who are exposed to serious prejudices in their state of origin or former habitual residence on account of their race, religion, nationality, membership of a particular social group or political opinion or who have a well-founded fear of being exposed to such prejudices. Prejudices is meant in the sense of dangers to one's body, life or liberty as well as measures causing insupportable psychological pressure.[10]

Despite differences in wording, this definition is almost identical with that of the 1951 Convention. This Asylum Law also gave refugees the right to an asylum procedure, it created the opportunity to appeal negative asylum decisions, and it wrote the principle on *non-refoulement* into Article 45. The federal government stressed that on matters such as family reunion, refugees' legal status, employment, exclusionary grounds, and termination

**Figure 5    Annual Asylum Applicants and Recipients in Switzerland**
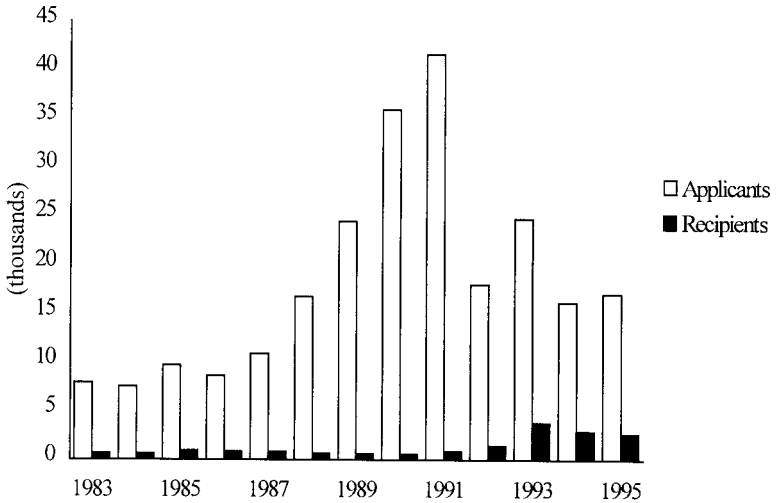
of asylum, this law conformed with international standards explicitly stated in the 1951 UN Convention, the 1948 Universal Declaration of Human Rights, and the European Human Rights Convention. The federal government also stressed that on several points Switzerland exceeded international norms, most importantly in its refugee definition, which considers *unbearable psychological pressure* to be a form of persecution.[11]

By the early 1980s, the volume and nature of those who sought asylum in Switzerland began to change. The number of asylum-seekers increased from 3,000 in 1980 to 9,700 in 1985 to 36,000 in 1990 (Figure 5). Whereas, in the mid 1970s nearly 90 percent of the asylum-seekers had come from the East Bloc, Chile, or Vietnam, by the mid 1980s that number had slipped to just over 10 percent. Now, the vast majority came from Zaire, Turkey, Angola, Iran, Ethiopia, Sri Lanka, and other poor nations, and these new asylum-seekers had a significantly harder time receiving asylum in Switzerland. In 1986, for example, while 192 of the 457 European asylum-seekers received asylum, only 61 of the 1,061 Africans and 521 of the 3,952 Asians did.

In an attempt to deal with the rising number of asylum-seekers, the Swiss parliament revised the 1979 Asylum Law for the first time in 1983.

This revision resulted in a more restrictive asylum law and was criticized by the United Nations High Commissioner for Refugees (UNHCR). The revision, however, did not change the direction of the asylum trend. By the mid 1980s, the Swiss grew increasingly suspicious that many of the asylum-seekers were not "political refugees" who were using asylum to escape persecution, but rather "economic refugees" who were misusing asylum as a form of immigration. This suspicion, coupled with the apparent ineffectiveness of the first revision and the growing backlog of unprocessed applicants, led parliament to pass a second revision in 1986. In defense of this new effort to tighten asylum, Peter Arbenz, the federal Delegate for Refugee Affairs said, "Today, as in the past, Switzerland remains true to its liberal asylum policy and sees no reason to deny protection to authentic refugees. On the other hand, a stricter control will be imposed . . . for illegal workers who use the asylum procedure as a useful means to assure themselves a temporary stay in Switzerland or in other European countries. . . . We intend to take measures to reduce the incidence of such illegal movements—in the interest of genuine refugees."[12]

This second revision of the Asylum Law was challenged by a popular referendum, but the referendum was solidly defeated on April 5, 1987 by a 2:1 ratio. In this referendum, differences in age and education were pronounced as younger and more educated voters tended to oppose tightening asylum, but differences in gender, religion, and region were unremarkable.[13] Despite its intent, the second revision also failed to change the situation as the number of asylum applicants kept outpacing the number of completed cases. By 1987, over 24,000 asylum cases were pending and this number climbed to over 61,000 by 1991, coming to be known as the "Pending Mountain" (*Pendenzenberg*).[14]

As asylum became increasingly controversial, tension grew between federal and cantonal governments. In 1987, for example, the federal government decided to deport 30 Tamils who had been denied asylum. Such expulsions are carried out by the cantons, and Canton Bern, which was responsible for these Tamils, felt they would be in danger if returned to Sri Lanka and therefore refused to carry out this federal deportation order. Meanwhile, Canton Freiburg declared itself unwilling to accept any more asylum-seekers allocated to it by the federal government, and the municipalities of Birrwil, Brittnau, and Fahrwangen refused its allotment from Canton Aargau. Subsequently, the federal government made it clear that such refusals were unlawful, and the supreme court made a similar ruling.

Tension also grew between the government and those segments of society who condemned the increasingly harsh treatment of asylum-seekers. In coordination with various churches, citizens began offering sanctuary to

asylum-seekers often in violation of Swiss law. One of the most spectacular efforts involved seven Kurdish families who began a hunger strike at the end of 1990 in Canton Obwalden to protest their planned deportation. Their hunger strike raised awareness of their plight, but it also brought to light the fact that they did not come from the war-torn region of Turkey. The canton tried to mediate, but the federal government remained firm in its plan to deport them. Then the families suddenly disappeared into the sanctuary movement. Later, at a supposedly secret press conference organized by the churches and attended by most of these Kurds, the police stormed in and arrested the Kurds and deported them to Turkey.

By 1990, Switzerland had granted asylum to 29,000 refugees and an additional 70,000 people were in the asylum process (i.e., their cases were still pending or they had been rejected but were allowed to stay provisionally for humanitarian reasons). In other words, about 1.5 percent of the total population of Switzerland fell under the realm of asylum.[15] Public opinion polls show that while a decade earlier 61 percent of the Swiss had seen the presence of foreigners in a positive light, by 1990 that number had dropped to 41 percent. Furthermore, over 90 percent of the Swiss people now believed that the number of foreigners in Switzerland should go no higher and 61 percent thought the number of asylum-seeker was "unbearable" (*untragbar*).[16] Such negative popular sentiment brought a rash of over 200 attacks on asylum-seekers and foreigners, and in the national election of 1991 the Automobile Party, which had a strong anti-foreigner platform, surprised observers with a relatively strong showing.

Yet, a study conducted by the University of Zürich concluded that the rising number of foreigners was neither a necessary nor a sufficient explanation for anti-foreign sentiment. Instead, such sentiment had more to do with periodic identity crisis in modern society.[17] In a 1992 report on extremism, the federal government drew a similar conclusion: it rejected the commonly held view that rising numbers of foreigners lead to more anti-foreigner sentiment. Instead, such sentiment results from a perceived threat to jobs, housing, and standard of living that stems from shifting economic and social structures. The report concludes that foreigners are "scapegoats for a rising societal and spiritual crisis" (*Sündenbock für eine schwelende soziale und geistige Krise*).[18]

Faced with such public sentiment in 1990, the Federal Council suggested a third revision of the 1979 Asylum Law, and this revision had the support of all parliamentary parties except the extreme right and left. Unlike in 1987, a referendum against this revision failed to materialize, in part because the Socialists, the Greens, and most refugee groups feared that a public debate over asylum would only fuel racism and so they distanced themselves from the effort.

A central thrust of this 1990 revision was to separate clearly positive and negative cases (together estimated by the government to cover about 75 percent of all cases) from those that needed closer examination. Linked to this effort was the new power of the Federal Council to declare countries of origin to be "safe" of human rights violations. Virtually all asylum applicants from such "safe countries" would be considered "obviously groundless." By the end of November 1991, Poland, Hungary, Czechoslovakia, Bulgaria, India, Algeria, Romania, and Angola had all been declared safe countries by the Federal Council. Amnesty International and Swiss Refugee Aid heavily criticized this decision, especially the inclusion of India, Romania, and Algeria. The Federal Council partially acknowledged this critique by removing Algeria from this list in February 1992 after the rise of human rights violations following the canceled elections in January.

Another central part of this 1990 revision was to make Switzerland economically less attractive to asylum-seekers by restricting their employment. Asylum-seekers were to be issued no work permits for the first three months of their asylum process, and if an initial negative decision was reached within this period, the canton could extend this work prohibition for another three months. Those asylum-seekers who did receive work permits had to pay back public assistance that they were receiving, and if a final negative decision was reached the work permit automatically expired.

While these steps were meant to tighten asylum, the revision also took steps that favored asylum-seekers. It established a clearly defined status of "provisional admission," and it created an independent appeals commission to hear the appeals of rejected asylum cases, which had previously been heard by the Federal Justice and Police Department that has jurisdiction over asylum.

Not only did the Federal Council seek domestic solutions to its asylum problem, but international ones as well. In June 1990 the European Community signed the Dublin Convention, which hoped to make it impossible for individuals to apply for asylum in more than one state. Although not a member of the Community, the Swiss Federal Council expressed interest in joining this harmonization effort, estimating that it would reduce the number of asylum-seekers by 20 percent. The idea of joining the Dublin Convention won the support of the Swiss parliament by 1993.

By this time, the number of asylum-seekers in Switzerland had begun to drop. Only 18,000 individuals sought asylum in Switzerland in 1992, a 57 percent drop from the previous year. The federal government credits this drop partly to the third asylum law revision in 1990 (especially the elimination of work permits in the first three months of the process) and partly to the economic recession that had made Switzerland less attractive

for those asylum-seekers who were misusing the policy for economic gain. Despite this drop in asylum-seekers, polls showed that asylum had become the top concern among the Swiss, replacing drugs and the environment. Polls showed that in 1992 only 35 percent believed foreigners had a positive impact on Switzerland while 27 percent of the Swiss expressed "understanding" for violent acts against asylum-seekers.[19]

The war in Yugoslavia exacerbated the already difficult asylum situation in Switzerland because of the large number of Yugoslavian guest workers who were already in Switzerland. When the war broke out in 1991, the Swiss government extended the temporary residency permits of guest workers in Switzerland from war-torn areas of Yugoslavia. By the end of the year, everyone in Switzerland from Croatia, the Croatia/Bosnia border, and Kosovo, as well as deserters and conscientious objectors, were allowed to remain in Switzerland on a temporary basis, but without being granted formal refugee status. By 1993, about 75,000 ex-Yugoslavians were in Switzerland, in addition to the 13,000 that Switzerland accepted by either granting asylum or through special programs organized by the Federal Council.[20]

In summer 1993, a great deal of sensational reporting by the tabloid press focused attention on crimes committed by asylum-seekers, especially drug dealings in the open drug scene of Zürich. In part due to intense public pressure, the Federal Council proposed the "Coercive Measures in the Foreigners Law" (*Zwangsmassnahmen im Ausländerrecht*) in autumn, and parliament passed it in March 1994. This law intended to make deportations of rejected asylum-seekers and of foreigners without residency papers easier, especially those who commit a crime in Switzerland. Opponents of this law initially hesitated to launch a referendum against it, because they feared the ensuing public debate would reinforce the stereotype of criminal asylum-seekers and foreigners, which would further fuel xenophobia. Eventually, a popular referendum did materialize to challenge the law but was defeated by 73 percent of the voters on December 4, 1994.

In the asylum process of the mid 1990s, an asylum-seeker who comes to Switzerland is first registered and given a preliminary hearing at a federal registration center.[21] A full hearing is then conducted (usually by the canton) and the asylum decision is made by the Federal Office for Refugees within four to ten months. While asylum-seekers await the decision, the federal government assigns them to cantons where they may be housed in shelters, receive public assistance, and may receive work permits after three to six months depending on the canton and the circumstances. To be granted asylum, the asylum-seekers must fulfill the 1979 Asylum Law's definition of a "refugee," discussed earlier. The Asylum Law also grants asylum to spouses and minors of refugees, even if they themselves

do not fulfill the definition. If asylum is granted, a refugee receives a temporary residency permit (*Aufenthaltsbewilligung*) and after five years a permanent residency permit (*Niederlassungsbewilligung*) after which an application for Swiss citizenship may be made.[22]

If asylum is denied by the Federal Refugee Office, the decision can be appealed to the Commission on Asylum Recourses, an independent federal authority. If it too rejects the asylum claim, then the asylum-seeker is ordered to leave by a given date, and if he/she fails to do so, may be deported. To ensure that this deportation is carried out, the government can detain the asylum-seeker for up to nine months if it suspects that the rejected asylum-seeker would otherwise go underground. If a deportation is "impossible," "inadmissible," or "unreasonable," the individual is "provisionally admitted" until the deportation can be carried out. Kälin explains:

> *Impossibility* of the deportation means that the alien cannot be returned to another country for factual reasons such as a lack of travel documents or transportation or because borders are closed. *Inadmissibility* is primarily given if the principle of non-refoulement as embodied in Article 33 of the 1951 Convention or in Article 3 of the European Human Rights Convention prohibits forcible return to the country in question. *Unreasonableness* bars the execution of a deportation if the return would specifically endanger the alien, e.g., because of the risks of war or civil war.[23]

In addition, if a deportation would cause especially severe personal hardships, the rejected applicant may be allowed to remain with a "permit for humanitarian reasons." Such personal hardships usually refer to families who are well integrated in Switzerland, who have young children in Swiss schools, or whose social and economic situation in their country of origin would be especially bad if forced to return.

Like all Swiss legislation, asylum legislation is first debated in secret by the executive Federal Council (*Bundesrat*) and then by parliament.[24] The federal parliament has two chambers, the Council of States (*Ständerat* with 46 members) and the National Council (*Nationalrat* with 200 members). Each of Switzerland's 26 cantons is represented in the National Council according to population. In the Council of States, each canton has two seats, except for the six "half cantons" that have only one seat each. The Federal Council's seven members are elected by parliament, and since 1959 the Federal Council has had the same party composition—the three largest parties (the traditional liberal Free Democrats, the primarily Catholic Christian Democrats, and the Social Democrats) each have two seats and the fourth largest party (agrarian and small business based Swiss People's Party) has one seat. Each Federal Councilor heads a department

and it is the Federal Justice and Police Department that has jurisdiction over asylum.

In addition to these four major parties, which occupy about 70 percent of the seats in parliament, there have at various times since the late 1970s been the environmental Green Party, the Automobile Party with an essentially anti-Green agenda, the far-right Swiss Democrats, the Progressive Organization and the Party of Workers both of the far-left, the Liberals who are primarily from the French-speaking cantons, the Independent Party whose focus is on consumer interests, and the Protestant Evangelical People's Party.

As case studies, I chose to analyze the 1979 debate because it produced the Asylum Law, and the 1986 and 1994 debates because they revised the 1979 Asylum Law in such controversial ways that referenda were launched against them. As mentioned, the 1979 Asylum Law was also revised in important ways in 1983 and especially in 1990, but these revisions were less controversial and did not spark a referendum. The 1979, 1986, and 1994 debates are also historically valuable because they reflect quite different periods for asylum in Switzerland: in the late 1970s the issue drew little attention, but by the mid 1980s it was fueling a xenophobic backlash, and by the early 1990s it had grown to be one of the top concerns in Switzerland.[25]

## The 1979 Asylum Debate

The origin of the 1979 Asylum Law was a motion introduced by Hofer (Swiss People's Party) in 1973. At the time, the issue of asylum was fragmented across numerous ordinances, decrees, and government guidelines so that important questions had no legal foundation. The Federal Council felt that such fragmentation was constitutionally unsatisfactory and it subsequently drafted the Asylum Law, whose goal was two-fold: a clear formulation of all relevant legal norms regarding asylum, and a better anchoring and development of the legal status of refugees in Switzerland. The Federal Council introduced this law to the Council of States on March 1, 1978 and to the National Council on December 13, 1978. Both chambers voted on the law on October 5, 1979 and it met no significant opposition, passing the Council of States 32–0 and the National Council 137–2 with the only opposing votes coming from the National Action, a far-right party. The law went into effect on January 1, 1981.

Despite essentially no opposition to the law as a whole, a few articles did spark some controversy, especially in the National Council. In addition to laying out the definition of a refugee, Article 3 states that a refugee's spouse and children (if minors) will also be recognized as refugees even if

they themselves did not face persecution. The intention of this provision was to maintain family unity and without it, supporters argued, a situation could arise where a refugee is granted asylum, but the rest of the family is rejected because it had not been persecuted. While this idea was uncontroversial, some parliamentarians wanted to broaden this provision to include also a refugee's partner-for-life (*Lebenspartner*) to cover unmarried refugee couples. This proposal met stiff opposition and was defeated.

Controversy also surrounded two "exclusionary measures," which deal with Switzerland's right to deny asylum. The first states: "Asylum will be denied to an individual if, due to reprehensible action, he is unworthy of it or if he harms or threatens to harm the domestic or international security of Switzerland." The second measure states that in times of international tension or armed conflict in which Switzerland is not involved, it will grant asylum only as long as possible; it gave the Federal Council, in such unusual circumstances, the right to deviate from the Asylum Law by restricting the granting of asylum, restricting the rights of refugees, and establishing a special asylum process. Fearing that this measure gave the Federal Council too much power, parliament tacked on the provision that any such deviation from the Asylum Law must immediately be reported by the Federal Council to parliament.

These controversial measures were all debated with an array of arguments. As discussed in Chapter One, arguments based on national interests can for useful analytical purposes be separated into arguments based on *political-cultural, economic,* and *foreign policy* interests. In this parliament debate, supporters of the 1979 Asylum Law used all three of these interests to argue that this law, which would loosen the asylum policy of Switzerland, would benefit Switzerland.

Because this looser Asylum Law would bring in more refugees, some supporters noted the benefits that past refugees had brought to Switzerland. Regarding economic benefits, Spiess (Christian Democrat) argued that past refugees had sometimes helped open entire economic sectors, and she cited the Huguenot's contribution to the silk textile industry in Basel, which she said was the precursor to today's chemical industry. Spiess also credited past refugees for making enormous cultural contributions to Switzerland, including the flowering of the theater in Zürich, and she noted that the descendants of the nineteenth century German liberals who had fled to Switzerland are now among the most notable families in Switzerland. She said she could cite many more examples of their positive impact on Switzerland, but did not want to overwhelm her colleagues. Wenk (Social Democrat) also spoke of the political, cultural, and economic contributions of refugees by pointing out that past refugees had become successful and productive members of Swiss society, including serving as

politicians. This argument was underscored by Reverdin (Liberal) who pointed out that he is a direct descendent of a Huguenot family that fled to Geneva in 1702. Bauer (Liberal) spoke of "irreplaceable values" that refugees brought, which "diversified and enriched our economy and nourished our spirit" (*diversifié et enrichi notre économie et fertilisé notre esprit*).

Another set of national interest arguments focused less on the benefits brought by past refugees and more on the benefits brought by the Asylum Law itself. Specifically, supporters of the law argued that it would strengthen Switzerland's democratic principles by codifying into one piece of legislation numerous guidelines and regulations concerning Swiss asylum practice. Dillier (Christian Democrat) argued, "The institutions of the state must abide by norms and the substantial content of these norms cannot simply be based on instructions and departmental guidelines, but must be anchored in clear formal laws that are enacted through the democratic process and recognized by all." Schmid (Social Democrat) likewise praised this law for curtailing the arbitrariness of bureaucrats in their dealing with asylum. Spiess (Christian Democrat) argued that during World War II asylum had been in the hands of a few bureaucrats who pursued a disgraceful asylum policy and this 1979 legislation would now put asylum above the whims of individual people, thereby securing an important aspect of a functioning democracy. Not only does a democratic society demand that bureaucrats follow clear laws, but Justice Minister Furgler (Christian Democrat) argued that the bureaucrats themselves had been demanding clarity and this law would provide it.

Supporters of this looser asylum law also argued that it served Switzerland's foreign policy interests. Wenk (Social Democrat) reminded the chamber that in the nineteenth century, Switzerland often stood under pressure from foreign powers because of its asylum policy, and he said that if a time ever came again when foreign powers tried to apply such pressure, this law would enable Switzerland to declare that it was acting on a firm legal basis, which would strengthen Switzerland's position vis-à-vis such threats. Munz (Free Democrat) argued that a generous asylum policy gave a small state like Switzerland additional legitimacy to exist in the international community, while Muheim (Social Democrat), Schmid (Social Democrat), and Bauer (Liberal) all pointed out that asylum was a natural corollary to neutrality and international solidarity, pillars of Swiss foreign policy.

Supporters also made national interest arguments in reference to specific articles of the law. In the debate over granting asylum to a refugee's partner-for-life, Weber (Social Democrat) conceded that such a proposal would violate the image that many Swiss hold of the family unit, but precisely because of this newness the proposal should be accepted because it

would improve the culture of Switzerland by helping to fight its narrow-mindedness (*Geist einer Kleinkrämerseele*). Alder (Independent) also argued for this proposal, but appealed to Switzerland's economic self-interest. He hypothesized a situation in which Switzerland accepted a refugee and the children but rejected the partner-for-life who was the bread winner. He asked whether this situation really served the interest of Switzerland since this broken family would then require public assistance, and he concluded that the entire family should be admitted so that they can become productive members of Swiss society. In debating the two exclusionary measures, Morf (Social Democrat) complained that the wording of the original version was so vague that it gave the Federal Council too much power vis-à-vis parliament. Similarly, Muheim (Social Democrat) successfully lobbied for the additional clause that demanded the Federal Council immediately inform parliament when it deviates from the Asylum Law in extraordinary circumstances by stressing, "We need such a protection to ensure that parliament does not simply abdicate its power."

Because there was only insignificant opposition to the 1979 Asylum Law, few arguments against it emerged. No arguments based on economic national interests were made against it at all. While the literature suggests that asylum-seekers and refugees may harm the economy, nothing of the sort was said in these debates. At most, Bretscher (Swiss People's Party) and Oehen (National Action) complained that this law gave refugees work permits without enough regard to the economic climate in Switzerland. And foreign policy arguments against the 1979 Asylum Law were also insignificant. Just a few vague concerns were sprinkled throughout the debate, like Bretscher (Swiss People's Party) who warned, "Let's not forget that with these refugees often come also undesirable elements who do not only become a burden on our country, but who also threaten our national security." This lack of economic and foreign policy arguments against this law stems from the fact that in the late 1970s, the unemployment rate in Switzerland was 0.2 percent, and the small number of asylum-seekers came mainly from communist countries, so that it was simply not credible to argue that they harmed the economic or foreign policy interests of Switzerland.

There were only two arguments that were clearly articulated against this legislation and they both appealed to national interests. One claimed that the law opened the asylum process to abuse, and the other claimed that the law was unnecessary. The *abuse* argument, best represented by Meier (National Action), claimed that the current asylum policy was already "negligently generous" and that the Asylum Law would only make matters worse. He claimed word had gotten out in Eastern Europe that Switzerland pampered its refugees, which had opened up the Swiss asylum

process to abuse by people who did not really need it. He said that of the 18,000 Czechoslovakian refugees who made it to Switzerland, 12,000 had actually come after 1968 and they had in fact already found safety in a third country. Another sign of this abuse, he said, was "a gang of 21 hash smugglers from Czechoslovakia" who had received Swiss asylum and were now carrying on their criminal ways and getting fabulously wealthy in Switzerland. Meier's argument is clear: this new, looser law will invite more such criminals who will abuse Swiss asylum and such abuse harms Switzerland's national interest.

Concern over abuse also came up in the specific debate over the issue of granting asylum to partners-for-life. Dillier (Christian Democrat), Schärli (Christian Democrat), Muheim (Christian Democrat), and Gautier (Liberal) all opposed this looser policy because they argued it would be very difficult for Switzerland to determine whether a couple was really partners-for-life or whether it had just met at the border and was seeking to enter Switzerland under false pretenses. Similarly, in arguing against declaring psychological pressure as ground for asylum, Oehen (National Action) argued that this looser definition would be prone to abuse because of the difficulty in verifying such pressure. Concern over abuse was expressed by only a few parliamentarians in 1979, but it will become the backbone of arguments for tighter asylum in the 1986 and 1994 debates.

The other national interest argument against this looser 1979 Asylum Law claimed it was unnecessary. Bretscher (Swiss People's Party) argued that there were sufficient guidelines and decrees to deal with asylum, and he wondered whether it made sense to force the existing policy, which worked well, into a law. Oehen (National Action) added that it was an ominous sign of the times when parliament wants to write anything and everything into law. Munz (Free Democrat) noted that the general public already sensed that too many laws were being made in Switzerland, so he had strong reservations about making another one.[26]

This *necessity* argument also came up in the specific debate over the issue of granting asylum to the partner-for-life. Although they supported the law as a whole, Justice Minister Furgler (Christian Democrat), Dillier (Christian Democrat), Muheim (Christian Democrat), and Gautier (Liberal) argued that this proposal was unnecessary, because in almost all cases the partner of the refugee would certainly also have been persecuted at home, so he or she could simply also apply for asylum; in the rare case when the partner had not been persecuted, they assured the chamber that the government would work something out.

An interesting point about this *necessity* argument is that it reflected two very different motivations. On the one hand, it was made by parliamentarians like Oehen (National Action) who were motivated by the desire for

a tighter asylum policy. On the other hand, it was made by parliamentarians like Gautier (Liberal) who were motivated by a defense of the liberal principle of limited government; Gautier said he had "serious hesitations" about supporting this law and argued, "For centuries we have pursued a generous and open asylum policy without a law. Is it really necessary now to create one? . . . I do not like to legislate in an exaggerated manner by introducing laws that are perfectly superfluous. Let's grant the policy makers a bit of freedom."

The arguments based on international norms in support of this looser 1979 law were straightforward: international norms are good and by meeting or even exceeding these norms, the Asylum Law is also good. Numerous supporters, including Schmid (Social Democrat), Blum (Social Democrat), and Schürch (Free Democrat) noted with considerable pride that this law conformed to or even exceeded international norms and therefore deserved support. This conformity to international norms was especially important to Justice Minister Furgler (Christian Democrat) who said, "It goes without saying that this law absolutely meets the demands of the UNHCR. No one in the UN even made any attempt to claim that this law did not conform to international law or to the modern refugee rules as practiced by the UN." He also stressed that Switzerland worked in "closest possible cooperation" with UNHCR in dealing with the global refugee issue.

While supporters of this looser law relied on international norms for support, some also used international norms to argue against loosening the law further. The most controversial of these looser suggestions came from Blum (Social Democrat) and Jaeger (Independent) who demanded that the law grant refugees the *right to asylum* as practiced in Germany. Numerous debaters, including Justice Minister Furgler (Christian Democrat), pointed out that international norms did not support such a right to asylum and therefore the idea should be rejected, as it indeed was. In other words, supporters used international norms to push for the looser law, but at the same time they used them to prevent the law from becoming too loose. The few opponents of this law simply did not refer to international norms.

Judeo-Christian moral arguments in support of this looser asylum law were virtually non-existent in the 1979 debate. Only Spiess (Christian Democrat) spoke of a Christian duty to help refugees, but later in the debate when she mentioned her faith again she apologized for raising it twice in one day: "I ordinarily do not like to peddle Christianity" (*ich gehe sonst nicht gerne mit dem Christentum hausieren*). The only other reference to religion was Renschler (Social Democrat) who mentioned that Pope John XXIII wrote in *Pacem in terris* that it was a human right to be able to live in a community in which one can hope to provide for oneself and one's family and that it was the state's obligation to accept such people.

Somewhat more common than religiously based moral arguments on behalf of this looser asylum legislation were liberal arguments stressing tolerance. Dillier (Christian Democrat) argued that this law expressed this important liberal ideal, and he quoted the well-respected Swiss historian Edgar Bonjour who had once written, "The uniqueness of Swiss asylum is that it was granted to all, not just to the like-minded, but also to hostile ones. Switzerland opened itself up to preachers, sectarians, and catholic priests, to anarchists as well as monarchists. One must not mistakenly interpret this evenhandedness as indifference or apathy, but rather one must see it as an expression of noble, morally-valuable tolerance." Schmid (Social Democrat) spoke of Switzerland serving for centuries as one of Europe's classic countries of asylum, in part because of its geographic location "but especially because of its tolerance and understanding toward minorities."

The moral value of tolerance was also raised by Morf (Social Democrat) and Spiess (Christian Democrat) in their defense of the partner-for-life proposal. Both parliamentarians argued that one must tolerate and respect foreign customs that have a different conception of the family unit and it is wrong to judge the asylum-seekers' living arrangements by Swiss standards. And Barchi (Free Democrat) stressed tolerance in defense of broadening the definition of a refugee by including "unbearable psychological pressure" as a ground for asylum. He argued that this broader definition was needed in light of modern persecution techniques used by totalitarian states, and if Switzerland were not to accept this broader definition "our contribution on behalf of persecuted people and on behalf of human rights would be zero." In response to Oehen's (National Action) suggestion to prohibit refugees from any political activities in Switzerland because such activities could threaten the national interest, Schmid (Social Democrat) said this suggestion contradicted Switzerland's humanitarian tradition, especially that of the nineteenth century, when it accepted refugees and allowed them to continue their agitation. He argued that refugees were usually profoundly political, and denying them politics would deny them "a part of their elixir of life."

While moral arguments based on Judeo-Christianity and Liberalism on behalf of this looser asylum legislation did not play the prominent roles in these debates that had been expected based on the asylum literature, there was another moral argument that made a noteworthy appearance. Supporters of this looser asylum law argued that this law was a necessary response to Switzerland's poor asylum policy during World War II, an episode that Morf (Social Democrat) described as "a disgrace on our history" (*Schandfleck unserer Geschichte*). The phrase *Das Boot ist voll* was used deliberately by numerous parliamentarians to condemn any part of this law that they thought was too tight. Blum (Social Democrat) noted with

regret that the Federal Council had made "not a single self-critical word regarding the historical guilt with which Swiss wartime asylum policy has burdened all of us." Spiess (Christian Democrat) said that during the war, Switzerland sent Jews to their certain death by refusing them entry at the border; she said, "We knew it back then and we still know it today." Schürch (Free Democrat) argued that the trauma surrounding the asylum policy during the war was still around today, but he believed that this law offered an opportunity to confront it. Jaeger (Independent) most clearly argued that this law offered a moral redemption for the asylum policy during the war when he said, "With this law, we have the opportunity to make right some of what was not right at the time."

As with other aspects of Switzerland's role during World War II, this moral argument was controversial and some parliamentarians took exception to it. Hofer (Swiss People's Party), the initiator of the law and a history professor, complained that the spirit of Heinrich Rothmund, the government official largely responsible for Switzerland's wartime asylum policy, was hanging too heavily over these deliberations and that this law should look forward, not backward. After inviting Morf (Social Democrat) and others to his World War II seminar, he concluded that while it was easy to pass judgment with hindsight, no one could judge with certainty whether at the time the boat was full or not. Bretscher (Swiss People's Party) went a step further to argue that anyone who, like himself, served on the border during the war, and saw "the enormous flood of refugees pouring into our country" understood that the boat was indeed full. Oehen (National Action) added, "Today from a safe vessel and knowing how World War II ended it is wrong to condemn the actions of our fathers and our nation at the time. It is also wrong now to overreact and try to soothe an artificially created guilty conscience ( . . . *durch Überreaktionen ein künstlich erzeugtes schlechtes Gewissen zu besänftigen*)."

## The 1986 Debate

Asylum in Switzerland changed dramatically between 1979 and 1986. The number of asylum-seekers rose from 1,900 per year to 8,500 per year, and the vast majority of them now came from the Third World. This change in the quantity and origin of asylum-seekers made enough Swiss uncomfortable that Lüchinger (Free Democrat) presented a motion in March 1984 to revise the Asylum Law for a second time; the first revision in 1983 had proven ineffective. The goal of this second revision, like that of the first, was to tighten Switzerland's Asylum Law, especially by targeting those asylum-seekers who were suspected of using asylum as a form of immigration rather than as a form of protection from political persecution.[27] The Na-

tional Council began debating this revision on March 17, 1986 and the Council of States took it up on June 3, 1986. On June 20, 1986 the National Council approved it by a vote of 94–43, and on the same day the Council of States approved it 27–5.

While some aspects of this revision were uncontroversial, others sparked sharp debate.[28] Under the existing law, the government generally gave rejected asylum-seekers two or three months to leave Switzerland and if they failed to meet this deadline, the government could deport them. Some rejected asylum-seekers, however, evaded their deadline by going underground, at times with the help of the sanctuary movement.[29] In an effort to combat such evasions, this 1986 revision introduced a controversial "Deportation Detention" (*Ausschaffungshaft*). This measure gave the cantonal government the power to detain rejected asylum-seekers for 30 days as it prepared their deportation if there were "grounds for serious suspicion" that they would not leave on their own by their deadline.[30] However, if their deportation was not possible, because it would for example violate the principle of *non-refoulement* or because borders are closed, rejected asylum-seekers could temporarily remain in Switzerland, but could be interned for up to two years if they posed a threat.

Another controversial new measure allowed the federal government to make its asylum decision based on just the first cantonal interview without also conducting its own second interview of the asylum-seeker if it was clear from the first interview that asylum would not be granted. Federal authorities believed that this measure would enable them to handle cases more quickly, because they estimated that about 20 percent of all decisions could be made after just one interview.

In an effort to combat asylum-seekers crossing the Swiss border illegally, another controversial measure required asylum-seekers to first report to one of over 20 border posts before entering Switzerland. Asylum-seekers who fail to do so would face disadvantages during the asylum process such as work restrictions and fines. This measure especially targeted asylum-seekers being brought into Switzerland by smugglers who were seen by many Swiss as a major source of the asylum abuse.[31]

Finally, the existing "exclusionary clause," which allows the government to suspend the Asylum Law in times of "international tension or armed conflict in which Switzerland is not involved," was broadened so that the Federal Council could now also suspend the Asylum Law "in case of an extraordinarily great flood of asylum-seekers in times of peace" (*bei ausserordentlich grossem Zustrom von Gesuchstellern in Friedenszeiten*).

A controversial suggestion that was ultimately rejected demanded amnesty for asylum-seekers whose cases had been pending for a number of years.[32] The idea of this amnesty was, on the one hand, to reduce the

ever-growing backlog of unprocessed cases (15,000 by 1986) and, on the other hand, to eliminate the hardships that asylum-seekers would face if, after having integrated themselves into Swiss society, their asylum claims are eventually rejected and they are forced to leave.

The 1986 asylum debate differed from the 1979 debate in a number of important ways. The tone was much harsher and more emotional than it had been in 1979. Miville (Social Democrat) described this confrontational tone in his opening statement:

> There are those who think our country is culturally and materially threat-ened by the flood of foreigners and then there are those who, due to a cos-mopolitan ethic and partly due to a guilty conscience because of our wealth, want to swing the door open as widely as possible to the less fortunate. These two camps are far apart and have had a polarizing effect on Swiss so-ciety that has led to a vehemence in disagreement (*Leidenschaftlichkeit des Streites*) that shatters the frame of our normal democratic argumentation and contains some danger.

These two extreme camps are illustrated well by Gurtner (Progressive Or-ganization) and Ruf (National Action), both of whom in fact rejected the revision. On the far left, Gurtner rejected it because she charged it would basically abolish asylum and it used asylum-seekers as scapegoats for do-mestic problem such as unemployment, housing shortages, cuts in health and welfare benefits. She also condemned the current policy for forcing some asylum-seekers to live on the street, deal drugs, and work in the black market where they are exploited by Swiss employers. Finally, she argued that refugees in the Third World are the result of the North's exploitation of the South, including Swiss arms dealings with the military dictatorships in Turkey and Latin America, and Swiss banks operating in South Africa. On the far right, Ruf argued that "the boat has long been full" and that Switzerland needed an even tighter law because of the problems he asso-ciated with the current asylum law, including crime, drugs, unemploy-ment, housing shortages, riots, cultural degradation, and "the raping of Swiss women by Africans." He warned, "If Europe fails to halt this inva-sion from the Third World, then our demise will be sealed."

The 1986 debate also differed from the 1979 debate in the blurring of the terms *asylum-seekers* and *refugees.* Parliamentarians spoke favorably of "real refugees" (*echte Flüchtlinge*), "refugee-applicants" (*Flüchtlingsbewerbern*), "recognized refugees" (*anerkannte Flüchtlinge*), "actual refugees" (*wirkliche Flüchtlinge*), "real asylees" (*echte Asylanten*), "actual asylees" (*tatsächliche Asy-lanten*), "real asylum-seekers" (*echte Asylsuchende*), but spoke disapprovingly of "economic refugees" (*Wirtschaftsflüchtlinge*), "fake refugees" (*unechte*

*Flüchtlinge),* "fake asylees" (*unechte Asylanten*), and "asylum tourists" (*Asyl-touristen*). This blurring of terms was especially practiced by supporters of tighter asylum, and opponents were quick to condemn such rhetoric. Braunschweig (Social Democrat) argued, "By [blurring these terms], we are beginning to pass moral judgment on them," and Friedli (Social Democrat) said, "For all those who talk about fake refugees, I recommend that you go back and read the parliament debates regarding refugees during the war, especially 1942. The Jews were declared fake refugees who had customs different from ours and therefore could not be assimilated. With similar arguments as today, we sent hundreds of Jews to the ovens." Yet, opponents of the revision also deliberately misused terms, although to a lesser extent, when they used the more sympathetic term "refugees" when they in fact were speaking of "asylum-seekers."

A final difference is that while the 1979 debate had been rich in historical references, this 1986 debate was rather ahistorical. In 1979, parliamentarians had spoken of Huguenots in the sixteenth and seventeenth centuries, liberals, monarchs, anarchists, and nihilists in the nineteenth century, and Jews during World War II, but by 1986, they focused on what had happened in Switzerland within the last few years.

Because many Swiss by the mid 1980s had grown suspicious that an increasing number of asylum-seekers were in fact not escaping persecution but were coming to Switzerland for economic betterment, the central concern among supporters of this tighter revision was that asylum was being abused as a form of immigration. Arguing on behalf of the national interest, most supporters of the 1986 revision therefore claimed that this revision presented an opportunity to fight such asylum abuse that threatened to turn Switzerland into an immigration country. To fight this asylum abuse, the revision called for the installation of border posts in an attempt to combat asylum-seekers from entering Switzerland illegally. Bonny (Free Democrat), who introduced this measure, argued, "We can only get the asylum problem under control with effective and legally correct control of the border." Weber (Christian Democrat) supported these border posts in part because they would "separate the chaff from the wheat earlier. . . . This measure is not xenophobic, it is self-defense." Uhlmann (Swiss People's Party) said, "Something must finally be done to combat these smugglers. I think this is an effective measure. We must do everything possible to make access to our country more difficult." By first gathering asylum-seekers at such border posts, Fischer-Hägglingen (Swiss People's Party) and Bratschi (Social Democrat) argued the government could then distribute them more evenly across cantons, which would ease inter-cantonal tension.

Another measure to fight asylum abuse granted the federal government the right, in obviously groundless cases, to make a negative asylum

decision based just on the cantonal interview. Lüchinger (Free Democrat) argued that this measure was supported by the Federal Office for Refugees, which he argued must certainly know the best and most efficient process. Fischer-Hägglingen (Swiss People's Party) argued that it was inefficient for these federal bureaucrats to have to conduct their own interviews in cases when it is perfectly clear from the cantonal interviews that asylum is out of the question. Similarly, Hofmann (Swiss People's Party) and Justice Minister Kopp (Free Democrat) praised this measure for making the process more rational and efficient.

To deal more efficiently with rejected asylum-seekers, the revision also introduced the deportation detention. Steinegger (Free Democrat) argued that since 80 percent of all asylum-seekers are rejected, the question of their departure was crucial, and he believed this measure made this matter more manageable. Nef (Free Democrat) argued that this new measure finally gave the existing law, which already sanctioned such expulsions, some teeth.

These various arguments about abuse and inefficiency were all grounded in the idea of protecting the national interest, and the arguments were simple and repetitive: abuse and inefficiency harms Switzerland and therefore this revision deserves support. The argument often did not elaborate on the exact nature or consequences of the harm done by this abuse and inefficiency. Instead of offering concrete evidence, they tended to put forth rather broad and vague claims. Hofmann (Swiss People's Party) argued that this abuse had become "a burden on the domestic political climate." Meier (National Action) argued that asylum-seekers made up 0.62 percent of the total population of Switzerland and therefore contributed to the "overforeignization" of Switzerland. Oehler (Christian Democrat) warned that if rejected asylum-seekers could not efficiently be expelled "we will make ourselves problems that we will hardly be in a position to solve." Wick (Christian Democrat) complained that in the city of Basel, asylum-seekers made up almost 2 percent of the total population, which was an "enormous burden" that had given rise to fear and xenophobia. These "burdens," "problems," and "climates" were, however, rarely detailed.[33] It seemed self-evident to supporters that the mere fact that abuse and inefficiency existed was itself reason enough to support the law: Switzerland simply could not tolerate such abuse and inefficiency. Lüchinger (Free Democrat) struck this chord when he stressed, "A state that values law and order cannot tolerate chronic injustices like 90 percent illegal entry by asylum-seekers."

To this *abuse and inefficiency* argument, supporters of the tighter revision commonly coupled on a *reassurance* argument. They stressed that by fighting abuse they would reassure the Swiss people that asylum was under control. Stamm (Social Democrat) argued that this revision would restore

people's trust in an asylum policy that they believed had become untenable: "The obvious incompetence of the government to deal with this urgent domestic problem has spread deep malaise (*tiefen Unbehagen*) in many circles of our population." Similarly, Bonny (Free Democrat) warned that this revision was needed to reestablish fully the "lost faith of the people" in asylum. Such discontent, supporters argued, harmed the national interest by eroding the confidence of the people and making them believe the government was out of touch with their demands. The amnesty proposal was especially attacked for going against the will of the people. Hösli (Swiss People's Party) noted that a conference of cantonal executives on August 27, 1985 had already rejected the idea of an amnesty, and he commented, "It would certainly be inappropriate for us to disregard such a clear voice from the cantons." Lüchinger (Free Democrat) and Justice Minister Kopp (Free Democrat) both warned that adding an amnesty would probably be the downfall of the entire law because a subsequent referendum would reject the amnesty.

That there were serious problems in the asylum process was conceded by almost all opponents of this tighter revision.[34] They, however, saw the revision as inflating instead of reducing these problems, thereby harming national interests. In other words, they took the two main arguments of the supporters and turned them upside down: the revision was ineffective and undemocratic. Opponents argued that the revision was an ineffective solution to the current problems. As the second opponent to speak, Robert (Green) set the tone for this argument by claiming that Switzerland's asylum problems did not stem from the existing law, but rather from its inefficient application on the one hand and from global inequality on the other. She warned that this revision offered only a delusion (*Scheinlösung*) that would in fact make existing problems worse. This attempt to reassure the Swiss people, she said, was an "opium for the people," which they would soon realize and then become even more frustrated. In his opening remarks, Leuenberger (Social Democrat) put this *inefficiency* argument in its clearest form: "I am not speaking of a 'liberal core' of the asylum law, nor of a 'humanitarian tradition' that must be maintained. I am not referring to basic principles of tolerance nor to the refugee definition. The constant repetition of these noble principles only serves to whitewash our guilty conscience for having abandoned them long ago. Instead, I am speaking to the ladies and gentlemen who believe in efficiency, who want to do something, who want to clean up, who want to finally be rid of these problems. You have presented us with numerous proposals but I tell you: with these proposals, you will not achieve efficiency."

Later in the debate, Leuenberger argued specifically against the border posts and again stressed that they would not bring the efficiency that

supporters promised: "As I already said earlier, I am no longer interested in arguing for a liberal asylum policy and against a restrictive one. That battle has long been lost. Instead, I want to remind you that these posts will not help you achieve your goal of efficiency and will not solve the asylum problem that we have today."

Having turned one of the supporters' national interest arguments on its head, opponents of the revision did it again by claiming that this revision was undemocratic. While the other side argued that this revision was democratic because it followed popular opinion that no longer supported the current law, opponents of the revision (having to concede popular support) argued that the revision violated other democratic principles. Some opponents of the revision stressed that it was undemocratic because it was merely a rash, knee-jerk reaction to xenophobic sentiment and a cynical ploy eyeing the upcoming elections. Such motives, they argued, did not form a sound basis for making good policy. Braunschweig (Social Democrat) argued, "This revision has been influenced by xenophobia found in segments of our population. But throughout the ages, jurists and legal scholars have rejected emotional law-making." Günter (Independent) warned that this revision was so rash and poorly conceived that it would have to be revised again within a few years. In light of this rash revising of the asylum law, Friedli (Social Democrat) noted, "One really gets the impression that we are disbanding the constitutional state."[35]

The border gates especially met the critique of not following democratic principles. Günter (Independent) dismissed them as "not serious legislating," and Braunschweig (Social Democrat) complained that these gates did not receive nearly the careful scrutiny that a new hunting law had received the previous day. Bäumlin (Social Democrat) noted, "We are dealing here with a perfect example of a rash piece of legislation that is less concerned with the matter at hand and more with the elections next year."

While some arguments against the tighter revision stressed that it harmed democracy because of its poor foundation, others warned that the revision, especially the new exclusionary clause, threatened democracy by shifting power to the Federal Council. Echoing the concerns of the 1979 debate over this same clause, Blunschy (Christian Democrat) complained that this new measure usurped too much power from parliament. She argued, "We value our separation of power. Parliament and (via the referendum) the people are the law-giving bodies. This proposal is an attempt to outfox this separation of power, to exclude parliament and the people by enabling the executive to practically abandon the entire Asylum Law, even in peace time. A common complaint in Switzerland is that, since 1848, the

power of parliament has steadily weakened while the power of the Federal Council has grown. This proposal is a further step in the wrong direction."

Günter (Independent) noted sarcastically that after accepting this proposal it could simply be stated: *Asylum is a matter of the Federal Council.* Braunschweig (Social Democrat) added, "States of emergencies and extraordinary lawmaking are met, rightfully so, with uneasiness in democracies and in parliaments. They create insecurity and give the Federal Council increased power at the expense of the parliament and the people." By arguing that this revision was poorly founded and that it shifted too much power to the Federal Council, opponents of the revision concluded that it clearly harmed Swiss national interests.

Arguments based on international norms did not play prominent roles in the 1986 debate, in part because there was a general consensus even among the opposition that the changes the revision proposed did not violate international norms. As Justice Minister Kopp (Free Democrat) said in her opening remarks, "It is self-evident that Switzerland adheres to its international obligations," and Muheim (Christian Democrat) noted, "For us Swiss, fulfilling our obligation to the Refugee Convention may never be questioned. In the commission, we unanimously agreed that our state must unconditionally fulfill our obligations to international law." When Gurtner (Progressive Organization) suggested that the new exclusionary clauses would violate *non-refoulement,* Kopp responded, "I really do value the fact that this measure conforms to international norms. . . . We are in no way, shape, or form violating any kind of international obligation." In response to Bauer's (Liberal) charge that UNHCR, in a letter to the Swiss authorities dated October 4, 1985, had expressed (in her words) "apprehension," "regret," and "reservation" about the exclusionary clauses, Kopp responded, "I want to make it perfectly clear that this measure is in total compliance with international obligations and that the UNHCR, after we discussed this article with them, showed understanding."

While generally conceding that the revision conformed to the wording of international norms, several opponents of the revision complained that it certainly violated the *spirit* of these norms. Rechsteiner (Social Democrat) complained that the deliberate effort made by this revision to treat asylum-seekers who entered Switzerland illegally worse than those who came legally violated "the sense and spirit of our asylum law and the refugee convention." He argued that being a refugee had nothing to do with how one enters a country and that history shows that often when persecution is the worst, people must cross a border illegally or even rely on the much-maligned smugglers.

Another reason international norms lay low in this 1986 debate was because of domestic political circumstances. On the day before the National

Council began debating this revision, Switzerland voted overwhelmingly against joining the United Nations. In a popular vote, the people rejected the international organization by a 3:1 ratio, even though the Federal Council and all major parties (except the Swiss People's Party) had lobbied hard for months in support of Swiss membership. Perhaps after this stunning defeat, the subject of international organizations, international norms, and international obligations was a bit sore, and neither supporters nor opponents of the revision thought they would gain by constantly referring to UNHCR standards. In fact, Justice Minister Kopp, sensing this anti-UN sentiment, made the limits of international norms clear when she stressed that international norms only commit Switzerland to respect *non-refoulement* and "in no way force us to grant refugee status to asylum-seekers." When the Council of States debated the revision three months later, international norms were somewhat more prominently mentioned, especially by Justice Minister Kopp. Perhaps by this time the dust had settled from the UN vote, or perhaps the Council of States is the chamber that takes international norms more seriously. In any case, neither supporters nor opponents significantly incorporated international norms into their arguments in the 1986 asylum debate.

In addition to serving national interests and conforming to international norms, supporters of this tighter asylum legislation said it fulfilled the moral obligation to help refugees. It did so, according to supporters, by regaining the support of the Swiss, on the one hand, and by making the process more efficient, on the other hand. This first argument was expressed well by Nef (Free Democrat) who said asylum abuse was hurting the people's willingness to help refugees. He warned, "The Swiss is good-natured and supports an asylum law that is fair to real refugees. But he gets sour when he feels duped and abused. We may not let that happen, already not for the sake of real refugees." The moral argument that the asylum process ought to be efficient for the sake of refugees was well made by Wick (Christian Democrat) who said, "In the past, inefficiency, by which I mean the dragging out of decisions, has repeatedly placed an inhumane burden on those in the process. We must now take care that efficiency and humanity work together."

Aside from helping refugees, supporters argued that the revision also served the moral purpose of representing the will of the Swiss people, who demanded reassurance that the asylum law would be revised. The moral side of this argument was nicely demonstrated by Oehler (Christian Democrat) who spoke of a "duty" to revise the asylum law, by Uhlmann (Swiss People's Party) who said, "We must finally acknowledge the mood of the people," and by Stamm (Social Democrat) who concluded, "We need more than just new words on paper. We need the Federal Council to

have the moral courage to apply the law and to do what is necessary for our country." This argument, claiming that "the will of the people" demanded this revision, was borne out in the referendum of April 5, 1987, which supported this revision by a 2:1 ratio.

We now have the supporters' complete argument for tightening asylum: this revision, which conforms to international norms, fights abuse efficiently, which reassures our citizens, which in turn allows Switzerland to continue its humanitarian tradition of helping refugees. Presented in this manner, it appears that their ultimate justification for this revision was a moral one. Not surprisingly, the opposition scoffed at the suggestion that this revision was grounded in morality. Such skepticism irritated Flubacher (Free Democrat) who complained of the opponents' attempts to co-opt morality: "There are also reasonable and responsible people among the supporters of this revision. There is humanitarianism here, too. Humanitarianism may not be monopolized by those from the churches or refugee organizations." Similarly, in his opposition to the amnesty, Frey (Free Democrat) argued that the other side did not have a "monopoly on the heart" (*le monopole du coeur*) and Dreyer (Christian Democrat) argued that just because he opposes opening borders to economic refugees does not mean he closes his heart or his wallet to them, and he suggested increasing development and humanitarian aid to poor countries. Genoud (Christian Democrat) charged that the other side in fact damaged the cause of refugees because an asylum law that was too loose risked forcing Switzerland to abandon asylum altogether: "Realism must guide our policy because, generally, idealism does not lead to good solutions."

Besides stressing that this revision served the moral needs of refugees by weeding out fraud, a number of supporters also suggested that granting asylum might not even be the most humane way of helping refugees. Instead, they argued that a better way to help them was to attack the source of the refugee flow in their own country. The Federal Council had already similarly remarked, "Helping refugees does not only consist of accepting people into ones own territory. An active search for a long-term solution in the countries from where asylum-seekers come is also part of a humanitarian asylum policy."[36] Hofmann (Swiss People's Party) and Steinegger (Free Democrat) supported this alternate way of helping refugees by suggesting that Switzerland engage its diplomatic and financial resources to create safe situations in countries so that refugees and asylum-seekers are able to return home. Aware that this argument would meet skepticism, Lüchinger (Free Democrat) added, "You may claim that this suggestion is a sign of a guilty conscience. But it is my firm conviction that we can better help refugees (but also economic migrants) from faraway countries by supporting them in their own culture instead of trying to accept them at

any cost in our culture, which to them is strange and unfortunately also sometimes hostile."

The moral arguments of the opponents of this tighter revision did not rely on Judeo-Christian tenets. In fact, the only parliamentarian in the entire debate to refer explicitly to Christianity was Oehler (Christian Democrat) who supported the revision because he argued (without elaboration) that it would bring a "humane but also a Christian asylum policy." Noting this lack of Judeo-Christian arguments on behalf of refugees, Fetz (Progressive Organization) said in the debate over the amnesty, "I turn explicitly to the CVP [Christian Democrats], which is divided on this issue and in whose hands the fate of this issue lies: do honor to the 'C' in your name! Think again about the Christian traditions, for it would certainly be appropriate on this issue." Not only were religious arguments not made on behalf of refugees, but the church-based sanctuary movement came under heavy attack. Oester (Evangelical Party) said, "Our party finds the sanctuary movement extremely questionable. It is not the role of the church to undermine a state's decision, as long as this decision was reached in a legally impeccable manner. I say this deliberately and clearly as a member of the Evangelical People's Party." Flubacher (Free Democrat) said the sanctuary movement was "absolutely intolerable and unacceptable in a liberal democracy" and he asked the churches, "Do you really want to empty every last church with your sermons." Ruf (National Action) went so far as to call those involved with the sanctuary movement traitors (*Landesverräter*) who were leading Switzerland to "collective national suicide."

Moral arguments based on liberal ideals were also not used to oppose this tighter asylum law. Not even references to promoting tolerance were made. In fact, the traditional liberal parties (Free Democrats and Liberals) supported the revision and argued for greater state power and control to deal more efficiently with asylum. Bonnard (Liberal), for example, complained that the 1979 law had been too preoccupied with its constitutionality, and Lüchinger (Free Democrat) argued that it had constrained the federal government too much to adapt to changing situations.[37] In response to such arguments made by liberals, Braunschweig (Social Democrat) commented on the irony of Free Democrats calling for a stronger state regarding asylum, while two weeks earlier in a debate regarding oil and gas taxes they had demanded the exact opposite. He specifically criticized their position on the deportation detention that Steinegger (Free Democrat) had said was needed to carry out deportations efficiently. Braunschweig commented, "I grant you that from the point of view of practicality and expediency you are probably right. But, Mr. Steinegger, I thought a liberal may not only think about such matters, but must also address fundamental principles of constitutionality and hu-

manity. I heard no such thing. . . . I admit that something is to be said for practicality, but that cannot be our ultimate concern."

Since Judeo-Christian and liberal moral arguments for looser asylum had not played important roles in the 1979 debate, their absence in 1986 is perhaps not surprising. What is surprising, however, is that references to World War II, which had been an important moral argument for a looser law in 1979, all but disappeared by 1986. Opponents' limited references to World War II came mainly in condemning the new, broader exclusionary clause as a *Boot ist voll* article. Ironically, in the rare cases that World War II came up at all, it was mainly raised by supporters of the tighter revision who argued that the 1979 Law had been too heavily influenced by World War II to still be applicable in 1986. Lüchinger (Free Democrat) said the 1979 Law had been shaped "by very much idealism but also by a bit of naïveté." To those parliamentarians who objected to housing asylum-seekers in collective shelters, Flubacher (Free Democrat) said, "During the war, we Swiss soldiers spent hundreds of nights in gloomy dwelling. I think it can be expected that refugees who are seriously threatened can now stay in collective shelters."

## The 1994 Debate

After peaking in 1991 at 42,000, the number of asylum-seekers dropped to 16,000 by 1994. The federal government attributed this drop in part to the 1990 revision of the Asylum Law and in part to the economic recession that had made Switzerland a less attractive destination. While there was still a perception of wide-spread asylum abuse, the focus in 1994 was now less on "fake" asylum-seekers and more on "criminal" ones, especially those dealing drugs in Zürich. The Federal Council acknowledged this criminal element in the asylum process, but stressed that only a minority of asylum-seekers were involved in such criminal abuse of asylum. It did note that in 1992, 39 percent of the 31,000 people arrested on drug charges were foreign, but it did not know how many of these foreigners were asylum-seekers. The canton of Zürich, which did separate asylum-seekers from foreigners in its statistics, reported that in 1992, 26 percent of all drug offenses were committed by asylum-seekers, but the Federal Council noted that because of the unique drug situation in Zürich, this percentage was disproportionately high and should not be projected across the rest of Switzerland. To fight this type of asylum abuse, the National Council began debating a piece of tighter legislation on March 2, 1994 and approved it 111–51 (with 13 abstentions) on March 18, 1994. The Council of States began its debate on March 8, 1994 and approved it 37–2 on March 18, 1994.

This tighter asylum legislation introduced several controversial measures that technically applied to all foreigners not in possession of residency permits but were geared specifically toward delinquent asylum-seekers who, the Federal Council noted, made up less than 2 percent of all asylum-seekers. The first measure allowed the government to prohibit an asylum-seeker who "harms or threatens public safety and order" from leaving or entering certain areas. This measure was aimed especially at the open drug scene in Zürich, which many Swiss suspected was being run largely by asylum-seekers. This tighter legislation also proposed a "Preparatory Detention" (*Vorbereitungshaft*) for an asylum-seeker who "seriously threatens or endangers other people." This detention, which must be approved by a judge within four days, allows the government to detain such asylum-seekers for up to three months while it decides their asylum cases. This detention can also be used against asylum-seekers who obstruct the asylum process by concealing their identity or by applying for asylum under numerous names.

Furthermore, this legislation extended the existing "Deportation Detention" from a maximum of 30 days to three months (with the possibility of an additional six months if approved by a judge) while the government prepared the rejected asylum-seeker's deportation.[38] This detention, too, must be approved by a judge within four days, and both the Preparatory Detention and the Deportation Detention may only be used if the subsequent deportation does not violate the principle of *non-refoulement*. Finally, this legislation granted the government the right to search houses and other buildings (i.e., churches) for rejected asylum-seekers that the government wants to deport. If a deportation is impossible because the identity of the rejected asylum-seeker cannot be established, this measure also grants the right to search for identity papers, either on the body or within the house or building, but such house searches must be approved by a judge.

The tone and character of the 1994 debate was similar to that of the 1986 debate. It was emotional, polarizing, and ahistorical. It focused almost exclusively on the events in Zürich within the past year, with Keller (Swiss Democrat) on the far right speaking of "crime," "drugs," and "asylum" as if they were one issue, and Spielmann (Workers' Party) on the far left comparing the asylum policies of the Swiss government to those of Vichy.

Supporters of this tighter legislation used the same national interest arguments that supporters had used in 1986. They argued that this legislation would help fight asylum abuse committed by those asylum-seekers who were applying for asylum not to escape political persecution but to gain temporary access to Switzerland to commit crimes, especially related to drugs. This legislation, they argued, would enable Switzerland to deport more efficiently such criminal asylum-seekers. Furthermore, this tighter

legislation would enable Switzerland to deport more efficiently rejected asylum-seekers who ignore their deportation deadline; Justice Minister Koller estimated that 60 percent of all rejected asylum-seekers ignore their deadline by slipping underground.

Carrying out such deportations more efficiently signals the state's willingness to apply the law, and this willingness would halt the erosion of the state's legitimacy, according to supporters. Frick (Christian Democrat) complained that this asylum abuse had turned the asylum process into a farce and had made a mockery of the state. Seiler (Swiss People's Party) warned, "The malaise in Switzerland grows. Doing nothing would be considered in many places a capitulation of the state. No state can tolerate sitting idly by as such abuses—such offenses!—take place. If the state wants to remain credible in the eyes of the people, it is high time to act." Fritschi (Free Democrat) agreed: "A constitutional state whose engine is idling and who cannot carry out its will is in danger of loosing legitimacy."

State legitimacy, supporters argued, stems from the people and they will be reassured by this legislation that the state has the asylum situation under control. Steinemann (Automobile) warned that many Swiss now lived in constant fear and that if the state did not fulfill its obligation to protect them, it would lose their loyalty. Such fear of crime and abuse, supporters argued, was fertile ground for racism, which must be combated. Seiler (Swiss People's Party) argued that if tighter legislation had been accepted five years earlier, xenophobia would now not be as high. Fischer-Seengen (Free Democrat) argued that this legislation provided an effective tool against racism. He said, "The danger of racism arises especially when asylum is abused. It is when we cannot carry out our asylum law that we must fear the outbreak of racism. This legislation will combat such abuse, will calm emotions, and it will significantly reduce the dangers of racist flareups." Engler (Christian Democrat) similarly attributed the growing xenophobia to those asylum-seekers who do not follow the rules. He noted, "If someone enters through the cellar instead of knocking on the door, one should not be surprised if the master of the house becomes somewhat surly, annoyed, and unfriendly."

Opponents of the tighter 1994 legislation acknowledged problems regarding asylum, but, just as they had in 1986, they argued that instead of solving them this legislation would simply make matters worse and therefore it was contrary to the national interest. Opponents argued that asylum-seekers were being made scapegoats for problems that lay outside the realm of asylum and deep within Swiss society. Weder (Independent) argued, "People in Switzerland really are scared. The causes of it however—published in a recent official study—are primarily unemployment, the growing poverty, environmental degradation and—now pay attention—

the 'money laundering' and the dubious dealings of the weapons and ura-
nium Mafia. These are the main reasons for the current panic, but in a
country that is deeply critical of foreigners, the guilty are quickly found."
To this list of societal problems that they consider the real cause of inse-
curity in Switzerland, Tschäppät (Social Democrat) and Diener (Green)
added harsh cuts in the welfare system, downsizing while banks make
record profits, Europe's highest youth suicide rate, and sexual assaults on
women and children. Goll (Social Democrat) argued, "This legislation will
simply bring new problems instead of solving old ones. [Justice Minister]
Koller and the government must quit constantly shifting problems around,
which only escalates tension on all fronts!" Opponents especially stressed
that this legislation was no way to fight the growing drug problem in
Switzerland. Instead of rewriting the asylum law, they argued that the drug
problem could only be tackled by rewriting the drug law.[39]

Another argument against this tighter legislation, familiar from the
1986 debate, claimed that it was drawn up under great pressure from right-
wing populists and the tabloid press, especially the *Blick.* Given this origin,
opponents complained that this legislation was racist and rash and there-
fore unworthy of passage in a democratic society. Goll (Social Democrat)
argued, "When the state, under the pretense of democracy, elevates xeno-
phobic programs into laws, it promotes discrimination against foreigners
and significantly contributes to the racist climate in the country. . . . Politi-
cians are deliberately stirring up racist tendencies by blurring the issues of
drugs, refugees, and domestic security." Rechsteiner (Social Democrat)
noted, "By rejecting this legislation, you will not win the applause of the
*Blick,* but you will show that right-wing populists do not set the tone and
cannot dictate such absolutely unreasonable laws." Opponents of this
tighter law, then, condemned it both as inefficient and as built upon rash,
racist sentiments and therefore contrary to the national interest.

While international norms were not often mentioned in the 1986 de-
bate, both sides frequently referred to them in this 1994 debate. Numerous
supporters stressed that this legislation conformed to international norms,
especially to the European Human Rights Convention (EHRC). Justice
Minister Koller (Christian Democrat) emphasized in his opening remarks,
"We brought our law precisely in line with the guidelines of the EHRC."
Koller and Heberlein (Free Democrat) especially stressed that a group of
experts including Professors Kälin, Heilbronner, Malinverni, and Trechsel
agreed that the legislation conformed to international norms.[40] Frick
(Christian Democrat) pointed out that international norms would have al-
lowed this legislation to be even tighter (especially in regard to the prepara-
tory detention), but that supporters of the law had made a conscious effort
to proceed more cautiously than international norms demand.

Some supporters, however, did not emphasize international norms and in fact dismissed them. In his opening remarks, Keller (Swiss Democrat) scorned the European Human Rights Convention. He said, "Ladies and gentlemen of the left, try telling the many schoolchildren in the plagued neighborhoods of Zürich that these few hundred criminal foreigners are entitled to human rights. You argue that this so-called human rights Convention should protect such people. That brings tears to my eyes!" He went on to dismiss explicitly the principle of *non-refoulement* by demanding that all asylum-seekers who commit a crime be immediately returned to their country, a clear violation of this international norm. Similarly, Steinemann (Automobile) did not mention international norms at all in his opening remarks and later when he expressed support for expanding the reasons for putting someone into preparatory detention, he said, "We support this proposal even if it is claimed that it is problematic with regard to the European Human Rights Convention. For we see no problems and want to expand it to include all foreigners who significantly threaten public order and security." His position can be interpreted in two different ways: either he meant, *We support this proposal, which some think is problematic with regard to the EHRC but we do not think it is,* in which case he may be respectful of the EHRC, or he meant, *We support this proposal, which some think is problematic and we do not care if it is,* in which case he is dismissing the EHRC. Given his party affiliation which, under the slogan, "The boat is sinking!" (*Das Boot säuft ab!*) went so far as to renounce the UNHCR Refugee Convention at a 1995 party conference, the latter interpretation is more compelling and serves as a good example of someone who wants a tighter policy but does not rely on international norms for support.

International norms also played an important role in the arguments of those who opposed this tighter legislation. Only a few opponents, including Weder (Independent), Spielmann (Worker's Party), and Fankhauser (Social Democrat), claimed that this legislation violated international norms. Weder noted, "According to renowned legal scholars, this legislation violates the European Human Rights Convention, the Anti-Racism Convention, the UN Children's Convention, and the UN Refugee Convention." Most other opponents reluctantly acknowledged that this legislation conformed to international norms, and some then turned against them. In his opening remarks, Plattner (Social Democrat) said, "I know that this legislation conforms to the EHRC. That, however, does not speak for the legislation, but rather against the EHRC. This legislation contradicts my moral sensitivity [*Rechtsempfinden*]." In his opening remarks, Tschäppät (Social Democrat) said that an important measure of the modern constitutional state is how it handles individual freedom and the deprivation of this freedom: "This cannot be measured simply by

whether it conforms to the EHRC. Not everything that conforms to the EHRC is constitutionally unobjectionable. For the acceptance of a legal norm, moral sensitivity, morality, and ethics are at least as important as the deliberations in Strasbourg." Similarly, in arguing against the preparatory detention, Bühlmann (Green) complained that once the Federal Council received confirmation from international legal scholars that this measure conformed to international norms, it put to rest any self-doubt. She argued, "But all this is not just a legal question! There is also the question of whether what we do conforms to humanity and to ethics. Legal scholars cannot answer this question for us, even if they stretch the EHRC to its extreme and exploit every loophole in order to justify this legislation by the skin of their teeth. The question that we politicians must answer is a political and an ethical one."

From these different arguments regarding conformity to international norms emerges an unexpected array of positions. Some supporters of this tighter legislation relied on international norms to justify their position, while other supporters dismissed them. Similarly, some opponents strengthened their arguments by referring to international norms, while other opponents complained of their inadequacies. This array of arguments shows the complexity behind the use of international norms. Either stressing or dismissing their importance, both sides referred to them.

Like in the 1986 debate, supporters of this tighter 1994 legislation rounded out their set of arguments by concluding that this tighter legislation was ultimately moral because it enabled Switzerland to continue helping refugees. They argued this legislation would fight abuse and that would reassure the Swiss and that in turn would enable the government to continue granting asylum. Justice Minister Koller (Christian Democrat) summarized this entire argument well, "I am deeply convinced that the best way to fight the spread of xenophobia is to show the people that we have asylum under control and that we fight abuse efficiently. . . . Only if we succeed in tackling the obvious asylum abuses efficiently and in carrying out deportation consistently do we have a chance to uphold our humanitarian tradition of granting asylum to persecuted people."

And, like in 1986, some supporters expressed resentment at the opposition's claim that this moral argument was insincere. Büttiker (Free Democrat) and Frick (Christian Democrat) dismissed the charge that all supporters were driven by xenophobia and by the sensationalist reporting of the tabloid *Blick*. Schmid (Christian Democrat) and Justice Minister Koller (Christian Democrat), while acknowledging that some supporters were motivated by racism, argued that the legislation nonetheless deserved support. Schmid said, "One can ultimately do the right thing even if the wrong people applaud, since sometimes one also does the wrong thing

when the right people applaud; I think the Federal Council should ignore the issue of who is applauding and instead do what it must do—and here it did the right thing."

Unlike in the 1986 debate, opponents of the 1994 legislation did argue that this law violated fundamental principles of Liberalism. They focused on the law infringing on individual freedom, granting the state too much power, and thwarting cosmopolitanism. Regarding individual freedom, Tschäppät (Social Democrat) warned, "The mere suspicion that you are hiding asylum-seekers who received an initial negative decision would now be grounds enough for your house to be searched. Be aware: this measure is not aimed at foreigners, this measure is aimed at Swiss houses, churches, and parsonages—that is hard to believe." Fankhauser (Social Democrat) called this measure monstrous and said, "It is absolutely out of proportion and irresponsible. Our constitutional state, which protects every citizen from unnecessary state interference, may not be toyed with so lightly." David (Christian Democrat) argued, "With this legislation, we are losing our perspective. We are employing the biggest cannon that the state has at its disposal when confronting the individual: the unconditional deprivation of freedom."

Tschäppät also argued that this legislation contradicted the liberal notion of responsible and limited government. He noted, "Governing responsibly means we only legislate as far as is absolutely necessary to achieve the desired goal—in this case fighting the misuse of asylum and the drug dealing. . . . This legislation, however, goes too far by seeking to intimidate future asylum-seekers who must fear being jailed if their asylum claim is rejected even if they committed no crime at all. Such fear will prevent persecuted people from applying for asylum, which is why my conscience and my moral sensitivity cannot support it." In her opposition to placing restrictions on entering or leaving certain areas, Goll (Social Democrat) complained that this measure would require so much state control that it runs the danger of actually becoming martial law. She argued, "The state cannot and may not act as if it can control all problems through repression."

Opponents also complained that this legislation violated liberal principles of cosmopolitanism and tolerance. Tschäppät (Social Democrat) reminded the chamber, "We are dealing harshly with foreigners and yet have quickly forgotten that an hour's drive from most points in Switzerland is enough to make us foreigners too." Goll (Social Democrat) argued, "This legislation makes the utopian promise that Switzerland can remain an island, but that is simply not possible. We cannot be culturally, economically, and politically highly integrated with the rest of the world, but then at our border return, detain, restrict, exclude, deport, and turn away anything that

we do not like. As long as we cling to the doctrine of the sovereign right to deport foreigners, we will make no progress. In the twenty-first century, there can be no more sovereign, unilateral handling of foreigners. Integration according to international law today means cooperation to solve transnational problems."

David (Christian Democrat) argued that Switzerland has long maintained the liberal principles of human dignity, individual freedom, and a limited state, and that this tradition must be maintained regardless of whether the individual is Swiss or foreign. Bühlmann (Green) concluded, "The dignity of humans is indivisible. That is my guiding political principle. This is true for origin, gender, and social class, but with regard to foreigners, we tread on this principle."

It must be noted that some supporters of tighter asylum, especially liberals, generally acknowledged that parts of this legislation were sensitive with regard to liberal principles. Fritschi (Free Democrat) said, "No doubt, some of these measures are very sensitive because they affect the fundamental right of personal freedom, which is an area that since *habeas corpus* belongs to the oldest liberal tradition of clearly limiting state action." Leuba (Liberal) said his party supports this legislation "without enthusiasm," and Roth (Christian Democrat) warned, "This legislation puts in doubt the concept of the Enlightenment and of the liberal state that emerged from the French Revolution. This concept established the fundamental principle that I want to discuss: individual freedom" (*Ce projet met en cause un concept que la philosophie des Lumières, puis l'Etat libéral issu de la Révolution française ont érigé en principe fondamental: je veux parler ici de la liberté personnelle*). Büttiker (Free Democrat), however, noted that while "this legislation is not exactly ideal for any liberal-minded person for whom individual freedom is the highest worldly good . . . it is in line with the oldest liberal tradition, which dictates that whenever individual freedom is at stake, clear boundaries must be set for the state and proportionality must be kept in mind. I am convinced that this legislation meets these high liberal standards." Similarly, although acknowledging that infringements on individual freedoms are a delicate matter, Bisig (Free Democrat) argued that they are legitimate if "national security, public order, public health, public morality, or the rights and freedoms of all" are at stake.

There were other supporters, especially those of the far-right, who did not express concern about this legislation's infringement on liberal principles. Both Steinemann (Automobile) and Keller (Swiss Democrat) instead called for tougher, firmer state action. Steinemann in fact suggested that in order to better implement this legislation, the state's power should be increased through use of the military. He remarked, "The Federal Council and a majority of the parliament are apparently ready to send parts of our

army to every corner of the globe to maintain law and order. Couldn't they instead provide order, security, and quality of life in our own country?" In his support of house searches, Bischof (Swiss Democrat) argued, "The fact that the houses of Swiss people will also be searched—as Tschäppät complained earlier—does not bother us one bit, because every honest and decent Swiss will welcome every policeman into his house and may even offer him a cup of coffee ( . . .*stört uns überhaupt nicht, denn jeder ehrliche und redliche Schweizer wird jeden Polizisten in seine Wohnung lassen und ihm eventuell sogar noch einen Kaffee offerierren*)." It is noteworthy that those parliamentarians of the far-right who here are rather unconcerned about liberal principles were also dismissive of international norms.

The emergence of liberal moral arguments during this debate raises the question of why such arguments did not emerge in 1986 when that revision had already given considerable amounts of power to the state at the expense of the individual. An explanation for this puzzle lay in the dramatic increase in suspicion that people felt toward the state by the mid 1990s. This suspicion arose from two government scandals that had emerged in the late 1980s and early 1990s. The first involved Federal Councilor Kopp who, as Justice Minister, tipped off her husband about her department's impending investigation of his shady business dealings. This obvious conflict of interest forced her to become one of the few Federal Councilors in Swiss history to resign her post. The second scandal was the discovery of a secret military operating outside of the existing military, and the discovery that the state had been keeping secret files on thousands of individuals. This scandal was not so much about the existence of this military and of these files, but rather that they existed outside of parliamentary control and were therefore unchecked by democratic principles. These two scandals brought a Watergate-type atmosphere to Swiss politics, and trust in the state was severely shaken. Therefore, in the 1994 asylum debates opponents of the revision clearly expressed their fear of giving the state any increase in power at the expense of the individual.

While the liberal argument moved to the foreground in 1994, the other moral arguments remained fallow. The *World War II* argument and the *Judeo-Christian* argument on behalf of looser asylum were essentially nonexistent. One of the few references to World War II came from Fankhauser (Social Democrat) who argued that the current debate had disturbing parallels to the debate in 1942: back then a tighter asylum policy was justified because of "lazy" and "arrogant" asylum-seekers and today they are defamed as "criminal" and "fake."

The church-based sanctuary movement again came under attack by supporters of tighter asylum. While acknowledging that church asylum played an important role in the distant past and also in modern tyrannical

states, Schmid (Christian Democrat) argued that in a democratic, constitutional state like Switzerland it had no place and was simply a "perversion" of the original. Justice Minister Koller (Christian Democrat) warned that the state cannot allow people to reject its decisions, lest it risk anarchy. He noted that the Catholic Church had resolved the issue of church asylum, at least on an institutional level, by removing church asylum from its *Codex Juris Canonici* and thereby publicly acknowledging that there was no room for church asylum in a liberal democracy.

## Summary Remarks

This book's goal is to explore the oft-alleged yet rarely examined tug-of-war between national interests pulling to tighten asylum, and international norms and morality pulling to loosen it. The Swiss debates in this chapter already reveal a kink in this common assumption by demonstrating a far richer and more complex picture that changes significantly over time because of both domestic and international circumstances. Each of these three debates show that, to better understand asylum, we must also understand how national interests can pull, counterintuitively, to loosen asylum, while morality can pull to tighten it. International norms, meanwhile, can be stressed or dismissed depending on political ideology and circumstance.

Arguments based on the national interest changed significantly between the late 1970s and the mid 1990s. In the 1979 debate, parliamentarians heaped a great deal of praise on past refugees for how they had furthered the economic, political, and cultural interests of Switzerland. After providing a long list of their contributions, Spiess (Christian Democrat) concluded, "One could go on with many more examples, but I do not want to overwhelm you." Such positive assessments of how refugees and asylum promote the national interest undoubtedly reflected Cold War circumstances when only a small number of well-educated asylum-seekers from predominantly communist countries annually applied for asylum in Switzerland. This Cold War dimension is especially clear in the inclusion of "unbearable psychological pressure" as a ground for asylum that Barchi (Free Democrat) argued was needed in light of modern persecution techniques used by totalitarian states.

As the number of asylum-seekers grew and as they increasingly came from non-communist Third World countries, these national interest arguments changed dramatically. By 1986, parliamentarians no longer provided each other with examples of how refugees promoted the national interest. In fact, they were silent on the matter. Instead, supporters of tighter asylum focused on how "fake" asylum-seekers abused asylum, and in 1994 they focused on "criminal" asylum-seekers. Yet, supporters of tighter asy-

lum tended not to elaborate on how precisely the national interest was harmed; it simply seemed self-evident to them that such abuse itself was harmful. To counter these arguments, one might have expected the opponents of tighter asylum to keep insisting that refugees did in fact promote national interests. But they did not. Instead, opponents argued that Switzerland was harmed by tighter asylum laws, not that it was helped by refugees. In other words, opponents of tighter asylum legislation argued more against such legislation than for the refugees.

Arguments based on international norms also varied considerably over time. They were important in the 1979 debate that loosened asylum, then they were unimportant in the 1986 debate that tightened it, and then important again in the 1994 debate that further tightened it. Their disappearance in 1986 was an anomaly caused by the UN vote being held one day before the opening debate in the National Council.

While arguments based on the national interest and on international norms changed over time, moral arguments on behalf of looser asylum remained largely the same—relatively unimportant. While the literature stresses that moral obligations based on Judeo-Christianity and/or Liberalism work on behalf of looser asylum laws, Judeo-Christian arguments were essentially non-existent. And liberal arguments emerged only in 1994 when they were made by the Left out of wariness with a state plagued by recent scandals. There was a moral argument made that Switzerland had an obligation to make amends for its asylum policy during World War II, but this argument was only important in 1979 and then all but disappeared, as if parliamentarians felt that the statute of limitations on moral guilt had run out sometime between 1979 and 1986.

In Switzerland, then, arguments based on national interests, international norms, and morality spun a complex web in the asylum debates of 1979, 1986, and 1994. Counterintuitively, many supporters of tighter laws ultimately argued on moral grounds: the tighter laws were needed to maintain the humanitarian tradition of granting asylum to refugees. And opponents of tighter laws stressed much more that such laws harmed national interests, instead of stressing the obligation toward refugees. And to strengthen their complex arguments, some members of both sides claimed to have international norms working on their behalf, while others dismissed them as inadequate, inappropriate, or irrelevant. Whether such complexity is also found in German asylum debates is the subject of the next chapter.

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# Chapter Three

## Germany:
## The 1978/1980, 1986, and 1993
## Parliamentary Asylum Debates

### Introduction

The Federal Republic of Germany's post-war asylum policy is complex because of the disparate groups who have crossed into its territory. Ethnic Germans, guest workers, and asylum-seekers have all sought admission, and the situation of the asylum-seekers can only be understood in context of the other two groups. The first group is the ethnic Germans, who are either *Aussiedler* or *Übersiedler*. The *Aussiedler* are descendants of Germans who had moved eastward in previous centuries, especially into Poland, Romania, and Russia. Many had been invited by Catherine the Great, herself a German, in the eighteenth century to Russia to help develop its agriculture. Before World War II, the largest concentration of such *Aussiedler* lived in the Autonomous Volga German Republic on the border with Kazakhstan, but in 1941 Stalin, fearing that they would support Hitler, disbanded their republic and deported these ethnic Germans to Siberia and Central Asia. After 1945, the Federal Republic of Germany (henceforth Germany) was forced to absorb 10 million *Aussiedler* who were being expelled from Eastern Europe and the Soviet Union. In addition to these *Aussiedler,* Germany also had to absorb 3.5 million *Übersiedler,* who were Germans fleeing into West Germany from what had become East Germany. These ethnic Germans were not considered refugees or guest workers, but simply Germans because Germany grants citizenship according to the principle of *jus sanguinis,* which grants citizenship based "on blood": you are German if your ancestors are German. This principle is also followed in Switzerland, but not in Britain

where citizenship follows the principle of *jus soli,* which grants citizenship based "on territory": you are British if you are born in Britain. Because of this German conception of citizenship, these *Aussiedler* and *Übersiedler* were automatically entitled, under Article 116 of the Germany constitution, to German citizenship, and despite their staggering numbers, these ethnic Germans were successfully integrated into German society by the 1960s. This successful integration was helped not only because of this conception of citizenship, but also because of the rapidly expanding economy of the 1950s and 1960s that was able to absorb them.[1]

During this time of rapid economic growth, Germany began facing a labor shortage and so started importing workers from abroad, first from Italy and then Spain, Greece, Portugal, Turkey, and North Africa.[2] Germany has always insisted that it is not an immigration country and it brought these workers in under the assumption that they would remain only temporarily, until their labor was no longer needed, and then they would return home. By the early 1970s this assumption had been proven wrong because, except for the brief recession in 1967 when their numbers did drop, guest workers had, for all practical purposes, become immigrants in Germany.

In addition to ethnic Germans and guest workers, asylum-seekers were also coming into Germany throughout the post-war era. Germany has been an especially attractive haven because of its unique constitutional guarantee to asylum: Article 16 of the 1949 Basic Law states "Politically persecuted enjoy the right to asylum" (*Politisch Verfolgte geniessen Asylrecht*). Until this Article was changed in May 1993, Germany was unique in offering such an asylum guarantee. An early draft of Article 14 of the 1948 Universal Declaration of Human Rights had made a similar guarantee, but states objected because it infringed on their sovereign right to grant asylum, and the wording was subsequently changed to give individuals the right *to seek and to enjoy* asylum, but not the right *to be granted* asylum. Germany, in an effort to amend for its past, deliberately wrote this unmatched asylum guarantee into its constitution, and the 1993 constitutional change of this guarantee resulted in one of the most heated debates in Germany's history.

Until the mid 1970s, the asylum issue went largely unnoticed in Germany. The number of annual asylum-seekers was small, except after the 1956 Hungarian and the 1968 Czechoslovakian uprisings. From 1953 to 1972, a total of 101,000 people applied for asylum in Germany, which averages 5,000 per year.[3] Many of these asylum-seekers came from the East Bloc so that, like Switzerland, Germany granted them asylum with little discussion or controversy. By the early 1970s, the success of the massive resettlement of ethnic Germans and the country's uniquely broad constitu-

tional right to asylum had "rendered the Federal Republic, in spite of its catastrophic past, something of a model for all states in the handling of refugees."[4] Indeed, it is striking that until the early 1970s, the significant movement of people into Germany, whether ethnic Germans, guest workers, or asylum-seekers, caused little political debate, problem, or anxiety.[5]

This placidity began to roil in the mid 1970s. The oil crisis and the subsequent economic recession brought a halt to the importation of guest workers in November 1973. By this time they numbered 2.6 million, although if their family members are also counted, the total number of foreigners was almost four million.[6] Paradoxically, despite halting the importation of labor, the number of foreigners actually kept climbing due to family reunification and high birth rates among the guest workers. By 1981, 4.6 million foreigners lived in Germany (or 7.7 percent of the total population) and the vast majority of these foreigners were associated with the guest-worker program.[7] Ethnic Germans kept arriving as well; in 1978 alone 70,000 *Aussiedler* arrived, marking a 20-year high.[8] And the number of asylum-seekers climbed too; while in 1973, 5,600 individuals applied for asylum in Germany, five years later this number had risen to 33,000.[9] These rising numbers brought calls for tighter asylum, and asylum became an important political issue for conservative parties in the late 1970s.

The first significant legislative effort to deal with this rising number of asylum-seekers came in 1978. This legislation (*Gesetz zur Beschleunigung des Asylverfahrens*) attempted to speed up the asylum process, which could take up to seven years, by allocating more personnel to the Federal Office for the Recognition of Foreign Refugees and by limiting the appeal opportunities for rejected asylum-seekers whose case the government had declared "obviously groundless." This tighter legislation, however, did not stem the rising numbers, which reached 108,000 in 1980.

Like in Switzerland, housing and caring for asylum-seekers is the responsibility of local governments, but by this time a number of cities, including Frankfurt and Essen, declared themselves unwilling to accept any more asylum-seekers. In a well-publicized incident in July 1980, 200 asylum-seekers from Afghanistan and Ethiopia were stranded at the Frankfurt airport for five days after Mayor Walter Wallmann refused to accept them, arguing that his city had already accepted 8,000 that year. The asylum-seekers were eventually moved to Bavaria.

In an effort to calm the growing tension over asylum, another piece of legislation was adopted in 1980. Among other things, this 1980 law (*Zweites Gesetz zur Beschleunigung des Asylverfahrens*) withheld work permits from asylum-seekers for their first year in the asylum process, which was a measure targeted at those asylum-seekers whom the government suspected of coming to Germany for economic, not political, reasons. After this law

passed, the number of new asylum-seekers in 1983 did drop to 19,700, but then climbed again to 73,800 in 1985 and to 99,700 in 1986 (Figure 6). The majority of these asylum-seekers were now coming from the developing world, especially Sri Lanka, Turkey, and Iran.[10]

To fight these rising numbers, Germany relied on the same basic strategy that Switzerland used: make access harder, speed up the asylum process, and make living and working conditions less attractive for asylum-seekers. A good example of making access harder was the agreement West Germany reached with East Germany in the mid 1980s. At the time, many of the asylum-seekers from the Third World arrived in East Berlin where the East German authorities allowed them to pass into West Berlin and on into West Germany. Through an October 1986 agreement, West Germany was able to convince East Germany to begin requiring visas to travel from East to West Berlin. Another example of this three-pronged strategy was the government's introduction of "carrier sanctions," which fined airlines for every person they brought into Germany without proper travel documents.

In 1986 parliament, in yet another effort to fight the growing numbers of asylum-seekers, passed a law that extended the work prohibition for asylum-seekers to five years and denied asylum to anyone who had already found asylum in another country for at least three months. This tighter law (*Gesetz zur Änderung asylverfahrnsrechtlicher, arbeitserlaubnisrechtlicher und ausländerrechtlicher Vorschriften*) brought a temporary drop in the number of asylum-seekers, but by 1988 the number had climbed back to 103,100. It is worth mentioning that Germany did not consider the ethnic Germans problematic and let in over 60,000 in 1985; their acceptance was stressed during the debate over the tighter 1986 asylum law when Olderog (Christian Democrat)[11] said of the *Aussiedler,* "They belong as Germans to us (*Sie gehören als Deutsche zu uns*)."

The fall of the Berlin Wall in 1989 brought not only another dramatic upturn in the number of asylum-seekers, but also a surge in the number of *Aussiedler* and *Übersiedler.* While in 1988, 255,000 ethnic Germans had entered Germany, in 1989 this number climbed to 720,000, half of whom came from the crumbling East Germany, and a third from Poland.[12] In the year following German reunification in October 1990, an estimated 120,000 people moved from the former East Germany into the former West Germany, although they were now no longer called *Übersiedler.* That year also brought 222,000 *Aussiedler,* the majority of whom came from the USSR (147,000), Poland (40,000), and Romania (32,000).[13]

To deal with the ever rising number of asylum-seekers, Germany passed a series of new laws that went into effect on January 1, 1991. Among the most important features of these new laws was a loosening of the work re-

**Figure 6 Annual Asylum Applicants and Recipients in Germany**
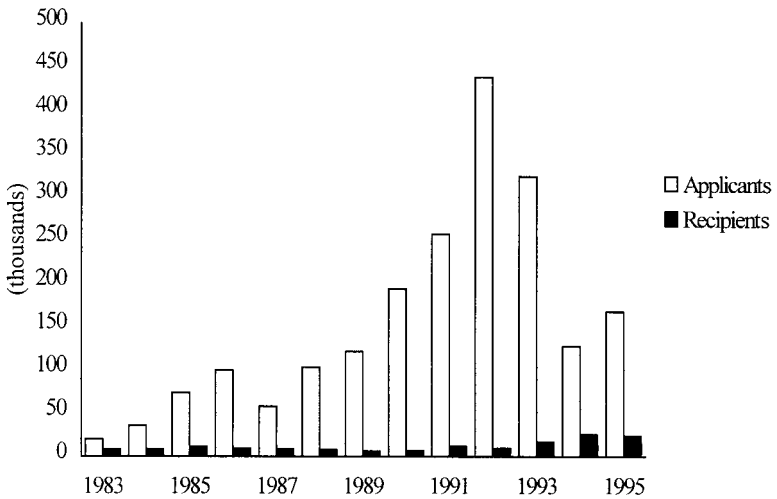
strictions, the introduction of a "tolerated status," and the abolishment of appeals for "manifestly unfounded" asylum claims. Before these changes, an asylum-seeker whose case was being decided had to wait five years for a work permit, but the government lowered the wait to one year (and eliminated the wait altogether in July 1991) although asylum-seekers were still generally limited to jobs that Germans would not fill. These new laws also introduced the practice of granting renewable six-month "tolerated status" to asylum-seekers who did not actually receive asylum but who could not be deported because of war, famine, economic crisis, or some other threat in their home country.

Again, these measures failed to lower the numbers. Between 1992 and 1993, Germany received more asylum-seekers than all other European Union countries combined, in large part because of its unmatched right to asylum and because of its generous welfare support of asylum-seekers. In 1992 alone, a record 438,000 asylum-seekers arrived, which was more than 75 percent of the EU total.[14] It is important to note that the origin of these asylum-seekers had dramatically shifted again. While in 1986, 75 percent of all asylum-seekers had been non-European, by 1993 over 70 percent were European, mainly from the former Yugoslavia, Romania,

Bulgaria, and the former USSR.[15] The disintegration of Yugoslavia alone brought over 300,000 people from that country into Germany, and the U.S. Committee for Refugees writes that of all the EU countries, Germany has been the most generous in offering temporary safe haven to victims of the war in the former Yugoslavia.[16] Gibney notes that as long as other European countries continue to tighten their asylum laws, Germany will receive a disproportionate number of asylum-seekers. He explains:

> Germany is embroiled in an international situation in which states with the least room to maneuver in dealing with asylum-seekers are likely to bear the biggest burden. . . . If Germany now faces a crisis because of the extreme pressure placed on its generous asylum entitlement by huge numbers of necessitous foreigners, it is a crisis that is not of its own making. . . . If one wishes to find a culprit for the Federal Republic's current situation, one could do worse than to look at the actions of other Western states which, by effectively 'opting out' of providing refuge for the new wave of asylum-seekers, have collectively created an environment that imposes enormous costs on states that recognize broad rights of entry for refugees.[17]

By this time, the total number of foreigners in Germany was 6.5 million, or 8 percent of the total population, and most of these foreigners were in the guest worker sphere. The number of people in the asylum sphere was still relatively small: in 1993, for example, refugees, asylum-seekers, and people with a "tolerated status" together numbered 1.5 million (or less than 2 percent of the total population).[18] Regardless of the objective numbers, the perception grew that Germany was suffering. An October 1992 public opinion poll in *Der Spiegel* shows that "getting the problem of foreigners under control" had become the most important issue among western Germans, and second only to "economic development" among eastern Germans. It also showed that 16 percent of those surveyed thought that the far-right-wing *Republikaner* party was the party most competent in handling the foreigner problem and 35 percent had "understanding for radical-right tendencies because of the foreigner problem" (*Verständnis für rechts-radikale Tendenzen wegen des Ausländerproblems*). Furthermore, 77 percent thought foreigners abuse the welfare system, 74 percent thought they worsen the housing shortage for Germans, 60 percent believed they raised unemployment among Germans and 59 percent thought foreigners were "a danger on the streets."[19]

This anti-foreigner sentiment, in turn, encouraged a wave of attacks on asylum-seekers and on foreigners in general. In 1990, the radical Right was responsible for 300 attacks, and by 1992 they had committed about 2,000 such attacks.[20] Because much of this violence took place in eastern Germany, the common perception is that the radical Right is stronger there

than in the western part. In fact, the opposite is true: the October 1992 survey in *Der Spiegel* shows support for the far-right *Republikaner* party at 6 percent in the western part and at 3 percent in the eastern part, while "understanding for the radical right"(*Verständnis für Rechtsradikale*) at 38 percent in the western part and 25 percent in the eastern part. The most violent of these radical Right attacks occurred in Hoyerswerda (September 17, 1991), Rostock (August 24, 1992), Mölln (November 23, 1992, when three Turks died), and Solingen (May 29, 1993, when five Turks died). The violence then ebbed in the aftershocks of these deadly attacks; *Der Spiegel* wrote, "The murders in Mölln have transformed public opinion like few other events since 1945," and in a new survey, understanding for the radical Right dropped to 12 percent, support for the *Republikaner* dropped to 5 percent, and only 3 percent now thought it the most competent party to handle the problem with foreigners.[21] By the national election in October 1994, the *Republikaner* support had fallen to 2 percent.

Since 1990, the Kohl government had argued that the only way to get asylum under control was to change Germany's unique constitutional right to asylum, a suggestion the opposition Social Democrats resisted, and without its support the proposal lacked the two-thirds majority needed for a constitutional change. But as violence against foreigners grew in 1992, the Social Democrats under Björn Engholm switched its position over significant internal opposition and entered into negotiations over this constitutional change. In December 1992, the Social Democrats reached an asylum compromise with the ruling Christian Democrat/Free Democrat coalition, in which the Social Democrats agreed to support the constitutional change in return for easing citizenship requirements and other concessions regarding migration and integration. Public opinion polls showed that the majority of people also supported this constitutional change.

Parliament approved this constitutional change in May 1993 at a time when 1,000 asylum-seekers per day arrived in Germany. Outside the parliament building, 10,000 demonstrators protested the change, which prompted the largest police mobilization ever in Bonn. The *New York Times* (5.27.93) describes the scene: "The demonstrations prompted heavy security by a force of some 4,000 police officers. Main streets in the city were closed, public transportation schedules were altered, and some members of parliament were flown to the debate aboard helicopters or brought on police launches patrolling the Rhine." Despite these protests, the change was approved by the Bundestag on May 26, 1993 by a vote of 521–132, passed the Bundesrat two days later, and went into effect on July 1, 1993. The Constitutional Court upheld this change on May 14, 1996.

The federal government explains that prior to this constitutional change, Article 16 of the constitution meant that "any alien pleading

political persecution in principle had the right of temporary residence in Germany pending completion of asylum proceedings [and] the right to a comprehensive examination of his or her application for asylum even if administrative and possible subsequent judicial proceedings clearly offer no prospect of a successful outcome." The government felt that this article had become the root cause of its asylum problem and therefore decided to narrow it. It explains, "The aim of this revision is to continue to grant protection and refuge to persons suffering political persecution, while preventing unjustified recourse to the right of asylum and excluding from lengthy asylum proceedings those aliens no longer requiring protection since they are clearly not or no longer being persecuted on political grounds."[22]

This change was aimed specifically at two types of asylum-seekers: those coming from "safe countries" and those the government considers "manifestly unfounded." "Safe countries" are those that Germany believes are free of political persecution and therefore asylum-seekers coming from or through one of these countries have virtually no chance at being granted asylum. By the end of 1993, all states bordering Germany, as well as Norway, Sweden, Finland, Slovakia, Bulgaria, Romania, Hungary, Gambia, Ghana, and Senegal were declared safe of persecution. According to the federal government, cases are declared "manifestly unfounded" if "essential points of an alien's claim are unsubstantiated or the claim is contradictory or is based on forged or false evidence, [or] an alien gives false information about his identity or nationality or refuses to provide such information in asylum proceedings, [or] an applicant for asylum flagrantly fails to comply with the obligations to cooperate in asylum proceedings, unless he or she is not answerable for this."[23] In addition to rewriting the constitution, the government also sought to reduce its asylum costs, which had reached about $5 billion. As of November 1, 1993 adult asylum-seekers would receive $60 and children $30 per month, as opposed to $325 and $195 as had been the case. The government also took steps to speed up the asylum process at airports and to better patrol its borders.

All of these changes had an immediate effect. In the six months after the law took effect on July 1, 1993, Germany had a 56 percent drop in asylum-seekers, and in 1994 the number of asylum-seekers coming to Germany was down to 127,000.[24] The backlog of unprocessed files was also cut from 500,000 in 1993 to under 80,000 in 1995.[25] Despite initial concern regarding this new law, UNHCR subsequently wrote:

> According to UNHCR's Representative in Bonn, these developments cannot be interpreted as a collapse in refugee protection standards. "In general," she writes, "the reality since July 1993 has not come close to the fears of the

critics of the German legislation." Large numbers of persons still manage to gain access to the asylum procedure. The number of people who are returned to a "safe third country" after entering the procedure is small—just 1.5 per cent of the applicants in 1994. And in practice, the German authorities appear to undertake an examination of the claim when removal to a "safe country" is not possible, although such applicants are entitled only to protection against return to their country of origin, rather than refugee status.[26]

Similarly, the U.S. Committee for Refugees wrote that, if strictly enforced, this law now completely sealed Germany off from asylum-seekers coming over land, but that practical and administrative difficulties hinder such enforcement, and it concluded, "The new asylum provisions, although extremely restrictive on paper, appeared unlikely to produce the sweeping change Chancellor Helmut Kohl's government had hoped for."[27] Practical difficulties included, for example, Poland only taking back those asylum-seekers whom Germany could prove had come into the country through Poland, but proving this transit would require travel documents or ticket stubs, which asylum-seekers sometimes destroy upon entering Germany to avoid precisely such returns. It is noteworthy that asylum-seekers did not seem to want asylum in Poland or other countries to the east as seen by the fact that in 1994 only 2,000 applied for asylum in the Czech Republic, Poland, and Slovakia combined. UNHCR comments, "As these statistics suggest, asylum-seekers and migrants who are turned away from the Federal Republic as a result of the safe third country principle are very likely to try their chances again or seek entry to another Western European state, rather than remaining in the central or eastern part of the continent. . . . Germany's new refugee policy might therefore divert or defer the problem of irregular migration, but it seems unlikely to resolve it."[28]

This idea of being able to send asylum-seekers back to another country is the goal of the Dublin Convention, which Germany ratified in June 1994. Through this treaty, EU countries can return asylum-seekers to the EU country through which they had come. By 1994, Germany had also signed similar agreements with non-EU countries such as Switzerland, Romania, Bulgaria, Croatia, the Czech Republic, and Poland, and Poland received $76.4 million to accept asylum-seekers who had come to Germany through its territory.[29] Weiner summarizes the German asylum dilemma:

No industrial country has faced as severe a crisis over international migration as Germany. The fall of the Berlin Wall and the reunification of Germany, the collapse of Soviet control over Eastern Europe, and the breakup of Yugoslavia and of the Soviet Union have all combined to make Germany a front-line state not against a cold war adversary but against a flood of

refugees and migrants. . . . The response of Germans to that crisis has in turn created negative images of Germany in much of Europe and the United States. Paradoxically, Germany has been more open to refugees than any other industrial nation.[30]

In the asylum process of the mid 1990s, asylum-seekers make their claim with the Federal Office for the Recognition of Foreign Refugees and are then distributed to the various *Länder* according to a quota.[31] The *Länder* maintain 48 reception centers, each with a capacity to hold 500–1,800 asylum-seekers. Generally, asylum-seekers live in these centers for the first three months of the asylum process during which time they may not work. After three months, they must leave these centers, and the local authorities are responsible for housing them, usually in collective shelters such as dorms, hostels, or barracks. Asylum-seekers may at this point apply for work permits, but they face numerous restrictions in the job market. In principle, asylum-seekers must cover their own costs, so wage-earning asylum-seekers must pay back the government for their up-keep. Needy asylum-seekers receive welfare assistance, which is usually in-kind (plus monthly pocket money of 80 DM per adult and 40 DM for children), but after 12 months they receive the same kind of assistance that needy citizens do. There is considerable variation between the *Länder* in their handling of housing, welfare, employment, and education issues.

In a process that can take between a week and a year, the Federal Office for the Recognition of Foreign Refugees can decide an asylum claim in one of several ways: it can grant asylum and protection against *refoulement,* deny asylum but grant protection from *refoulement* by offering some type of "humanitarian status,"[32] or deny the claim altogether. If an asylum-seeker is simply rejected, then that person has one month to leave voluntarily or be deported, although the rejection can be appealed within two weeks to the administrative court. If a case is rejected as "manifestly unfounded"[33] or "in-admissible,"[34] the asylum-seekers must leave within a week, but can appeal the decision within that week. If an asylum-seeker is granted asylum, he or she is given a temporary residence permit that is valid for two years and can be renewed. The recognized refugee can then apply for naturalization after seven years, unlike foreigners in general who must wait 10 years.

About three-fourths of all bills submitted to the German parliament are conceived and written by the executive.[35] After a bill is approved by the executive, it is presented in parliament for a first reading, then heads to the ap-propriate committee(s) and comes back for a second and third reading and then a final vote. Like Britain but unlike Switzerland, party discipline is high in Germany with 85–90 percent of all votes cast along party lines. The fed-eral parliament has two chambers, the *Bundesrat* and the larger *Bundestag.*

The seats of the Bundesrat are distributed according to the size of the *Länder*. The Bundesrat's main political involvement is on issues directly concerning the states, such as education, police matters, state and local finances, land use, and transportation, although it must approve any constitutional change. The primary task of legislating falls to the Bundestag, which also elects the chancellor who in turn appoints the executive cabinet.

During the time period under consideration here, the three major parties in Germany were the conservative Christian Democratic Union and its Bavarian affiliate Christian Social Union, the Social Democratic Party, and the Free Democratic Party. Between the late 1970s and the mid 1990s, support for the Christian Democrats ranged from 41.5 percent (1994) to 48.6 percent (1976 and 1983), the Social Democrats' support ranged from 33.5 percent (1990) to 42.9 percent (1980), and the Free Democrats ranged from 6.9 percent (1983 and 1994) to 11 percent in 1990. Minor parties in parliament include the Greens and the Party of Democratic Socialism, which is the successor to the Communist Party of East Germany. The Greens first entered parliament in 1983 with 5.6 percent support, climbed to 8.3 percent in 1987, failed to reach the 5 percent threshold needed to remain in parliament in 1990, and then reentered parliament (with its eastern affiliate *Bündnis 90*) in 1994 with 7.3 percent. In 1990, the Party of Democratic Socialism won only 2.4 percent nationally, but because they had received 9.9 percent in eastern Germany special provisions were made to grant them 17 seats; in 1994, they won only 4.4 percent nationally but managed to capture four direct seats in single-member districts and that entitled them entry into the Bundestag and to 30 seats (or 4.4 percent of the total seats). [36]

I chose to study the 1978 debate because it produced Germany's first significant legislative effort to deal with the rising number of asylum-seekers. It had, however, little effect and so was followed by the 1980 law. I discuss the debates surrounding these two laws together because the 1978 debate was too short to stand alone as a case, and because their proximity in time, character, and intent make these two debates compatible. The debate over the 1986 law is important because it was the first significant asylum reform under the Kohl government, which came to power in 1982. The debate surrounding the 1993 law was one of post-war Germany's fiercest, and the law was the most important of all asylum reforms in this study.[37]

## The 1978/1980 Debate

Both the ruling Social Democrats/Free Democrats coalition and the opposition Christian Democrats[38] recognized problems in the asylum process

and both urged that asylum be tightened through these two pieces of legislation. The Christian Democrats' urging was a bit stronger than the government's, but the differences in their positions were not significant. Both sides insisted they did not want to change the constitutional right to asylum. Wendig (Free Democrat), for example, stressed, "Asylum for politically persecuted non-Germans is a norm of our constitution that is founded on our recent past and is, for political, ethical, and moral reasons, beyond debate." The debate on the 1978 law opened in the Bundestag on June 1, 1978, and the law passed unanimously on June 23, 1978 and was not discussed in the Bundesrat. The 1980 debate began in the Bundestag on March 6, 1980, and the law passed without the support of the Christian Democrats on July 2, 1980. It was then discussed and approved by the Bundesrat on July 18, 1980.

The 1978 law introduced two main changes intended to speed up the asylum process. First, it decentralized the judicial process, moving the administrative court out of just one location in Ansbach to 16 different locations so that each of the *Länder* had at least one. Second, it restricted the appeals opportunities for those cases that the administrative courts had rejected as "obviously groundless." The 1980 law attempted to speed up the process by allocating more personnel to handle the growing number of asylum-seekers. And it declared that in the administrative process the asylum decisions no longer required a panel of three but could now be made by a single person. In addition to this emphasis on speeding up the process, the 1980 law addressed the issue of asylum-seekers using asylum as a way to enter Germany to work by declaring that asylum-seekers would not receive work permits for the first year of their process.

A striking similarity to the Swiss debates was that both sides here deliberately blurred the terms *refugees* and *asylum-seekers.* And even though they did it as well, opponents of tighter asylum tended to complain about it. Däubler-Gmelin (Social Democrat) scolded the Christian Democrats, "You instrumentalize everything. You speak of asylees, sham-asylees, economic refugees, waves and floods of sham-asylees and much, much about abuse" at which point Wehner (Social Democrat) interjected, "That's how sham-humanitarians (*Scheinhumanitäre*) speak" to which she responded, "Exactly. I find that a very cold, contemptuous, technocratic treatment that does not at all recognize that we are dealing with humans who seek our help and protection, with homeless, poor, roaming people whom nobody wants."

A striking difference to the Swiss debates was the liveliness here. Not only did parliamentarians formally interrupt speakers with questions, but also informally with catcalls, scoffs, jokes, and encouragements. Interior Minister Baum (Free Democrat), for example, had to begin his speech to

jeers of "Security threat!" from the Christian Democrats. At one point Penner (Social Democrat) had to take a break from his speech as Wehner (Social Democrat) and Dregger (Christian Democrat) exchanged accusations of being the *Oberquäker*. And when Tandler (Christian Democrat) spoke of "sham asylees" (*Scheinasylant*), Wehner (Social Democrat) derided him as a "sham statesman" (*Scheinstaatsman*).

Both the governing Social Democrat/Free Democrat coalition and the Christian Democrat opposition supported tightening asylum, and both factions used similar national interest arguments to defend their similar positions for speeding up the process and fighting abuse. Many of these arguments for tightening asylum are already familiar from the Swiss cases. Like in Switzerland, here parliamentarians stressed the burdens associated with the growing number of asylum-seekers, many of whom they suspected of abusing the practice. Spranger (Christian Democrat) spoke of "numerous examples of abuse of the welfare system, of crimes that are committed and of shady businesses that are conducted by sham asylees." He remained rather vague about these problems, explaining that he did not need to elaborate on them because they were already familiar to all. Bühling (Social Democrat) claimed that the new laws would reduce the average duration of a case from seven years to 1.5 years, which would ease the burden on the bureaucracy and reduce welfare expenditure. The easing of bureaucratic and financial burdens were also stressed by Bötsch (Christian Democrat) and Tandler (Christian Democrat). Bühling (Social Democrat) further argued that speeding up the process would reduce the growing tension between asylum-seekers and citizens. Finally, as in Switzerland, German parliamentarians argued that the laws were needed to prevent asylum from becoming a form of back-door immigration. Penner (Social Democrat) reiterated the official position that all German governments have consistently maintained throughout the decades: "Germany is not an immigration country."

While the two factions generally agreed on the need, direction, and national interests being served by the new laws, they disagreed about how the handling of this issue affected democracy. As in Switzerland, they exchanged charges of stirring up xenophobia and of making asylum an election issue. Spranger (Christian Democrat) and Bötsch (Christian Democrat) defended acting quickly against this abuse, but Börner (Social Democrat) and Schnoor (Social Democrat) charged that the Christian Democrats were rash, emotional, and geared toward the next election. Däubler-Gmelin (Social Democrat) charged that the Christian Democrats and especially Späth were leading an "especially tasteless election campaign by claiming, in his unshakable self-righteousness, that asylum-seekers live better off of 'our' welfare than does the President of Pakistan [and] that the

'bush drums' (we are dealing here of course with a bunch of savages) carry the news of this abundance all over the world. That is a very pathetic election campaign." She said of her own party, "One thing we will not do is try to win an election on the fears of our people and on the backs of the poor, protection-seeking people." Interior Minister Baum (Free Democrat) stated, "I want to say this very clearly: this issue has been dragged into the election. We experience for the first time in the Federal Republic that xenophobia becomes an election issue." Spranger (Christian Democrat) denied this accusation and reversed it by charging that the ruling coalition put forth its "hastily formulated, unripe, contradictory, and constitutionally questionable" proposal not to fight the rising xenophobia but in fact to gain in the upcoming elections. Contrarily, Stoltenberg (Christian Democrat) rejected appeals to keep the asylum issue out of the elections and he argued that discussing controversial issues was part of the democratic process.

Three national interests received more attention in this debate than they had in Switzerland: *housing, integration,* and *foreign policy.* Spranger (Christian Democrat) complained that the housing shortage brought on by the rising number of asylum-seekers meant that "asylum-seekers are being housed in hotels at prices that normal taxpayers could never afford." To fight the housing shortage, Dregger (Christian Democrat) suggested expanding the use of collective shelters for asylum-seekers, adding, "If we put our fellow Germans who come as *Aussiedler* to the Federal Republic of Germany into collective shelters, I do not understand why we cannot house foreigners in a similar manner." While the ruling government acknowledged the housing shortage, it rejected calls for expanding the use of collective shelters. Däubler-Gmelin (Social Democrat) argued that such a solution would not solve the problem and would be degrading. Wendig (Free Democrat) attacked Spranger's comment as xenophobic and undemocratic: "I find your reproach that asylum-seekers are being housed in expensive hotels—and it is a reproach—very dangerous because it is designed to confuse in the mind of the public the issue of the right to asylum. That, ladies and gentlemen, is propaganda—and not very good propaganda." Similarly, the Secretary of State in the Interior Ministry von Schoeler (Free Democrat) charged that Dregger's assertion about *Aussiedler* in camps was misleading. He explained that they are kept in reception centers for a few days or weeks, which he said was completely different from setting up camps to house asylum-seekers for the long term, and he charged that such false claims were made purely to stir up the German people and such emotionalism had no place in this debate.

The second issue that received more attention in this German debate than in the Swiss debates was the asylum-seekers' negative impact on the

integration of guest workers. While Switzerland had even more intensively imported workers in the 1950s and 1960s, their integration into Swiss society was hardly mentioned in its debates. In this 1978/1980 German debate, however, it was clearly on the minds of the parliamentarians. Börner (Social Democrat) argued that unlike countries of immigration, Germany has "no social traditions and mechanisms for the assimilation of foreigners." He argued that Germany has an obligation to integrate the guest workers whom it imported out of self-interest, but that this task is unfortunately being made more difficult by the sudden arrival of asylum-seekers, a view shared by Tandler (Christian Democrat) and Späth (Christian Democrat). Penner (Social Democrat) added that the arrival of the asylum-seekers would also make more difficult the task of integrating European Community members who would soon move freely within the Community. Wendig (Free Democrat) warned, "The integration capacity (*Integrationsfähigkeit*) of our country has limits that have already been reached if not already exceeded." Warning of the difficulty of integrating certain foreigners, Dregger (Christian Democrat) argued that the example of other European states showed that it was harder to integrate Muslims and Hindus than Christians: "The Molukker in the Netherlands cannot be integrated. The integration of Indians in England has largely failed."

A final national interest that weighed more heavily on the German parliamentarians than on the Swiss was foreign policy concerns. Of particular concern was the government's plan to introduce visa requirements for asylum-seekers traveling from countries that produced a particularly high number of asylum-seekers, many of whom the government suspected of abusing asylum for economic gains. Interior Minister Baum (Free Democrat) noted that such visa requirements would obviously have to be discussed with the Foreign Minister and weighed against foreign policy interests, especially in the case of its NATO partner Turkey. Penner (Social Democrat) and Secretary of State in the Interior Ministry von Schoeler (Free Democrat) agreed that especially with regard to Turkish asylum-seekers, Germany had to consider foreign policy implications; von Schoeler spoke of "weighing the extraordinarily difficult foreign policy considerations against the efforts to stem the flow of asylum-seekers from Turkey." How precisely Germany's foreign policy would be affected by visa requirements was never addressed. It is also noteworthy that only representatives of the ruling coalition mentioned foreign policy concerns.

So, in this 1978/1980 debate over tightening German asylum, most of the national interest arguments focused on how the rising number of asylum-seekers harmed German interests. No parliamentarian spoke directly of asylum-seekers' or refugees' positive impact on Germany, and this silence stands in contrast to the concurrent debate in Switzerland that was

full of praise for how refugees contributed to the political, economic, and cultural life of Switzerland. However, that 1979 Swiss debate concerned a law that *loosened* asylum and it took place when asylum was still uncontroversial; subsequent Swiss debates that *tightened* asylum were also silent on national interests promoted by asylum-seekers and refugees.

A few parliamentarians did argue, at least indirectly, that asylum-seekers helped the labor market by filling a labor shortage. And no parliamentarian claimed that asylum-seekers took jobs away from Germans. Däubler-Gmelin (Social Democrat) noted that one of the root causes of the high number of asylum-seekers in Germany was that "in the economic interests of entire business sectors, the halt of the importation of foreign labor is being circumvented—maybe by turning a blind eye—through the asylum process." Interior Minister Baum (Free Democrat) asked, "It's a legitimate question: how else should the labor demands be covered?" Penner (Social Democrat), Secretary of State in the Interior Ministry von Schoeler (Free Democrat), Erhard (Christian Democrat), and Wendig (Free Democrat) likewise attributed the asylum abuse to the needs of the German labor market. While none of these parliamentarians actively argued that Germany should loosen its asylum policy because asylum-seekers filled a labor shortage, they did bring to light (perhaps unintentionally) that asylum-seekers promoted this one national interest.

While the national interest arguments heard in this German debate that tightened asylum were similar to those heard in Swiss debates that tightened asylum, the international norms arguments were quite different. While Swiss parliamentarians commonly stressed the importance of abiding by international norms, the Germans hardly mentioned the UNHCR, the 1951 Refugee Convention, 1967 Protocol, the 1948 Universal Declaration of Human Rights, the European Human Rights Convention, Amnesty International, the UN refugee definition, or the principle of *non-refoulement*.

Instead of referring to standards set by international conventions and organizations, German parliamentarians when looking beyond their borders referred to standards set by other countries. They used such comparisons to stress that Germany's policy was much looser than those of other countries. Penner (Social Democrat) noted that no country in the world matched Germany's right to asylum nor its generous support of asylum-seekers and refugees. Bühling (Social Democrat) offered the reassurance that even with this tighter law Germany would still have "the most thorough asylum process of all western European states. . . . I say this without meaning to be arrogant or presumptuous, since Article 16 of the constitution is rooted in the events and experiences of the Nazi period that bring us special obligations. In comparing us to other democracies, I just wanted to demonstrate that with this new law we are in no way shirking our

deeply felt constitutional obligation." The Christian Democrats tended to make these cross-national comparisons to justify an even tighter policy than what the government suggested. Spranger (Christian Democrat) said, "We must acknowledge that no other Western democracy even comes close to offering such an elaborate asylum process," and he said he did not mean this as a self-congratulatory compliment but rather as an urging to tighten Germany's policy further. Dregger (Christian Democrat) likewise complained of Germany's asylum policy being too elaborate and too generous in comparison to other countries.

Except for a handful of fleeting references, why did explicit international norms play an insignificant role in the arguments of this first German debate? Perhaps it is because Germany is a large power in the international community and large powers are less likely to refer (and defer) to international norms. Or, it may be because Germany's asylum policy far exceeded international norms so that parliamentarians thought them not terribly relevant. It could also be that, as in the 1986 Swiss case, domestic circumstances muffled references to them, although no such events come to mind. Will arguments based on international norms appear in the next two debates?

Besides arguing that tighter asylum would serve the national interest and would still compare favorably to the policies of other states, both factions also argued that doing so would serve the moral end of helping refugees. Speaking for the government, Interior Minister Baum (Free Democrat) said, "All of us intend to strengthen the right to asylum by making the process more effective, which is particularly in the interest of the politically persecuted." Speaking for the opposition, Spranger (Christian Democrat) said, "It is particularly in the interest of the truly politically persecuted that the process be accelerated and abuse of the asylum right be prevented. We want the right to asylum to be granted generously, but only to those who are genuinely politically persecuted."

Most of the moral arguments for tightening asylum are familiar from the Swiss cases. Wolfgramm (Free Democrat), Bühling (Social Democrat), Dregger (Christian Democrat), and Bötsch (Christian Democrat) argued that the long process was unfair to those who were entitled to asylum because it unduly denied them that right. Spranger (Christian Democrat) and Späth (Christian Democrat) argued that the long process was also inhumane to those who would eventually be rejected because they would then be forced to return to their country with which they had lost their connections over the years. Bühling (Social Democrat) complained that the "asylum tourists" (*Asyltouristen*) who abused the process were hurting its credibility, which is why "the wheat must be separated from the chaff." Similarly, Dregger (Christian Democrat) argued that "the great constitutional

right of our free democracy may not, through abuse, fall into disrepute and lose credibility." Such a loss of credibility, Wendig (Free Democrat) argued, may mean that "citizens will begin to only focus on all the problems, and their consciousness of the necessity and the moral quality of the right to asylum will be shaken."

Like in Switzerland, some German parliamentarians stressed that tightening asylum would not only fulfill a moral obligation toward refugees, but also toward citizens. Spranger (Christian Democrat) explained that fighting abuse was demanded not only by "humanitarian concern for the truly politically persecuted who seek asylum in the free part of Germany, but also by the political responsibility we have toward our citizens who can no longer be expected to tolerate the overwhelming burden created by this abuse of the asylum right." And, like in Switzerland, supporters of tighter asylum sensed that such moral arguments raised skepticism about their sincerity to help refugees and so Bötsch (Christian Democrat), for example, stressed, "To publicly reiterate once again: no one who supports an acceleration of the asylum process can or should be accused of wanting to curtail the legal protection for those who for good reasons and upon sound reflections apply for asylum in Germany."

This moral obligation to grant asylum was not significantly based on Judeo-Christianity. Däubler-Gmelin (Social Democrat), Wendig (Free Democrat), and Secretary of State in the Interior Ministry von Schoeler (Free Democrat) only referred several times to Bishop Hengsbach's call to help refugees, but mentioned nothing else. And the Christian Democrats remained silent, which brought a few critical remarks from the Social Democrats and Free Democrats. In criticizing Spranger's (Christian Democrat) rhetoric, Meinecke (Social Democrat) asked him to define "as a practicing Christian" the term *Schein-Asylant,* which Spranger used repeatedly, thereby implying that such a derogatory remark contradicted Christian values. Similarly, Interior Minister Baum (Free Democrat) mentioned the churches' support of a loose asylum policy, and he faulted Spranger (Christian Democrat) for failing to mention this fact even though, according to Baum, he likes to refer to the church in other matters. During that same speech, when Baum (Free Democrat) criticized the Christian Democrats for focusing too much on how the asylum-seekers burdened Germany, a member of the Social Democrats interjected sarcastically, "That's a Christian party for you!" Aside from this smattering, there was no sustained attempt to argue on behalf of loose asylum with Judeo-Christian arguments.

The moral obligation to grant asylum was also not strongly based on Liberalism. Secretary of State in the Interior Ministry von Schoeler (Free Democrat) did appeal to cosmopolitanism when he spoke of "our self-

evident obligation to solidarity as a member of the international community in which human rights have priority over the borders of sovereignty." Similarly, Interior Minister Baum (Free Democrat) argued that Germany had to relieve poor countries like Somalia, Thailand, and Malaysia that were much more burdened with refugees, and he said, "The burden that these countries must carry because of geographic proximity must be shared, in the spirit of solidarity, by countries that are better off. . . . Do you, ladies and gentlemen of the opposition, want to shirk this responsibility?" In the liberal spirit of protecting the individual from state power, Wolfgramm (Free Democrat) criticized calls for easier deportations of rejected asylum-seekers when he said, "Even if the wish to deport is politically powerful, no foreigner may be reduced to merely an object of state action."

Instead, perhaps not surprisingly, German parliamentarians' main foundation for the moral obligation to grant asylum was the Nazi period. Germany's constitutional right to asylum was deliberately written with the events of 1933–1945 in mind, and Bühling (Social Democrat) reiterated that this right was based on "the bitter experiences of the Nazi time, during which many Germans had to flee abroad and could consider themselves lucky if they found asylum there." Secretary of State in the Interior Ministry von Schoeler (Free Democrat) spoke of a "great obligation" based on the "experiences of the Nazi dictatorship." Stoltenberg (Christian Democrat) spoke of this right reflecting "the direct, bitter experience of the persecution during the Nazi period." Interior Minister Baum (Free Democrat) spoke of the "many Germans who survived the Nazi regime only because of the willingness of the other states to accept them." Börner (Social Democrat) said, "Germany, like few others countries, has experienced the need of people who could no longer find their livelihood at home, who had to flee the chaos of war, and who were politically persecuted. . . . During the Third Reich, the framers of our constitution experienced political persecution and felt what it meant to find refuge in another country. Therefore, they then wanted to guarantee that the Federal Republic of Germany award this same protection to other politically persecuted people. With this constitutional right to asylum, they wanted to set new standards for international humanitarianism."

If read carefully, all these statements reveal a curious twist. The focus is on "Nazi" persecution and on how "Germans" suffered under it. The argument was not (as might be expected): *We Germans made others suffer during this period, so we now have an obligation to grant asylum to those who suffer.* Instead, the argument was consistently: *We Germans suffered during this period and others granted us asylum, so we now have an obligation to grant asylum to those who suffer.* This *Germans-as-victims* argument was made by Däubler-Gmelin (Social Democrat) to argue specifically against a more extensive

use of camps when she quoted Bishop Hengsbach as saying, "From our own personal experience as refugees, we know that being stuck in a camp for a long time with no occupation destroys the soul and the family."

This *World War II* argument contrasts sharply with the *World War II* argument in the first Swiss debate. In that Swiss debate, some parliamentarians readily acknowledged a moral obligation to help refugees because of the Swiss role during the war, while others argued that the Swiss role had been too complicated to judge with hindsight, thereby downplaying moral responsibility. In this first German debate, no one denied the moral responsibility stemming from this period, but parliamentarians shifted responsibility from "Germans" to "Nazis." Will this argument change over time? Remember that in Switzerland the World War II argument all but disappeared after the first debate. While it is hard to imagine that this historic period will be similarly disregarded in subsequent German debates, it may be that as a younger generation of parliamentarians (especially the anti–status quo Green Party who entered parliament in 1983) comes onto the scene, this moral argument based on World War II will shift responsibility to "Germans."

## The 1986 Debate

By the mid 1980s, the effect of the 1978 and 1980 laws had worn off and the number of asylum-seekers began to climb again, so parliament introduced another legislative measure to further tighten asylum. The debate over this new law opened in the Bundesrat on March 1, 1985 and concluded on June 14, 1985. The law was then picked up by the Bundestag on October 4, 1985 and concluded on November 13, 1986, when it passed over the opposition of the Social Democrats and the Greens.

Two major changes occurred in the power structure of the German parliament between the late 1970s and mid 1980s. First, the Free Democrats switched coalitions and joined the Christian Democrats, and this new coalition subsequently won the 1983 national elections that put the Social Democrats into the opposition. As the opposition party, the Social Democrats now began arguing more forcefully for looser asylum than it had done when it was in the governing coalition. Second, the Greens now sat in parliament and proclaimed themselves staunch defenders of a loose asylum policy.

While there was widespread support in parliament to speed up the asylum process by hiring more personnel, there was controversy over two measures intended to fight abuse. First, the law withheld work permits from asylum-seekers for five years, which, supporters argued, would discourage those who used the asylum process to gain temporary access to the German

labor market. Second, the law denied asylum to anyone who had already found asylum for at least three months in another country, a measure Olderog (Christian Democrat) argued would discourage "asylum tourism," which he defined as "foreigners traveling from one European state to another and then claiming to be persecuted where the pasture is greenest."

As in the first German debate, all sides insisted that they fully respected Germany's unique constitutional right to asylum. For example, Schlee (Christian Democrat), a supporter of tighter asylum, proclaimed, "A free, constitutional state cannot do without the right to asylum." Despite such reassurances, opponents of tighter asylum argued that this new law would weaken and even violate Article 16 of the constitution, which Wartenberg (Social Democrat), an opponent, valued as "a sign of the rebirth of the political culture of Germany."

There were also accusations and mistrust regarding the numbers of asylum-seekers and refugees in Germany. Wartenberg (Social Democrat) and Hirsch (Free Democrat) charged that the government was inflating the numbers in order to drum up support for a tighter asylum law, and they cited UNHCR figures that said Germany had about 120,000 "refugees." Olderog (Christian Democrat) countered that this UNHCR estimate was wrong and that the number of "refugees" in fact stood at over 600,000 although he was referring to "refugees," "asylum-seekers," and "rejected asylum-seekers." This disagreement stems from the deliberate blurring of terms that has been so common throughout these debates.

Fighting asylum abuse was again the central goal of the supporters of this tighter law. Lummer (Christian Democrat) stressed that Germany's loose asylum policy was being abused by many foreigners as a form of immigration: "Every foreigner who comes to the border of the Federal Republic of Germany and says the word 'asylum' has the opportunity to live in Germany and be supported by German taxpayers for about two years. Every foreigner!" This abuse, supporters stressed, increased housing shortages, complicated the integration of guest workers, overwhelmed the bureaucracy, and strained the finances that Olderog (Christian Democrat) estimated would reach DM 2.7 billion in 1986. Lummer (Christian Democrat) warned of the crime associated with this abuse when he said, "The drug scene is largely tied to the phenomenon of asylum-seekers. And when one thinks of Ghana, one also knows that prostitution is tied in as well." Olderog (Christian Democrat) also complained of the behavior of asylum-seekers when he noted, "More and more often the press reports brawls, disturbances, knife fights, prostitution, and theft in connection to this problem. All this unfortunately is leading to anti-foreigner sentiment." Fighting such xenophobia was in the national interest and would effectively be done with this new, tighter law, supporters argued.

In light of the growing tension over asylum, supporters also argued that the law reflected the will of Germans and therefore served the democratic interests of Germany. Olderog (Christian Democrat) cited a public opinion poll that showed 70 percent of Germans thought asylum was being granted too generously, up from 40 percent three years earlier. Secretary of State in the Interior Ministry Waffenschmidt (Christian Democrat) pointed out that even Social Democrat mayors supported the changes, and he suggested, "Go ask your colleagues what's happening out there. Then you would not argue so starry-eyed (*wirklichkeitsfremd*)." This argument that the law served the democratic national interest was summed up nicely by Olderog who said, "In a democracy, the government cannot consistently contradict the will of the people on such an important issue."

In addition to these *abuse, xenophobia,* and *democracy* arguments that had also been made by Swiss supporters of tighter asylum, supporters of tighter asylum in Germany made an additional national interest argument not found in Switzerland. They argued that this tighter law served Germany's foreign policy objective of promoting European integration. Lummer (Christian Democrat) and Eyrich (Christian Democrat) pointed out that countries within the European Community had significantly different asylum laws, and if the Community wanted to continue growing together there had to be increased harmonization of these laws. To achieve such European harmonization, supporters argued, Germany would have to tighten its laws, because other countries were unlikely to loosen theirs. Secretary of State in the Interior Ministry Waffenschmidt (Christian Democrat) specifically mentioned the Schengen Agreement, which Germany, France, and the Benelux countries were about to sign, which would significantly loosen their common borders but require increased harmony on asylum matters.

Meanwhile, opponents of tighter asylum did not focus on foreign policy concerns, although Maring (Social Democrat) did argue that critique of this law by UNHCR and Amnesty International hurt Germany's image abroad. Instead, they did what opponents of tighter laws in Switzerland had done: they simply reversed the national interest arguments of the supporters. They argued that this new law was an unnecessary and ineffective way to fight the abuse and that it was built on racist, undemocratic principles. While acknowledging the abuse and its financial and psychological costs, Koschnick (Social Democrat), Görlach (Social Democrat), Wartenberg (Social Democrat), and Maring (Social Democrat) argued that instead of passing a new law, existing laws should be used more effectively. Maring noted that Hamburg has successfully fought abuse by applying existing laws more strenuously, thereby dropping the annual number of asylum-seekers from Ghana from 1,376 in 1981 to 273 in 1984. Koschnick

(Social Democrat) said, "It is utopian to think that lawmakers can simply write a new law and the problem will then be solved." Not only was the new law unnecessary, but Wartenberg (Social Democrat) argued that it was also ineffective. He argued that the five-year work prohibition would prove counterproductive in that it would drive asylum-seekers into the black labor market, which would raise social costs and crime. Similarly, Görlach (Social Democrat) argued that this new law would only increase the burden on authorities and thus slow the process down even further, and Ströbele (Green) charged that this law did not solve problems but instead was just a "public deception" (*Irreführung der Öffentlichkeit*).

In addition to being unnecessary and inefficient, opponents of the tighter law complained that it was undemocratic. As in Switzerland, they could not argue that it contradicted the will of the people. Instead, they charged that not only did this tighter law weaken or even violate the constitutional right to asylum, it was also rash and fueled xenophobic tendencies in the population. Wartenberg (Social Democrat) charged that Olderog's speech was typical of the "hysteria" surrounding this topic, and he complained that the Christian Democrats were playing on prejudices within the population for election purposes. Wartenberg claimed that in a democracy, politicians sometimes had to take unpopular positions: "Responsible politics in a democracy means also doing what is disagreeable, such as reducing prejudices and calling people to the responsibility that a rich democratic state must carry. That is the postulate that you are grossly violating." Ströbele (Green) called the measures of this law "political-ideological hate-tirades," pointing out that shortly after the last elections in Bavaria, the Christian Democrats let the asylum issue quickly die down again. To further stress the undemocratic nature of the government's asylum policy, Ströbele claimed that "civilian police commandos" (*zivile Greiftrupps der Polizei*) were lurking in the Berlin subway ready to deport asylum-seekers, and he compared the Christian Democrats' attitude toward foreigners to that of the last Kaiser.

Like in the first German debate, the norms set by international organizations played almost no role in the arguments of parliamentarians on either side of the issue. While Maring (Social Democrat) did point out that UNHCR and Amnesty International had expressed (in her words) "massive concern" about some of these measures, for Wartenberg (Social Democrat) international norms were literally just an after-thought: in his critique of the proposal to reject asylum-seekers who had already found asylum in another country for more than three months, he only at the end tacked on without any further explanation, "Besides, this proposal contradicts the Geneva Human Rights Convention." On the other side, some supporters saw international norms as an annoyance. They criticized the

UN for not being more critical of those countries producing refugees. Lummer (Christian Democrat) argued, "We Germans occasionally sit in the dock in front of some kind of international refugee commissioner because we do not treat the asylum-seekers correctly. That really has happened. But who is going to drag the perpetrators of this flow into the dock?" (*Wir Deutsche sitzen gelegentlich vor irgendeinem Flüchtlingskommissar international auf der Anklagebank, weil wir die Asylbewerber nicht richtig behandelten. Das hat es ja gegeben. Aber wo ist derjenige, der die Verursacher der Flucht auf die Anklagebank bringt?*) Olderog (Christian Democrat) complained that Germany carried the heaviest burden in Europe and said, "I would ask the UNHCR to acknowledge this loudly and clearly instead of constantly downplaying our accomplishments."

Most often, though, international norms simply went unmentioned. Their absence was especially noticeable when they would have been most relevant, such as when Ströbele (Green), for example, pointed out that this law was opposed by "Amnesty International, the churches, many unions, and many social services organizations" but failed to mention UNHCR's opinion. If UNHCR opposed this law, why didn't he mention it? If UNHCR supported it, why didn't the other side mention it? Similarly, he and Wartenberg (Social Democrat) warned that this new law would send some asylum-seekers back to countries where they would face danger, yet they both failed to mention by name the principle of *non-refoulement,* which forbids such returns. Ströbele declared, "There are examples of refugees who disappeared or were killed in Lebanon after they were deported from Germany," yet inexplicably he did not mention that such German actions violated *non-refoulement,* the most important international asylum norm.

Instead, like in the first German debate, when they did look across their borders, parliamentarians compared German policy not to standards set by international organizations, but to standards set by other European countries. Among the supporters of the tighter law, Schmidhuber (Christian Democrat) argued that Germany had the most asylum-seekers and refugees in Europe and "therefore does not need to shy away from comparing itself to other European states, even if we are tightening our policy in order to fight abuse further." To downplay the growing xenophobia in Germany, Olderog (Christian Democrat) mentioned that France, Switzerland, and Denmark (which he described as "such a peaceful country") were also suffering from tension between citizens and asylum-seekers. To justify further tightening the law, Interior Minister Zimmermann (Christian Democrat) pointed out that Switzerland too had recently tightened its law, a comment that brought a jeer from Vogel (Green): "They should be ashamed of themselves!" And among the opponents of the tighter law, Ströbele (Green) complained that Germany's

acceptance rate of refugees was already the lowest in Western Europe, while Wartenberg (Social Democrat) downplayed the asylum problems of Germany by pointing out that Pakistan had three million refugees, while Germany only had 8,000.

The ultimate justification for this tighter asylum law was again a moral one. Supporters argued that it would help refugees because it would shorten the process, weed out the undeserving, and calm the fears of citizens, thereby restoring their willingness to help. While insisting that he was not shirking the moral obligations toward refugees, Olderog (Christian Democrat) did warn against having too loose a policy, which might spawn a backlash among citizens. He argued, "Politicians can, with best intentions, also try to do too much good but then end up causing the opposite effect of what they wanted. . . . We must take the fear—whether just or unjust—of our citizens seriously when they worry about their jobs or about loosing the spiritual, cultural, and ethnic identity of our people." Supporters of the tighter law also suggested that instead of helping them in Germany, the government ought to help asylum-seekers and refugees closer to home. Olderog (Christian Democrat) said the government was moving in this direction by spending a record DM 8.7 billion on development aid in 1985. Lummer (Christian Democrat) said that this strategy, which he said had the support of UNHCR, meant that Tamils fleeing Sri Lanka would be better served in India where 50 million Tamils already lived. Similarly, Schlee (Christian Democrat) stressed the difficulty of integrating asylum-seekers into German society and said, "Despite all our efforts, these people will never really feel at home here." Finally, Eyrich (Christian Democrat), Schlee (Christian Democrat), and Secretary of State in the Interior Ministry Waffenschmidt (Christian Democrat) added that the current policy was unfair because it raised false hopes among undeserving asylum-seekers who left everything behind in their country in hopes of starting a new life in Germany when in fact most of them do not receive asylum.

These moral arguments for tighter asylum raised red flags among opponents who questioned their sincerity, and Olderog (Christian Democrat) had an especially difficult time being convincing. When he urged citizens to carry moral burdens, Kuhlwein (Social Democrat) interrupted, "Where is the morality of the CDU?" When he thanked various refugee organizations for their good work, Vogel (Green) yelled, "Hypocrite! Unbelievable!" and when he insisted that the law helped refugees, Ströbele (Green) yelled, "That is not true!" Wartenberg (Social Democrat) further accused the Christian Democrats of "deliberately neglecting to remind people of our moral and ethical obligations," while Ströbele complained, "The political responsibility for our past is onerous for Kohl,

Zimmermann, Lummer, Späth, Olderog and the rest of them; they would like to bury it, seal it, and forget it."

Unlike in other debates we've analyzed, however, supporters of this tighter law did not complain much about the opposition's monopolization of morality, although Lummer (Christian Democrat) did plead for a discussion free of "inappropriate emotionalism" that condemns as a villain (*Bösewicht*) anyone who asks certain difficult questions. Instead, supporters maintained that they sought to help refugees, and that this moral obligation stemmed from their past. Olderog (Christian Democrat) said, "As politicians, we have the moral obligation to call our citizens to humanitarian tasks. That is especially true because during the time of Hitler, Germans who were persecuted by the Nazis found havens as refugees." In fact, he opened the entire debate in the Bundestag with this line: "During the Nazi period, many thousands of politically persecuted Germans received asylum in other countries. Therefore, today and in the future we vigorously emphasize not only the legal but also the moral obligation to offer protection to the politically persecuted from other countries." As was the case in the first German debate, these quotes stress the *victimization,* not the *perpetration* of Germans during this time. And references to the Nazi period did have their limits: in the context of the sanctuary movement Ströbele (Green) complained, "We find it intolerable that things have again reached such a point in Germany where politically persecuted people, even if they come from abroad, must once again be hidden from the authorities," and this comment brought a sharp rebuke from Olderog (Christian Democrat) who interrupted, "This is unbelievable. These parallels to the Nazi time are unbelievable."

Opponents of tighter asylum also saw the moral obligation to grant asylum as stemming from the 1933–45 period, more so than from Judeo-Christian or liberal values, which remained largely unexplored. Nor did opponents make the argument that might be expected, and instead also spoke of *Germans* fleeing *Nazis* and of now wanting to return the favor. Surprisingly, this argument was made most clearly by Ströbele who spoke on behalf of the Greens, the most critical and anti–status quo party in parliament. He said, "For us, this past represents an obligation. We think that since 600,000 Germans were accepted by other countries during the Nazi period, then that means we have an obligation today to do all that we can to pay humanity back."

## The 1993 Debate

With the fall of the Berlin Wall and the civil war in Yugoslavia, an unprecedented number of asylum-seekers arrived in Germany. In response,

the Kohl government demanded that the constitutional right to asylum be amended. Having reached a compromise with the Social Democrats on the matter in December 1992, the government introduced its proposal on January 21, 1993. The debate concluded on May 26, 1993 with all Christian Democrats supporting it, all Greens and Party of Democratic Socialism members opposing it, and the Free Democrats and Social Democrats being split.

The intensity of this debate is palpable by the over 100 participants, by the debate's 13-hour running time on May 26, and by the fact that on this day the parliament building was guarded by the largest police force ever mobilized in Bonn. Reading the transcript of this debate, one senses that parliamentarians on both sides of the issue felt besieged and overwhelmed by the number of asylum-seekers coming to Germany, by the demonstrators outside the parliament and/or by the far-right violence of the preceding year. Hintze (Christian Democrat) denounced the demonstrators outside as *Chaoten* who he said were attacking parliamentary democracy itself, and when Bleser (Christian Democrat) entered the chamber splattered with paint, the transcript reports "great indignation" (*große Empörung*) among the Christian Democrats. On the other side, Briefs (unaffiliated)[39] charged that the true *Chaoten* were those parliamentarians sitting on the right side of the Bundestag from where they were fueling racism, fascism, and violence across German society. Feige (Green), representing a district near Rostock, said he is still shocked by the right-wing violence in that city, and he warned that the attackers had used the same arguments that were being presented here by supporters of tighter asylum.

The intensity of this debate was further fueled by the presence and rhetoric of parliamentarians of the extreme Left and extreme Right. Gysi (Party of Democratic Socialism), for example, argued that his experience in the former East Germany had taught him, "Whoever builds walls at the border, regardless if they are made of infrared sensors or of concrete, also raises the issue of the willingness to shoot. Otherwise the wall makes no sense. You will see: whoever votes today to essentially eliminate the right to asylum must know that he is partially responsible for future shootings of refugees at the border." To the applause of all other parties, Weiß (Green), speaking after Jelpke (Party of Democratic Socialism) who had made similar heavy-handed comments, declared, "It is very difficult for me to speak after a colleague from the party that built the wall and that in East Germany did everything that was contrary to granting asylum."

The one parliamentarian of the far Right was met with equal scorn; as Krause (unaffiliated)[40] began his speech, the transcript describes "a large number" of Social Democrats leaving the chamber amidst shouts of, "Neo-Nazi out of parliament!" and "Pfui!" When he had finished, the

Social Democrats yelled, "Heil!" and the following speaker, Sonntag-Wolgast (Social Democrat), said that while she did not want to draw attention to Krause, she did want to say that it was "sad and shameful that the disease of the Republicans has been carried into this parliament." The unmatched intensity of this debate brought forth all arguments that have been analyzed so far, and this no-holds-barred debate often crystallized arguments into their clearest, sharpest, and at times most extreme forms.

The central concern again was asylum abuse, and supporters of this law relied on *political, economic, cultural,* and *foreign policy* national interests to appeal for support. The most common argument was that this law served the political interest of preserving stability and protecting democracy in Germany. This argument was emphatically made by supporters from across the political spectrum. Klose (Social Democrat), for example, argued, "The people who live in areas with high numbers of asylum-seekers are not xenophobic, but their standard of living is dropping in an often dramatic manner; they feel themselves threatened, personally and socially. It would not be right to deny this, and it would be dangerous to stand idly by and let things go on. In the end, this is my very real fear: it threatens the stability of our democracy, especially because the temptation is great to exploit politically these problems and fears. We democratic parties have nothing to gain from this situation that only helps the pied-pipers of the right (*Rattenfängern von rechts*)." Similarly, Solms (Free Democrat) warned, "Ninety percent of the people expect a change of the constitution. A failure to do so would have dramatic consequences. The trust in politics would be severely damaged. The trust in the democratic parties would be further weakened. Not only the democratic parties but the entire democratic system would begin to teeter."

Supporters also argued that this tighter law would reduce the financial burden and thus serve the economic interests of Germany. Interior Minister of Bayern Stoiber (Christian Democrat) said the asylum process cost Germany DM 8 billion annually, and Glos (Christian Democrat) claimed that the "pain threshold" of the population was exceeded long ago. Dregger (Christian Democrat) complained that asylum-seekers were "totally unproductive" and that Germans were increasingly envious of the housing, education, and welfare benefits that they received at the expense of German taxpayers. He suggested that a wiser way to spend taxpayers' money would be to invest it in the countries of origin to stem refugee flows in the first place. Fuchtel (Christian Democrat) asked, "How are you going to look into the eyes of a war widow who is ashamed of going to the welfare office, while others cannot even keep their apartments clean?"

Supporters of the tighter law also argued that it would promote Germany's foreign policy on a number of fronts. It would strengthen the European Union, numerous supporters argued, because in order for the EU to move forward, the harmonization of national asylum laws must take place and this law would allow Germany to join fully the Schengen and Dublin Agreements that stress the harmonization of asylum laws. Marschewski (Christian Democrat) argued, "Whoever wants the political union of Europe—and we all do—must adjust the laws so that they are compatible with the legal code of rest of Europe. I want to stress that our solution to the asylum problem is in accordance with the views of the EU commission."

A second foreign policy interest, supporters argued, was that the law would encourage the eastward expansion of the EU. Interior Minister of Bayern Stoiber (Christian Democrat) argued that declaring Poland and the Czech Republic safe third countries was "a sign that we consider them full-fledged liberal democracies whom we want to lead toward the EU." Similarly, Solms (Free Democrat) argued, "We see this law as a way to bring these states closer to the EU, as an important step toward the EU. With this legislation, we are tying Poland and the Czech Republic closer to Europe and further opening the door to full membership into the EU." Supporters also stressed that these countries would be compensated for their help in reducing the number of asylum-seekers in Germany. Poland, for example, received $76.4 million for its willingness to take back asylum-seekers who had entered Germany through its territory, and van Essen (Free Democrat) praised Poland's commitment to asylum by noting that within the last year, Poland had handled 350 asylum cases and granted asylum to 70 refugees. In contrast, he noted that Austria's refusal to cooperate with Germany on the asylum matter was "unacceptable" and warned of its future in the EU: "A country that acts exclusively on the basis of its own self-interest is not capable of joining a union."

Supporters of the tighter law further argued that opposition to this law insulted and harmed Germany's neighbors. R. Schmidt (Social Democrat), Hintze (Christian Democrat), and Steinbach-Hermann (Christian Democrat) complained that opposing the safe third country rule was arrogant and offensive because it implied that asylum-seekers were not safe from political persecution in neighboring democracies. Justice Minister Leutheusser-Schnarrenberger (Free Democrat) charged that opponents of the safe third country rule had an "inappropriate sense of moral superiority," and Stübgen (Christian Democrat) said that pride in Germany's unique asylum policy was a form of "left-leaning nationalism," and he warned, "Nationalism has never benefited Germany" (*Nationalismus hat Deutschland noch nie etwas gebracht*). Indeed, opponents of this

tighter asylum law realized the delicate foreign policy implications of rejecting the safe third country rule. Kuhlwein (Social Democrat), for example, said cautiously of Poland and the Czech Republic, "Whether the Geneva Convention's principle of *non-refoulement* is actually guaranteed there cannot be established but must today still be doubted—and I say that without wanting to offend the Poles or the Czechs."

Furthermore, supporters argued that by adopting a tighter asylum law Germany would slow the brain-drain from other countries, and these countries would be grateful for this assistance. Müller (Christian Democrat) noted that on a recent visit to Bulgaria, he had met the President and the Interior Minister who begged Germany to do something about the Bulgarians fleeing to Germany. He reported that the medical system in particular was collapsing because nurses and doctors were leaving under the pretense of asylum, and he concluded, "Whoever opposes this law hurts the poor of the world." Dregger (Christian Democrat), likewise argued that asylum-seekers tend to be young and educated, and that Germany was harming the development of poor countries by allowing such people to leave.

Finally, the interest of protecting German culture emerged in this debate. This concern, specifically the "overforeignization" (*Überfremdung*) of Germany, had gone unmentioned in the previous debates perhaps because of the sensitive nature of this argument. Now this argument was implied by a number of supporters and was made explicit by Geis (Christian Democrat), who warned that the rising number of asylum-seekers would "overforeignize" Germany which would bring a "catastrophe." He argued, "Every people has its own way of living and the right to do so. That is a natural law of every people. . . . Our people are scared that one day they will no longer live in the Germany that they want to live in. Every people must have the right to live in the country it wants to live in. That is why we have the right to self-determination. What is wrong with that? How can we condemn our people for that?" He further decried those people who thought *Volk, Staat, und Kultur* were concepts of the last century and who proclaimed Germany to be "marching toward a new global order with a grand common culture and, if possible, even a world government. That, ladies and gentleman, is a fantasy. People will always separate themselves from one another."

The supporters' vehemence that this tighter law promoted national interests was matched by the opponents' charges that it did not. Regarding political interests, opponents argued that this law profoundly harmed democracy and the political culture of Germany because it was racist, dishonest, ineffective, and repressive. Von Larcher (Social Democrat) warned of a "dangerous rightist tendency in our society that weighs its own well-

being so absolutely that the solidarity with persecuted people who come to us in need is lost." Leonhard-Schmid (Social Democrat) charged that the German people had been "goaded by pathological seducers" and especially warned Fuchtel (Christian Democrat) and Dregger (Christian Democrat) that "the time of condemning a people has passed" (*Die Zeit der Volksverdammung ist vorbei*). Weiß (Green) warned of the "oppressive madness of the nationalists" and said, "It is a shame that such a proposal is even being discussed in the German parliament, because this proposal was negotiated in the back-rooms among political tacticians who sought to cater to the lowest populist sentiment." Briefs (unaffiliated)[41] warned that this law would in fact raise crime, asylum abuse, financial costs, and xenophobia, and that these new problems would require the state to build a "mechanism of persecution and repression." Jelpke (Party of Democratic Socialism) charged that this law caved in to right-wing extremism and that democracy had now been replaced by populism. She argued that this law essentially eliminated asylum and said, "Those who are now ready to deny protection to the politically persecuted will under different circumstances be ready to practice persecution themselves."

Not only did opponents argue that this tighter law hurt the political interests of Germany, they also stressed the damage done to German foreign policy interests. Weiß (Green) charged that the safe third country rule would violate Polish and Czech sovereignty because it would dump asylum-seekers on them. Furthermore he argued that by dumping German problems onto the East, they too would soon set up barriers, which would hurt the democratic process in these countries and raise tension between their citizens and their foreigners. He complained, "We are exporting Rostock and Mölln to Poland and the Czech Republic. Such a policy is cynical and undignified. . . . Is this really going to be the political style of the new Germany?" Poppe (Green) called the safe third country concept "absurd" and contrary to the ideal of an open Europe, because it would build barriers to the east and solidify a Fortress Europe. He warned that all of the Eastern European countries were in delicate stages of democratic transition and the last thing they needed was to have Germany dump its asylum problems on them. He concluded, "The planned asylum reform contributes to the thinning of the air for the democrats and reformers of East and East Central Europe. . . . Not even the smallest sparkle of an idea for the creation of a desired new Europe is to be found in these completely uninspired and counterproductive proposals." Erler (Social Democrat) spoke of "catastrophic economic consequences" in Central and Eastern Europe if Western Europe sealed itself off. And, alternatively, Skarpelis (Social Democrat) argued that a loose asylum law promotes a positive image of Germany abroad.

It is noteworthy that opponents of the tighter law did not make arguments based on Germany's economic or cultural interests. Not even in this heated debate, which at times became a bit of a free-for-all, did anyone argue that asylum-seekers or refugees promoted the economic or cultural interests of Germany. Opponents argued only that the law harmed the interests of Germany, not that the refugees and asylum-seekers promoted them. At most, various opponents of the law argued that asylum-seekers were not really causing problems but instead were being used as scapegoats.

Unlike in the previous German debates, here some supporters did refer to explicit international norms by pointing out that this tighter law conformed to them. Van Essen (Free Democrat) said, "This revision of the right to asylum conforms exactly to the Geneva Refugee Convention. It allows returning asylum-seekers to a safe third country as we propose to do. It is no violation of human rights if we deny protection to someone who could have received it in a safe third country. There is a human right for protection against torture and inhumane treatment, but there is no human right for such protection in the country of one's choice." Marschewski (Christian Democrat) stressed, "The Geneva Convention and the European Human Rights Convention are international agreements that are and remain binding laws for the Federal Republic of Germany. The high regard we have for these international norms is seen in the fact that we now explicitly mention them in the constitution." While certainly more prominent than in previous German debates, arguments based on international norms in support of tighter asylum did not carry the weight they did in Switzerland. Supporters limited their references to the 1951 Refugee Convention and the European Human Rights Convention, and when mentioned at all these came up more in passing rather than being analyzed, quoted, and praised as in the Swiss cases. And even though the central issue of this law was returning asylum-seekers to other countries, the principle of *non-refoulement* received virtually no attention despite the fact that this most important international norm deals precisely with this issue.

Instead of referring to explicit international norms, supporters of the tighter law more commonly referred to (and complained about) the low standards of other European countries. In addition to complaining that their European neighbors contributed too little to international burden-sharing, various supporters pointed out that Switzerland, France, the Netherlands, Denmark, and Britain (with only 20,000 asylum-seekers it was stressed) had all recently tightened their laws, and supporters asked why Germany should be any different. Von Stetten (Christian Democrat) argued that even with this new law, Germany would still have a "signifi-

cantly higher standard" than its European neighbors. When Höll (Party of Democratic Socialism) complained about Germany's treatment of asylum-seekers, Hinsken (Christian Democrat) shouted, "How well are they treated in France and Switzerland?" and in response to charges that this law would stir up xenophobia among Germans, Interior Minister of Bayern Stoiber (Christian Democrat) said, "The willingness of the Germans to live with foreigners is at least as great as that of the French, the Italians, the English, the Danes, and of other neighbors." Schäuble (Christian Democrat) summed up, "The intention of this change, which will adapt our protection to the level of protection offered by all other civilized states, especially of European states, will accomplish nothing more than fair burden-sharing in Europe, but this goal cannot be reached if we offer more protection than all other states."

Opponents of the tighter law were rather quiet with regard to international norms and when they did raise them, they sent mixed signals. On the one hand, Ullmann (Green) complained that this new law did nothing to strengthen the 1948 Declaration on Human Rights, the Geneva Convention, or the European Human Rights Convention, Hirsch (Free Democrat) said this law was "not compatible with our obligation to international law stemming from the Geneva Convention," and Kuhlwein (Social Democrat) pointed out that the UNHCR representative in Germany, Walter Koisser, had (in Kuhlwein's words) "much misgiving" about this law. Kuhlwein continued, "Especially Germany with its exemplary asylum right and its declared willingness to accept additional international obligations should not damage the existing consensus in international law. Koisser warned on March 11: 'Everything indicates that with this safe third country rule, the eastern neighbors have been forced into an undesirable situation. There is a danger of a domino effect that would put the entire international praxis and structure of refugee protection in question.'"

These statements stress the importance of international norms to opponents. Yet, on the other hand, Weiß (Green) complained that conforming to international norms violated German sovereignty. He said, "By incorporating the Geneva Convention and the European Human Rights Convention into the German constitution, you will make our constitution dependent upon decisions made outside of our sovereignty. If the Bundestag agrees to this, then it will curtail its own sole competence. Not the German parliament, but other states would subsequently determine these constitutional issues. Every revision of said conventions would automatically bring a change to our constitution. Such a move would, to say the least, be foolish and constitutionally intolerable." Later, in another jab at international norms, Weiß noted that the German constitution, unlike the 1948 Declaration on Human Rights or the 1951 Refugee Convention,

granted the right to asylum, and he argued that this superiority should remain: "This new [German] perspective, this great advancement in the European legal system was painfully fought for by those who sought protection as refugees from German egoism and nationalism."

As we have consistently seen, the end justification for tightening asylum was the moral obligation to help refugees, and more strongly than in any other debate, supporters bristled at protests to the contrary. And there were many such protests: Weiß (Green), for example, called for "solutions based on humanity and solidarity" and decried this law as "cold selfishness," urging parliamentarians to "let only your conscience be your guide." Waltemathe (Social Democrat) declared, "Humanitarianism demands courage of one's convictions and not cowardly egotism" and Gysi (Party of Democratic Socialism) asked, "Isn't it morally highly dubious to be profiteering off of the misery and poverty of the so-called Third World while at the same time building walls against refugees who are trying to escape this misery and hunger?" and he appealed to the "solidarity of people's conscience." Numerous supporters of the tighter law took exceptions to such statements. Justice Minister Leutheusser-Schnarrenberger (Free Democrat) protested that supporters were not "throwing all convictions overboard," and Otto (Free Democrat) said this law was "ethically defensible and politically necessary." Klose (Social Democrat) noted, "Everyone in our party has doubts about this law, some feel it more strongly than others but this doubt cannot be overlooked. I say this to all those of you in here and out on the street who are always so perfectly certain of what is right and moral." Similarly, Irmer (Free Democrat) demanded, "We must fight the myth that only those who oppose this law are the true humanitarians and that those who support it are heartless opportunists. That is simply not true. Everyone in this chamber struggled with this decision. I acknowledge that those of you who oppose this proposal do so based on a very solemn decision of conscience. But I also say of myself and of the others who vote for this proposal that we too reached a decision of conscience based on concern for refugees and also on concern for peace in our country."

That moral obligations exist not only toward refugees but also toward citizens was also noted by Schäuble (Christian Democrat) who argued that the government's obligation "does not call for only pursuing perhaps noble motives and lofty goals" of helping refugees, but it must also be vigilant against the dangers of xenophobia in Germany. He explained, "We owe our citizens domestic peace and stability, which requires us to maintain an order that ensures the peaceful coexistence of people. Only if we can assure the citizens that this liberal democracy is capable of guaranteeing such stability can we provide the necessary foundation for tolerance and harmony between Germans and foreigners." Such a proactive argument was

also made by Hintze (Christian Democrat), who said protecting the right of asylum for refugees demanded action and that "inactivity in the name of asylum right is not a badge of high ethical conviction." Similarly, Geißler (Christian Democrat) reminded the chamber of Molière who once wrote: "We are responsible not only for our actions, but also for our inactions."

Oddly, despite intense charges and countercharges regarding moral responsibility, this responsibility was again not well examined by either side. There were only a smattering of references to Judeo-Christianity. For example, among supporters of the tighter law, Geis (Christian Democrat) argued that supporters were not acting "against fundamental Christian principles," von Stetten (Christian Democrat) said that switching asylum-seekers' welfare support from cash to payments-in-kind corresponded to the Bible, Cronenberg (Free Democrat) criticized those "naive utopians who misuse church sermons and who believe they can monopolize God for their side and their views," and Bernrath (Social Democrat) noted that in the new catechism, "which is certainly a guidance for Catholics," there is no reference to asylum, to flight, to refugees or to persecution and therefore it offers no direction on this matter.

And among opponents of the tighter law, Ullmann (Green) argued that the real Christian tradition (as opposed to the one practiced by the other side, which he derided as "amateur theology") stems from Jesus, who asks that we look after strangers, but he charged that this law "radically and diametrically contradicts the fundamental principle of Christian ethics." Gysi (Party of Democratic Socialism) also cited the Bible: "God says to Moses— you can read this in the third book of Moses Chapter 19—'When a foreigner lives among you, you shall not oppress him. He shall live among you like a native and you shall love him as you love yourself.' And read what Jesus says about how to treat strangers. According to Mattthew Chapter 25, 'What you do to him you do to me.'" At this point Raidel (Christian Democrat) interrupted Gysi with the burst, "Pharisaic!" Weiß (Green) denounced this tighter law as "neither liberal nor Christian," and he said, "Offering a haven to the persecuted, freeing the captured, sharing with those who have nothing—I cannot believe that these no longer count for anything in your parties. It cannot be that only the Greens try passionately to defend Christian and liberal ideals and seek viable solutions, even under these difficult circumstances of unification."

As in the previous German debates, the moral responsibility to grant asylum was said to stem mainly from the events between 1933 and 1945. And again the focus was on Germans as victims not as perpetrators. Supporters like Hintze (Christian Democrat) spoke of "Nazi horrors," and opponents like Waltemathe (Social Democrat) referred to "Nazi persecution." In fact, in all of these German debates, only Briefs (unaffiliated)[42] spoke of

"German crimes" and of "monstrous historical German guilt" (*ungeheuren historischen Schuld Deutschlands*). He complained that this new law represented the end of the post-war era—"the end of the period in which German society and the German state consciously stood by and dealt in a significant way with the German crimes committed between 1933 and 1945."

## Summary Remarks

Unlike the Swiss debates, which had significant variations, these German debates were remarkably similar to each other. Despite the span of almost 20 years, a switch from a Social Democrat/Free Democrat government to a Christian Democrat/Free Democrat government, and the introduction of the Greens and the Party of Democratic Socialism into parliament, arguments based on national interests, international norms, and morality took the same basic shape in all three debates. In addition to demonstrating important similarities to and differences from the Swiss debates, these German debates further weaken the literature's simple tug-of-war image of national interests pulling to tighten asylum and international norms and morality pulling to loosen it. Indeed, the complex and counterintuitive nature of asylum debates continues to emerge.

The *national interest* arguments were quite similar to those presented in the Swiss debates. Supporters of tighter asylum laws argued that such laws were needed to fight asylum abuse. Such abuse, they argued, brought unacceptably high financial and bureaucratic burdens, represented a form of illegal and unwanted immigration, questioned the state's competence, and angered citizens. Like in Switzerland, supporters of tighter asylum did not argue that asylum-seekers or refugees brought about unemployment, and a few German parliamentarians even tacitly argued that they in fact served the labor market, although they were unwilling to make this argument forcefully.

Instead of stressing the positive impact of asylum-seekers and refugees on national interests, opponents of tighter asylum stressed the negative impact of the laws. Specifically, they complained that tighter asylum laws were rash, ineffective, and based on racist and undemocratic principles. Because these national interest arguments have played out similarly in all five debates that tightened asylum laws in Germany and Switzerland, we may expect British supporters and opponents of tighter laws to present these same arguments as well.

There were three national interests that received more attention in the German debates than in the Swiss debates. First, German parliamentarians on both sides of the issue noted the housing shortage brought on by the

rising number of asylum-seekers. Second, especially supporters argued that the integration of guest workers was being made more difficult by the arrival of asylum-seekers. Finally, parliamentarians focused on foreign policy interests; supporters argued that tighter laws would allow European asylum laws to be harmonized, which would promote European unity, while opponents, especially in 1993, argued that the tighter law would harm Germany's neighbors by dumping its asylum problems on them.

While national interest arguments in the German debates largely mirrored those in the Swiss debates, arguments based on international norms differed significantly. Swiss parliamentarians commonly stressed the importance of abiding by norms set by international organizations, but German parliamentarians did not often refer to UNHCR, the 1951 Refugee Convention, 1967 Protocol, the 1948 Universal Declaration of Human Rights, the European Human Rights Convention, or Amnesty International. Instead of referring to such international norms, German parliamentarians referred to standards set by other countries. Supporters of tighter asylum used such comparisons to point out that even with a tighter law German asylum standards would still be above the standards of other countries. They also used such comparisons to argue that harmonizing German asylum law with the asylum laws of other European states would promote unity on the continent. German opponents of tighter asylum, meanwhile, remained rather quiet on the matter of norms, referring only rarely to either international norms or to standards set by other countries. This difference in the reliance of international norms in Germany and Switzerland raises the question of how they will be used in Britain. It may be that Swiss parliamentarians referred to international norms more often than Germans because international norms are more important to smaller countries, in which case British parliamentarians will argue more like the Germans. However, Germany tends to be more interested in European unity than is Britain, so that the British may be unlikely to stress the harmonization of European asylum laws.

Supporters of tighter laws ultimately defended their position with moral arguments: a tighter law would help "real" refugees by weeding out asylum abuse and by replenishing the willingness of their citizens to help. As in the Swiss cases, German supporters of tighter asylum were unwilling to let the opponents monopolize morality and this was especially true in 1993. Yet neither side based their moral arguments much on religion. Olderog (Christian Democrat), in fact, said, "It is praiseworthy when citizens orient their lives around high ethical and moral standards and help refugees according to Christian principles. The Christian command to love thy neighbor is especially applicable for refugees who face such a difficult and bitter lot. But the Gospel according to Matthew is unfortunately no

recipe for practical politics." This comment brought catcalls from opponents of tighter asylum, including Ströbele (Green) who yelled, "You should be ashamed of yourself!" His reaction nicely demonstrates how, in the rare cases that opponents of tighter asylum referred to Judeo-Christianity at all, they did so mainly to accuse the other side of hypocrisy.

Instead, German parliamentarians on both sides and in all three debates saw the moral obligation to grant asylum stemming from the 1933–45 period. Yet, unexpectedly, all but one parliamentarian focused on "Nazi" persecution and on how "Germans" suffered under it. They did not argue that Germans must repay humanity for what they did during this period, but instead argued that Germans were able to flee persecution by the Nazis and must now return the favor. This *World War II* argument demonstrates significant cross-national and cross-temporal differences: in the German debates, parliamentarians continuously stressed the obligation that stems from 1933–45, but in the Swiss debates, this stress was only important in 1979 and then essentially disappeared. This *World War II* argument also demonstrates the counterintuitive nature of these asylum debates: although it is reasonable to expect the post-1968 generation of parliamentarians in Germany and Switzerland to be more critical of their country's role during the 1933–45 period, they in fact were not. Younger German parliamentarians did not increasingly argue that *German* actions during that period set a moral obligation to grant asylum today, and younger Swiss parliamentarians simply let the *World War II* argument fade. How will British parliamentarians handle this delicate issue? Britain, like Switzerland, certainly did not have a heroic refugee policy during the war, but they did win and victors have the privilege of writing history.

# Chapter Four

# Britain:
## The 1987 and 1993
## Parliamentary Asylum Debates

## Introduction

In analyzing parliamentary asylum debates, we have moved from the most straightforward case to the most complicated one. Large-scale migration into Switzerland in the post-war era has only involved asylum-seekers and guest workers. Switzerland treats the asylum issue as distinct from the guest-worker issue, and asylum is covered mainly by one specific piece of asylum legislation that has undergone several revisions since the late 1970s. The asylum issue in Germany is more complex because of the addition of the *Übersiedler* and *Aussiedler* and because the government has used a large array of legislation and administrative decrees to deal with the asylum issue. While both Switzerland and Germany deal with asylum-seekers and guest workers through two separate federal ministries, in Britain asylum is closely intertwined, both legislatively and ministerially, with immigration, an issue that itself is remarkably complicated because of Britain's views on race, citizenship, and the Commonwealth. To understand British asylum, we must therefore understand British immigration.

Remarkably, for most of the nineteenth century, Britain simply had no laws to exclude or expel foreigners, whether immigrants or refugees. While Britain saw *immigrants* as economically beneficial, it considered many *refugees* to be burdensome because they tended to be poor, unskilled, and embittered, and yet they too were freely admitted. While Britain adored the refugees who arrived in the 1830s (many of whom were fashionable, moderate, liberal, and Italian), it merely tolerated those who came in the 1840s and 1850s, who were mainly from Central and Eastern Europe.[1]

Some British resented these newer refugees for not adapting well to life in Britain. *The Times,* for example, complained in 1850 that Poles had had ample time "to adapt themselves to their new situation, and to turn their energies [from revolution] to the less brilliant but equally honourable career of private industry. . . . The man who in this busy hive of industry can find no employment after such a time is unworthy of compassion." And other British disapproved of the radical politics and methods of some of these refugees; the historian A. W. Kinglake wrote in 1858 that the English "regarded assassination as a cowardly and dastardly evasion of those rules of fair conduct to which we were accustomed." After weighing the opinions, Porter concludes that more common than either approval or disapproval of these refugees was broad apathy toward them, and this apathy is evident in the lack of material and financial support they received. As one observer wrote in 1852, "The exile is free to land upon our shores, and free to perish of hunger beneath our inclement skies."[2]

Although not seen as serving national interests, Britain maintained an open asylum policy throughout most of the nineteenth century. And it did so for the sake of Liberalism. *The Times* proclaimed in 1858, "For better, for worse, we have long been wedded to liberty, and we take it with all its evils for the sake of its manifold blessings." Nineteenth century British liberals certainly subscribed to Thamer's view that refugee waves and refugee policies are a "barometer of the political culture" of both the sending country and the host country.[3] British liberals believed that refugees were the result of the illegitimate rule by reactionary powers on the continent, and by standing with refugees Britain was standing against tyranny. This asylum policy, it must be said, was in fact more of a moral commitment to Liberalism than to refugees, and it reflected Britain's pride in its liberal institutions and in its absence of government restrictions. *The Times* beat its breast in 1853: "Every civilised people on the face of the earth must be fully aware that this country is the asylum of nations, and that it will defend the asylum to the last ounce of its treasure, and the last drop of its blood. There is no point whatever on which we are prouder and more resolute."[4] Porter explains, "The refugees in England, therefore, were in a curious situation. Most of them were unloved by most Englishmen, who made them feel very little welcome, but tolerated their presence in deference to what purported to be a great and selfless humanitarian principle: the doctrine of asylum."[5]

Besides believing in the moral superiority of their liberal system, Britain resented any demand made by the continent regarding the expulsion of refugees. Public opinion was especially sensitive to this; it condemned even the slightest hint that the British government was giving in to such demands. Palmerston's Liberal government fell in 1858 in part because it ap-

peared to give in just a bit to France's demand for Orsini after his assassination attempt on Napoleon III, and Porter concludes, "This aspect of the refugee question was probably the most important of all in determining the nature of the public reaction to it. People disliked being told to alter their superior laws at the request or dictation of foreign governments."[6] By the early 1860s, the refugee issue had become a less serious diplomatic problem, in part because the continent (except France) was losing interest in the issue and realized that Britain would remain firm on this issue.

By the end of the century, the British economy was in decline and anti-Semitism was rising in response to the 120,000 Russian Jews who came to Britain between 1880 and 1905. As a result, Britain introduced immigration restrictions with the 1905 Aliens Act, which remained the foundation of its immigration law until the Immigration Act of 1971.[7] For the first time in nearly a century, the British government took steps to control its borders. Porter concludes:

> In one important area of political activity, a liberal age had come to an end: and there was no possibility that it could return. . . . [By the end of the century] attitudes of which the Victorians would have been ashamed had become common parlance, and what the Victorians had accepted as axiomatic was coming to be seen as unrealistic idealism.[8]

British policy toward immigrants and refugees continued to tighten in the first decades of the twentieth century. Until the eve of World War II, relatively few refugees came to Britain, not only because of the restrictions but also because many preferred to remain on the continent. Until 1938, Britain generally accepted only those refugees who could show that they were self-sufficient and would eventually move away again. By summer 1938, there were only about 8,000 refugees in Britain, of whom 80 percent were Jews. In the last months of peace, domestic pressure did force the British government to ease its restrictions somewhat so that by the end of 1939, about 56,000 refugees were in Britain. Britain's interwar refugee policy is evaluated by Sherman as "comparatively compassionate, even generous," but Marrus writes that Sherman's view "is more a reflection on the international rejection of refugees than a comment on British benevolence," and Holmes concludes, "In view of the harsh restrictive policies pursued in other countries, [Sherman's] positive assessment should not be over-emphasized."[9]

More than focusing on refugees coming to Britain during this time, the government was concerned with Jewish refugees fleeing to Palestine, which had been under British mandate since after World War I. In 1932 only 9,500 Jews had entered Palestine, but a year later that number rose to

30,000, and in 1935, 62,000 Jews, mostly from Poland and increasingly from Germany, entered. Arabs began protesting against this rising number and a violent revolt against British rule erupted in 1936. Seeking to get Arab support in case of war with Germany and knowing it already had Jewish support, Britain gave in to this Arab pressure and enforced restrictions so that in 1937 the number of Jews entering Palestine dropped to 10,600. In spring 1939, Britain issued a White Paper announcing that an annual quota of 10,000 Jewish immigrants, plus 25,000 refugees, could enter Palestine over the next five years, and that after these had arrived no more would be admitted without Arab consent. By 1942 Britain had loosened somewhat its policy over Jewish entry into Palestine, but it was too late for many; it subsequently tightened its policy again as the Nazis were in retreat toward the end of the war. Britain's restrictions in Palestine were such that by the end of the war the quota of 75,000 had still not been filled.

As war broke out in 1939, Britain tightened its refugee policy on the home front as well and it remained tight for the duration of the war. When Britain declared war on Germany, visas that Britain had previously granted to nationals of the enemy ceased to be valid, and Kushner writes that with few exceptions the British government began making no distinction between refugees and German nationals, denying admission to both. Wasserstein writes that early in the war, Britain interned 30,000 so-called "enemy aliens" even though most of them were refugees who were sympathetic and potentially helpful to the British cause. He also charges that in the first two years of war, Britain took the lead in barring the escape routes from Europe against Jewish refugees. Excluding those who came as members of the Allied Forces, Britain accepted over 70,000 during the war, but the number of Jews was not more than several thousand. Kushner concludes, "Of these [Jewish refugees] it is not unfair to say that they found refuge in Britain despite, rather than because of, government policy [which] made no effort to help such Jews reach Britain."[10] Wasserstein is especially harsh in his assessment of British refugee policy during this period: "There is little to celebrate in this account of British policy towards the Jews of Europe between 1939 and 1945. A few flashes of humanity by individuals lighten the general darkness. . . . The overall record leaves a profoundly saddening impression."[11]

In the immediate post-war period, Britain took in about 200,000 people from Eastern Europe in a highly selective program that served foreign policy and economic interests. These people were young, healthy anti-communists who could be productive in the labor force or in the intelligence service. This intake of people marked a break from the highly restrictive policy of the past decades, but unlike the intake of the nine-

teenth century, it was tightly controlled by government policy. Layton-Henry writes that for the first and last time the government took an active role in integrating these foreigners, and the process was remarkably smooth and caused little of the resentment that met earlier and later groups who had to rely on themselves or on voluntary organizations for help.[12]

Such tight government control could not, however, be exerted on Commonwealth immigrants who made up the most significant flow of people into Britain in the post-war era.[13] Under the British Nationality Act of 1948 all citizens of the Commonwealth could freely enter, work, and settle in Britain and they had full citizenship rights including the right to vote. The intention of this Act had been in the opposite direction: it was supposed to move people from Britain to the colonies, as part of a long-standing imperial policy that strengthened British control over its empire. Instead, people came from the empire to Britain, first from the Caribbean, then from India and Pakistan, and finally from Africa and the Far East. From 1951 to 1961, the Caribbean population in Britain grew from 15,000 to 182,000, and the population from the Indian sub-continent grew from 36,000 to 106,000. In 1961, the year before the government introduced restrictions, 136,000 Commonwealth immigrants came to Britain. This Commonwealth immigration was spontaneous and thus in sharp contrast to the carefully orchestrated guest-worker programs of Germany and Switzerland that were operating concurrently. And the issue of race played a prominent role in Britain's experience with immigrants. From the beginning, problems with this Commonwealth immigration were seen by Britain as "race problems," just as the Jewish immigration in the late nineteenth century had been framed in racial terms.

In response to growing tensions over Commonwealth immigration, Britain passed the Immigrants Act of 1962, which introduced work restrictions, and the government justified this tightening of immigration as a means of maintaining good race relations. Despite this and other attempts to legislate restrictions on Commonwealth immigrants, their numbers climbed throughout the 1960s. By 1971, 300,000 immigrants from the Caribbean, 275,000 from India, and 132,000 from Pakistan lived in Britain, but Layton-Henry makes the observation that despite the controversy surrounding these immigrants, for most of the past century except for the 1930s and the 1950s British emigration actually outnumbered British immigration; in the 1960s, for example, 320,000 more people left than came to Britain and in the 1970s that number doubled.[14]

Throughout the 1960s, the Conservative Party used the immigration issue successfully while the Labour Party struggled with it. In the early 1960s, the Labour Party had opposed all restrictions on Commonwealth immigration, but by the middle of the decade it sounded much like the

Conservative Party by calling for tighter controls. This call for tighter immigration policies was taken to an extreme by the Conservative Enoch Powell who is best known for his April 20, 1968 "river of blood" speech that warned, "As I look ahead I am filled with foreboding. Like the Romans, I seem to see 'the River Tiber foaming with much blood!' That tragic and intractable phenomenon, which we watch with horror on the other side of the Atlantic but which there is interwoven with the history and existence of the States itself, is coming upon us here by our own volition and our own neglect."

Britain introduced the most significant post-war immigration law in 1971. For immigrants, this *Immigration Act* introduced work permits that did not carry with them the right to permanent residency or the right to bring family. This Act also encouraged voluntary repatriation through financial incentives, and it fought illegal immigration more vigorously. Although the 1971 *Immigration Act* made little reference to asylum, it is nonetheless an important piece of legislation affecting refugees because it addresses such issues as entry and admission into the United Kingdom, detention of illegal entrants, and deportations.[15] Asylum was more explicitly addressed in *Immigration Rules* drawn up by the Home Secretary. Since 1980, these *Rules* have referred specifically to the 1951 Refugee Convention, but this situation led to tension between the provisions of the *Rules,* which gave primacy to the Convention, and the *Immigration Act,* which did not refer to the Convention and whose provisions were in some respect incompatible with it.[16] This tension was eventually resolved when the *Asylum and Immigration Appeals Act* of 1993 incorporated the 1951 Convention into British law.

Another important measure affecting immigration was the 1981 Nationality Bill, which changed British citizenship, a step the Conservative Party had stressed in the 1979 election. This bill modified *jus soli* by making birth in Britain no longer enough to acquire British citizenship. The Nationality Bill set up three major types of citizenship: British citizenship, British Dependent Territories citizenship, and British Overseas citizenship. The first offers unlimited access to the United Kingdom and is therefore the most desirable for foreigners wanting to move to Britain. It is given to those persons who have a close connection to Britain, either because their parents or grandparents were citizens or because they have settled permanently in Britain. Persons marrying a British citizen no longer automatically receive citizenship but must wait three years. The second status is given to persons who already had citizenship of a colony, and the third status was, according to Layton-Henry, "essentially a residual one with virtually no rights . . . It was hardly a citizenship at all—rather, the phasing-out of British subject status."[17]

By the 1980s, immigration had largely lost its importance as a political issue. Commonwealth immigrants and their descendants numbered 2.6 million or 4.5 percent of the total British population of 54.5 million and mainly originated from the Caribbean, India, and Pakistan. This foreign population was smaller than Germany's 7 percent and Switzerland's 15 percent, although these numbers must be seen in light of the stricter citizenship and naturalization requirements of Germany and Switzerland. With regard to its current immigration policy, Rees concludes, "Insofar as Britain can be said to have an immigration policy, it is a policy designed to contain the social problems of past immigration by eliminating virtually all future inward flows."[18]

This kind of preventive policy best describes Britain's recent approach to asylum as well. The asylum issue remained politically rather unimportant in Britain until the late 1980s. Kaye notes that the Labour Party, for example, referred to refugees only once in its 1979 party manifesto and not at all in the 1983 manifesto.[19] The British government estimates that between 1955 and 1980, it accepted 153,000 refugees, mainly from Hungary, Czechoslovakia, Uganda, Chile, Cyprus, Lebanon, and Indochina.[20] Of these, Uganda and Indochina are especially noteworthy cases because of their historical ties to Britain. On August 4, 1972 Idi Amin of Uganda announced the expulsion of all 50,000 Asians, most of whom had British passports. The ruling Conservative Party, having taken a strong stand against immigration, was only lukewarm about receiving these Ugandan refugees, and it lobbied other states, especially India and Canada to get involved; Britain eventually accepted about half of them. With regard to the Indochinese refugees of the late 1970s, Britain accepted 13,200 of them between 1975 and 1980, which on a per capita basis is slightly less than Germany's 16,700 and significantly less than Switzerland's 6,600.[21]

From 1980 to 1985, the annual number of asylum-seekers ranged from 2,500 to 5,000 and the vast majority of these came from Iran, Iraq, Sri Lanka, Poland, Ghana, Ethiopia, and Uganda. Despite these modest numbers, Britain moved to restrict access to its asylum process starting in the mid 1980s. In response to the rising number of Tamils, it introduced visa requirements for Sri Lanka in 1985, a controversial decision because it was the first such move against a Commonwealth member. In subsequent years, Britain introduced visa requirements for citizens of Turkey, Somalia, Uganda, Bosnia, and Sierre Leone as well. Britain also began introducing work restrictions for asylum-seekers who were still waiting on their decision.

Most significantly, Britain introduced the 1987 *Immigration (Carriers' Liability) Act,* which allowed the government to fine any ship or airline company £1,000 (raised to £2,000 in 1992) for every passenger it

brought to Britain without proper travel documents. Within weeks of its implementation in March 1987, the number of asylum-seekers coming to Britain fell by half. This Act was especially controversial with regard to its conformity to international norms. Ruff writes that this measure undermines the substantive right of refugees to claim asylum, and it allows Britain effectively to restrict or evade its international obligations. Similarly, Feller writes that while states have a right to control their borders, they are in breach of international obligations when such measures hinder a refugee's access to the asylum process. A number of airlines, including British Airways, also criticized this Act by arguing that it unfairly forced their employees to act as immigration officials; in subsequent years, companies increasingly refused to pay these fines, which totaled £19 million by 1990.[22]

Not only did Britain tighten access to its asylum process, but it also granted refugee status less frequently. Instead, Britain increasingly relied on the "exceptional leave to remain" status. This status is given to asylum-seekers whom the government does not consider refugees (i.e., those asylum-seekers who do not fulfill its asylum criteria of being individually persecuted) but whose deportation may violate the principle of *non-refoulement*. For asylum-seekers, this *exceptional leave to remain* status is less desirable because it does not carry with it the rights and protections of *refugee* status. Despite these government efforts, the number of asylum-seekers rose from 6,000 in 1988 to 38,000 in 1990 and peaked at 73,000 in 1991, by which time there was a significant backlog of unprocessed cases, which caused the average case to take over a year to be decided (Figure 7). The majority of these asylum-seekers now came from Turkey, Somalia, Sri Lanka, and Uganda.

As the number of asylum-seekers kept rising, the asylum debate became increasingly influenced by the immigration debate, and a deliberate blurring of these two issues took place, especially in the conservative press, which referred to "immigrants," "refugees," and "asylum-seekers" interchangeably. The intent of this blurring was to associate the new issue of asylum with the old, unpopular issue of immigration. Immigration was clearly unpopular in Britain, as indicated by the 1991 Eurobarometer Survey, which shows that Britain had the highest proportion of people (63 percent) who thought there were too many immigrants in their country. Asylum, too, was getting a bad reputation in Britain as evident from a poll that shows an even higher percentage of British respondents (78 percent) believing Britain took in too many refugees, up from 53 percent in 1989.[23]

To confront the number of asylum-seekers coming to Britain, parliament began debating a new asylum bill in 1991, but its passage was inter-

**Figure 7   Annual Asylum Applicants and Recipients in Britain**
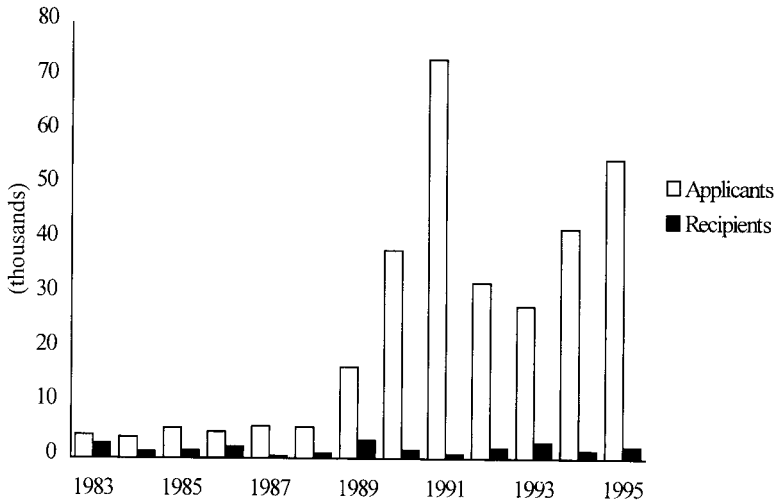
rupted by the general elections of 1992. Parliament subsequently introduced and passed a more moderate version of that bill in 1993 (*Asylum and Immigration Appeals Bill*), but instead of dropping, the number of asylum-seekers continued to rise from 28,000 (1993) to 42,000 (1994) to 55,000 (1995).

With regard to ex-Yugoslavia, of the 600,000 people who had fled the civil war by February 1993, Germany had accepted the most of any European country (250,000), followed by Switzerland (80,000), Austria (73,000), Sweden (62,000), and Hungary (40,000), while Britain had only accepted 4,400.[24] UNHCR criticized this weak British effort as not in keeping with the spirit of international burden-sharing.

Britain was also criticized for its handling of the case of Muhammad Massari, who had been imprisoned and tortured in Saudi Arabia for criticizing the Saudi royal family. Massari managed to flee to Yemen and then came to Britain in 1994 where he applied for asylum and kept up his anti-government activities. The British government became worried that his presence would jeopardize Britain's trade with Saudi Arabia, especially after Saudi Arabia hinted that the $31 billion oil-for-arms deal signed in the late 1980s was at stake if Massari did not cease his political

activities in exile. The British government wanted to send him back to Yemen, but then decided that was too dangerous and instead announced in early 1996 that Massari would be shipped off to the safe country of Dominica, a tiny island in the Caribbean whose foreign aid from Britain had suddenly quadrupled. Critical of the government's action, *The Economist* (1/13/96) complained that Massari had broken no British laws nor did he advocate terrorism, and it concluded, "There is nothing wrong in fighting for British exports, and the jobs that go with them. But it does not follow that Britain's legal responsibility toward genuine political refugees should be manipulated in that cause. . . . It has been a shameful sight." In March 1996, the Chief Immigration Appeals Adjudicator ruled that the government had not demonstrated that Massari would be safe on Dominica, disallowed the deportation, and condemned the government's decision to deny Massari asylum as not being "within the humanitarian spirit within which the [UN Refugee] convention should be interpreted."[25] Finally, in April 1996, while stressing it was not granting Massari refugee status, the government granted him "exceptional leave to remain," but because he is allowed to travel freely and to bring his family to Britain, which goes far beyond the normal rights of "exceptional leave to remain," immigration experts agree that he has in fact been given refugee status in all but name.

In the asylum process of the mid 1990s, asylum cases are handled by officials in the Asylum Division of the Home Office's Immigration and Nationality Department.[26] Asylum-seekers who apply within the country (as opposed to at points of entry) normally fill out an Asylum Questionnaire and are subsequently interviewed about their claim by a Home Office official. Based on this questionnaire and interview, the asylum-seeker receives either refugee status, "exceptional leave to remain," or is rejected and then faces deportation. A rejected claim can be appealed to an independent adjudicator, but this appeal must be lodged within 10 days and should be decided within 42 days. In port cases or in cases where the asylum-seeker makes the claim after he or she was caught as an "illegal entrant," there is an additional step in which an initial interview is held to see whether the asylum-seeker came from a safe third country and can be safely returned to it. If this is the case, the asylum-seeker will be returned without the case receiving a substantive review, and that decision can be made within a few hours. This decision to quickly deport (but not the decision to deny asylum) may be appealed, but the appeal must be lodged within two days and should be decided within seven days. Asylum-seekers may not work for the first six months of the asylum process, during which time they are entitled to public assistance. This assistance is not as generous as in Germany or Switzerland, especially with regard to housing.

This accelerated process for dealing with port cases and illegal entrants is known as the "fast-track," and it has been criticized by UNHCR and Amnesty International for not allowing enough time to prepare a proper appeal. Amnesty International conducted a study that followed the fate of 60 cases that had been rejected through this "fast-track" process, and it concluded that very few of those refused asylum under the safe third country rule who obtain legal representation were actually permanently removed from Britain. This low deportation rate is also evident in the government's own figures, which show 1,305 asylum-seekers being rejected because of this "safe third country" rule between January 1, 1994 and April 30, 1995, but that only 415 rejected asylum-seekers were actually removed to a third country. Furthermore, of these deported asylum-seekers, as many as 40 percent were eventually returned to Britain by the third countries and are now in the regular asylum process.[27] Dunstan concludes that this safe third country rule, which he calls, "an invention of officials with no basis in international law," has not only failed to meet government expectations but has also raised government costs by several million pounds a year, imposed immense hardships on those affected, and "has compromised—and continues to compromise—the government's upholding of its obligations under the 1951 UN Convention on Refugees."[28] Addo assesses Britain's compliance with the Convention as follows:

> It needs to be said from the outset that the UK's record of compliance with the Convention rights regime is good. The United Kingdom's record in this field cannot, however, in any conceivable sense be said to be an excellent one. Excellence presupposes not just compliance with the law of the Convention but with its spirit, aims and purposes as well. While the United Kingdom policy and practice in the field of refugee rights cannot be said to be in breach of the Convention, it has become evident, especially in recent times, that the law, policy and practice has sought to take full and unashamed advantage of the loopholes that may be said to exist in the Convention rights regime.[29]

To these assessments, Kaye adds that Britain has been one of the leading advocates of the narrow interpretation of the 1951 Refugee Convention.[30]

Asylum, like immigration, is the responsibility of the Secretary of the Home Office, who is appointed by the Prime Minister. By convention, the Prime Minister usually draws his or her cabinet from the House of Commons, and all the government ministers remain in parliament while they serve in the cabinet. The British parliament has two chambers, the House of Commons and the House of Lords. Because the House of Lords is a rather undemocratic body in both its composition and its representation

and because it is politically only marginally important to the legislative process, the asylum debates that took place in that chamber need not be considered here. The power and legitimacy in British politics lies with the House of Commons, whose members are popularly elected and whose debates we will weigh. Whichever party holds the most seats in the House of Commons chooses the executive, which is headed by the Prime Minister, who is also the party's leader. Like Germany, Britain is a parliamentary democracy so that once the executive has come to a decision, parliament is almost certain to approve it. Since 1945, the British parliament has approved 97 percent of all bills introduced.[31] Legislation is introduced to the House of Commons by the cabinet in a first reading, when there is no debate. In the second reading, the legislation's principle is debated before it heads to the appropriate committee that discusses its details but cannot change its principle. The legislation then returns to the House of Commons for a third reading, which usually consists of only a brief discussion and then a final vote.

The two major British parties are the Conservative Party and the Labour Party. For most of the period covered in this work, the Conservative Party was led by Margaret Thatcher, who served as Prime Minister from 1979 until 1990 when she was replaced by John Major in an intraparty feud. The Conservative Party's majority in the House of Commons gradually diminished from its post-war peak of 61 percent of the seats after the 1983 election to 52 percent after 1992. Meanwhile, the Labour Party rose from its post-war low of 32 percent (1983) to 42 percent (1992).

From 1945 until the 1970s, the only third party to win consistent (albeit small) representation in the House of Commons was the Liberal Party, but by the 1980s the field of third parties was getting more crowded. In 1981, the Liberal Party entered a centrist alliance with the new Social Democratic Party, which had split from the Labour Party. In both the 1983 and 1987 elections, this alliance won roughly 3.5 percent of the seats, and the two parties subsequently merged into the Social and Liberal Democratic Party, which won 3 percent in 1992. Various small nationalist parties from Scotland, Wales, and Northern Ireland make up the rest of the House of Commons.

Asylum as a salient political issue arose comparatively late in Britain, so that unlike in Germany and Switzerland, there were no British parliamentary debates over asylum legislation in the late 1970s and early 1980s. The first such debate occurred only in 1987 when the House of Commons debated the *Immigration (Carriers' Liability) Act,* and this debate is this study's first British case. To match in time and in importance the Swiss and German asylum debates of the early 1990s, this study also considers the 1993 debate surrounding the *Asylum and Immigration Appeals Act.*[32]

## The 1987 Debate

Asylum as a salient political issue in Britain arose relatively late. Only in 1987 did Britain take its first legislative measure to address the rising number of asylum-seekers. The *Immigration (Carriers' Liability) Act* gave the government the right to fine passenger carriers £1,000 for each person they brought to Britain without proper travel documents. The government argued that an increasing number of asylum-seekers were using forged travel documents or destroying their document en route, making it difficult for British authorities to trace their countries of origin, thus hindering the deportation of rejected asylum-seekers. This carrier fine could be waived if the carrier could show that the passenger had a valid travel document at the time of embarkment or if the document's forgery was not "reasonably apparent." This bill was introduced in the House of Commons on March 4, 1987, had its second reading on March 16, 1987, and won final approval in the third reading on March 26, 1987 by a vote of 147–57.

As in the Swiss and German cases, all British parliamentarians in this debate defended the asylum practice and declared their readiness to accept refugees; Prime Minister Thatcher declared that Britain had "an excellent record of hospitality towards genuine refugees." The central question then was not whether asylum should be abolished but rather whether it should be tightened. The Conservative government insisted that asylum had to be tightened in order to combat the rising number of asylum-seekers who it claimed were not genuine refugees. Minister of State for the Home Office Waddington (Conservative) complained that in the month prior to this debate, 185 of the 233 individuals who had applied for asylum in Britain did not have valid documents. He also noted that the number of asylum-seekers arriving with invalid documents had already dropped significantly since the measure was announced a few weeks earlier, adding with satisfaction, "It is one of those rare beasts—a Bill which has begun to work before it has achieved its Second Reading." With a skeptical eye, Waddington also questioned the motives of such asylum-seekers by arguing that people who faced genuine persecution would seek refuge closer to home: "It is the most natural thing in the world for a genuine refugee to go to the nearest safe place and not travel three quarters of the way around the world."

Opponents of tighter asylum acknowledged that some asylum-seekers did abuse the system, but argued that these were the exceptions. Madden (Labour) said, "Those of us who have been concerned with refugees will admit that some of them are rascals, but the overwhelming majority of those who seek political asylum here are genuine." Bidwell (Labour) went so far as to argue, "It is very likely that anybody who arrives without papers is a political refugee."

Like in the previously analyzed Swiss and German debates, the historical context is once again important to consider. This 1987 British debate was heavily influenced by the controversy surrounding a group of 64 Tamil asylum-seekers who had arrived in Britain the previous month. Because this group had arrived without the necessary travel documents, the government wanted to deport them immediately, but a High Court order prevented that and instead demanded that their cases be heard. Nellist (Labour) defended this group, whom he said had "fled the bombing of their homes and the torture and murder of their families and neighbours," but Dicks (Conservative) derided them as "liars, cheats and queue jumpers." Wheeler (Conservative) pointed out that this group of Tamils had traveled from Sri Lanka to Britain via Malaysia and Bangladesh, and he argued that if they were genuine refugees, they would have asked for asylum in either of these two countries: "They came from two Commonwealth countries where they were not at risk and where they could have obtained sanctuary from oppression, if that was their first objective."

Like their Swiss and German counterparts, British parliamentarians blurred the terms *asylum-seekers* and *refugees* in this debate, but British parliamentarians (especially Conservatives) took this rhetorical tactic a step further by blurring *asylum-seekers, refugees,* and *immigrants.* In part this loose use of terms was due to the fact that asylum and immigration are less delineated in British law than in Swiss or German law, so some unintentional confusion is inevitable. Such blurring, however, also occurred deliberately in part because the Conservative Party, which had long exploited the immigration issue with considerable success, hoped that it could paint *asylum-seekers* as *immigrants* and thereby capitalize on the asylum issue as well.

This blurring of asylum and immigration was especially evident when supporters of this tighter *asylum* bill accused its opponents of being soft on *immigration.* In his opening statement, Home Secretary Hurd (Conservative) charged that opponents claimed to support firm immigration control but then opposed all measures to maintain an effective policy: "There is no point in agreeing that there must be a bucket, but on the sole condition that it has plenty of holes in it. Yet that is the present stance of the Labour and Liberal parties on immigration control." The Labour Party, which had long struggled with the immigration issue, fought this charge throughout the debate. In response to the above charge, Winnick (Labour) asked Home Secretary Hurd, "Will he try to avoid the completely false accusation that because the Labour Party criticises the government from time to time it is not fully committed to effective immigration control? The right hon. Gentleman knows that that is not so and that we are totally committed to such controls." To stress this point, opposition Front Bench Spokesman on Home Affairs Dubs (Labour) began his speech by saying, "To clear up any

misunderstanding I make it clear at the outset—otherwise, Conservative Members will claim not to be clear on the point—that Labour Members believe in firm immigration control, but not immigration control that is racially or sexually discriminatory."

The central national interest argument of supporters of tighter asylum in this British debate is familiar from the German and Swiss cases: this bill will fight the abuse that is irritating citizens who demand action. Stokes (Conservative) asked Home Secretary Hurd, "Is my right hon. Friend aware that the vast majority of people in this country are thankful for the steps that he is taking to deal with bogus immigration? Is he further aware that the attitude that we have heard from the opposition is quite untypical of the vast majority of all classes of people living in this country?" Furthermore, by fighting abuse and appeasing citizens, supporters argued, this bill would calm growing anti-foreigner sentiment. Home Secretary Hurd said, "If we do not do that, the future for race relations and harmony in the United Kingdom is bleak," and Lawler (Conservative) warned that opposition to this bill was "in great danger of seeking to damage race relations in Britain." Supporters noted that asylum abuse was resented not only by whites but also by ethnic minorities who supported this bill. Morris (Conservative) said, "Opposition Members ought to realise that my Bangladeshi constituents in Northhampton are just as concerned about taxes that they pay as the indigenous community in Northhampton, and they wonder why money should be spent on bogus asylum-seekers." Similarly, Lawler (Conservative) noted, "One may talk to Indians, Asians or West Indians of various ethnic origins and discover resentment against people who try to come to the country and evade controls."

Few other national interest arguments in support of tighter asylum were made in this debate. While supporters of tighter asylum in Switzerland and Germany had presented various domestic and foreign policy concerns, supporters in Britain remained remarkably narrow and vague. Housing shortages, for example, which were often raised in the other two countries, rarely came up; Home Secretary Hurd (Conservative) only mentioned that there was "a good deal of public criticism" when asylum-seekers were housed in hotels, while Clark (Conservative) demanded to know "how much it costs the taxpayer per day to house these immigrants? Surely it is a gross abuse and waste of public money to allow this sort of spectacle to go on."

It appears that the number of asylum-seekers in Britain at the time was so insignificant that supporters found it difficult to argue credibly that asylum-seekers had much of an effect on national interests. After all, in 1986 only 4,800 individuals applied for asylum in Britain, which had a population of 55 million (or 0.009 percent of the total population). Home Secretary Hurd acknowledged as much when he said, "We should be strongly

and rightly criticised if we delayed our own action until the trickle became a flood, as more and more people began to use the loophole." In other words, the main argument of supporters of tighter asylum was that this bill was more of a preventive measure against future problems than a reactive measure to current ones.

Just as their counterparts in the other two countries had done, British opponents of this tighter bill reversed the arguments of the supporters: this bill was unnecessary, ineffective, and based on undemocratic principles. While accepting that the asylum problem was growing, Spokesman Dubs (Labour) argued that the issue had to be kept in perspective: "We must keep the problem in proportion and not become quite so hysterical as some people are at the thought that a few hundred people have applied for admission to this country. Of course we have to separate those who are genuine from those who are bogus, but we should not be quite so out-raged when we remember that we have taken only a few refugees, whereas most other west European countries have taken far more." Meadowcroft (Liberal) said that not only was the bill unnecessary, but he also warned that it would not achieve its objectives. He argued that far from combat-ing the smugglers who bring in asylum-seekers, this bill would only in-crease the demand for their services, because it would become more difficult to enter Britain. Similarly, Madden (Labour) argued that forgers of documents would simply increase the quality of their work so that they would not be "reasonably apparent," thereby giving carriers an excuse not to pay the £1,000 fine.

Shadow Home Secretary Kaufman (Labour) also stressed the economic inefficiencies associated with this bill, especially to the carrier industry. He extensively cited a letter he had received from the General Council of British Shipping, which complained about how difficult this bill would be for the shipping industry to implement. Kaufman argued that airlines would be similarly troubled to implement the bill, because 149 different airline companies from 246 destinations fly into Britain, and airline em-ployees are not trained to check documents as are immigration officials. Similarly, Bermingham (Labour) complained that the government "have misunderstood the needs of the shipping industry and have failed to ap-preciate the enormity of the burden being placed upon that highly com-petitive industry."

With a nod to foreign policy interests, Kaufman complained that pri-vate companies and even KGB officials working for Aeroflot would have the power to interpret and implement British law. Bidwell (Labour) fur-ther argued that in those cases where a state-owned airline violates this bill, the British government would have to try to fine a foreign government, which he doubts would bring results. Bermingham (Labour) concluded,

"The Bill, as drafted, is an invitation to the shipping companies to conclude that they should ignore it because there is no way in which they could economically comply with it. Any Act that invites people to ignore it through sheer economic necessity must be a bad Act because the object of English law and legislation is to be obeyed."

This argument that the bill contradicted the objectives of British democracy, was picked up by numerous opponents of the bill who argued that it was also rash. Madden (Labour) said, "There can be no doubt that the Bill was conceived in panic [and] is being rushed through this House in great haste [in reaction to the case of the 64 Tamils, which] led the government into embarrassment, into the courts and resulted in an even more embarrassing U-turn." Similarly, Bermingham (Labour) said, "Legislation that is a reaction instead of being thought through is often bad legislation," and Foot (Labour) noted, "Legislation that is rushed through in a panic is usually the worst kind of legislation, especially when it deals with questions of civil liberties and when strong passions are aroused." With this bill, Meadowcroft (Liberal) complained, the government is not fulfilling its democratic role because "the government are seeking to follow their Back Benchers instead of endeavouring to lead and initiate."

This charge that the bill is rash is closely linked to the charge that it is racist and angling for electoral gains rather than serving the national interest. Shadow Secretary Kaufman charged that Conservatives, "have abandoned any standards of decency on this matter, at any rate until the general election is over." He continued, "The Bill is about having a shoddy little debate in which racism can be stirred up in hope of winning a few votes. At every general election, Tory Members cannot resist playing the race card. They are doing it again now, and it is especially lamentable that this Home Secretary, of whom people expected better, should have lent himself to this shabby manoeuvre."

Winnick (Labour) likewise said that while he had expected the Conservative Party to play the race-card in this pre-election period, he was "extremely disappointed" that Home Secretary Hurd followed suit. And Bermingham (Labour) lamented "This country was once the cradle of modern democracy. It was the hub of a civilised society that catered for the revolutionary who had fled his native state. It catered for the person who was at ideological war with his native state. Whether that ideological war was from the Left or Right mattered not to this nation. . . . Why is it, in the 1980s, that this country has begun to turn its back on an honourable history of catering for refugees and for those who seek political asylum? I am beginning to wonder—I say this with great sadness—whether this measure has been prompted by the colour of the political refugees." Corbyn (Labour) argued that the government had whipped up public support

for this bill by creating a racist hype in the media, especially in the Murdoch press. He charged, "All that the Minister is trying to do is to appeal to the basic sense of xenophobia in the media, in the country and throughout Europe."

That this tighter asylum bill conformed to international norms was mainly stressed by the two government representatives. Minister Waddington turned back as "nonsense" the charge that this bill violated UNHCR standards and insisted, "We observe the convention meticulously and will continue to do so." Home Secretary Hurd said in his opening remarks that this bill was "firmly based" on the UNHCR Convention that "states clearly a general principle, which we accept." He was especially keen to stress that Britain accepted the UN definition of a refugee, which Morris (Conservative) later referred to as "the gold standard" for defining refugees. Hurd in fact relied on this internationally recognized refugee definition to counter suggestions that Britain broaden its definition to also include those people who flee famines, war, environmental degradation, or economic hardship. He stressed, "The United Nations convention and our practice in the matter draw a clear distinction between people who live in a troubled part of the world—as I have said, there are many troubled areas—and wish to lead a more prosperous and secure life here and those who individually have a well-founded fear of persecution. Only the latter category is covered by the United Nations convention and therefore by our international responsibilities. We must strike the right balance so that we can continue to honour that obligation to the second category while excluding the first." Aside from Hurd and Waddington, few supporters of tighter asylum referred to international norms in this British debate.

When supporters did look beyond their borders, they did so to compare themselves favorably to the asylum policies of other states. In arguing for a tougher stance against Tamils from Sri Lanka, Hanley (Conservative) noted that Switzerland, which he described as "a welcoming, peace-loving country," was contemplating returning 40 Tamils to Sri Lanka because it too felt that the situation had improved. Morris (Conservative) agreed, "Switzerland does not have a hard-headed, Right-wing government who are determined to throw out everybody that they possibly can. The Swiss weigh up matters. If the Swiss government are thinking of returning those Tamils to Sri Lanka, it suggests that the position is improving there." In defense of carrier sanctions, Home Secretary Hurd argued that levying a £1,000 fine "is more or less in line with what other countries are imposing," and Minister Waddington noted that Australia, the United States, Canada, Germany, New Zealand, and Brazil already had similar legislation in place and the European Community was working to implement such legislation as well.

In contrast to the relative silence of supporters, a number of opponents of tighter asylum argued that this bill contradicted international norms. Bermingham (Labour) said that the bill "flies in the face of the Geneva convention" and Spokesman Dubs (Labour) urged that amendments to it be made lest "we shall be in breach of the convention and therefore our international agreements." Shadow Secretary Kaufman (Labour) argued that the bill irrefutably violated Article 31 of the 1951 Convention, which he read to the House: "*The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.*" Responding to this charge, Minister Waddington said that the fine is imposed on the airlines not on the refugees and thus was not in violation of the Convention. To this explanation, Kaufman replied, "That was a clever little interruption. The person seeking refugee status is penalised by the penalty on the carrier, of course." Kaufman also complained that this bill would delegate to foreign airlines Britain's responsibility for implementing UNHCR norms, and he specifically mentioned South African Airlines as being unworthy of this task.

Corbyn (Labour) argued that this bill also violated the recommendations made by the 34th executive session of the UNHCR, which Britain had endorsed. He urged, "[The government] should listen more carefully to what the United Nations High Commissioner for Refugees has said about the Bill" although he never offered UNHCR's position on the bill. In fact, Minister Waddington (Conservative) said that if this bill did violate the Convention "certainly that has never been said by the UNHCR." Regardless of whether the bill violated the letter of UNHCR, Meadowcroft (Liberal) argued that it certainly violates its *spirit.* He said, "To say that we shall take unilateral action despite what might happen elsewhere, and to excuse doing so on the ground that someone can travel on properly with documents seems to go against the spirit of the international attitude that we should advance. If we do not play our part in coping with the problems of the world's refugees, how can we expect others to do so?"

Responding to Hanley's (Conservative) charge that the 64 Tamils who had recently landed at Heathrow should have applied for asylum in either Malaysia or Bangladesh, where they had first landed, Corbyn (Labour) asked, "Is the hon. Gentleman aware that Malaysia is not a signatory to the United Nations convention and that the Tamils were only in the transit lounge at Dhaka airport and never entered Bangladesh?" Corbyn thereby argued that countries that have not signed the Convention are unsafe for refugees. Similarly, Meadowcroft (Liberal) wanted to waive the £1,000

fine for asylum-seekers coming from countries that had not signed the Convention such as Iraq and Afghanistan, because he believed such countries were not properly protecting refugees. This argument—that states who have not signed the Convention are not properly protecting refugees—was rejected by Minister Waddington (Conservative) who said, "Every state, on achieving membership of the United Nations, is obliged, *inter alia,* to subscribe to the mandate of the High Commissioner for Refugees. The mandate, in effect, contains the same element of protection for refugees and asylum-seekers as the convention." Both sides, then, respected the role that the UN plays in protecting refugees and both tried to use this role in support of their position.

Opponents of this tighter asylum bill argued further that Britain did in fact not compare favorably to the standards of behavior of other states. Shadow Secretary Kaufman (Labour) faulted Home Secretary Hurd for claiming that other countries had undertaken similar legislation, because he argued at least Australia and Denmark had built in safeguards that made their policies less tight than Britain's. Spokesman Dubs (Labour) likewise argued that Britain's asylum policy compared unfavorably to the policies of other states: "According to the figures that have been published by the United Nations High Commissioner for Refugees, Britain is very low down the league table in the number of asylum-seekers that we have accepted, compared with other European countries." Corbyn (Labour) argued that Britain should not even bother to compare itself to the policies of Europe because "The attitude of Europe, led by the British government, towards asylum-seekers in general has been disgraceful. They were heavily censured by Mr. Poul Hartling, the former United Nations High Commissioner for Refugees." Madden (Labour) derided the bill as "a shoddy, shameful, nasty little measure which does nothing to assist the United Kingdom's reputation throughout the world and which even this government may be ashamed of within a short time."

Like all supporters of tighter asylum in all the debates we have examined, British supporters insisted that this tighter bill served the moral end of helping genuine refugees by discouraging fraudulent claims, by speeding up the process, and by raising goodwill among citizens. In his opening statement, Home Secretary Hurd said that this bill would serve "the interests of all genuine refugees," and Lawler (Conservative) added, "In supporting this Bill, I am not concerned about the bogus asylum-seeker or visitor, nor the middle man who unfortunately profits too much from this trade in human misery. I am concerned about the genuine asylum-seeker. Unfortunately, as with visas, those who observe the rules are not the ones who cause extra controls to be imposed. However, it is to their benefit in the long run that this measure—as with visas—is introduced."

It is noteworthy that this stated moral concern for refugees was even less explored than in Switzerland or Germany. British supporters of tighter asylum simply stated their concern for refugees and left it at that, offering little justification. Nothing was said of a religiously based obligation to help refugees, and there was very little talk of a philosophically based obligation. And Minister Waddington (Conservative) and Wheeler (Conservative) both explicitly rejected moral parallels to World War II that opponents were drawing.

Unlike the supporters, opponents of the tighter bill did raise some moral arguments, but they did not make a single reference to Judeo-Christianity. Instead, they appealed to liberal principles of individual rights and limited state power. The bill was described by Miller (Labour) as "draconian" and by Shadow Secretary Kaufman (Labour) as "oppressive" because, they argued, it violated privacy and exposed the individual to the increased power of the state. Numerous opponents also complained of the unjust hardships this bill would impose on individual asylum-seekers as they tried to get the proper travel documents in their home country. Meadowcroft (Liberal), for example, noted that in some countries peoples' entry and exit of a British diplomatic post is under surveillance by the host government. And from the liberal position of limited government, he argued that the existing system is already working and therefore a new law was unnecessary, warning Hurd (Conservative) that he was hurting his reputation as a liberal Conservative, to which the Home Secretary responded, "If being a liberal means that one denounces racketeers while opposing every effort to deal with them, I disclaim that label."

Opponents also drew parallels to the World War II era in an attempt to portray the bill as inhumane. Shadow Secretary Kaufman (Labour) compared the "nice, tidy smugness" and the "contemptible complacency" of today's Home Office to that of the Home Office during the World War II era. Nellist (Labour) argued, "If the Home Secretary had occupied the same post in the 1930s or 1940s he would have sent thousands of people back to Germany, Italy, and Spain and to their deaths." In support of asylum-seekers arriving without proper travel documents, Winnick (Labour) argued that World War II especially showed that too often refugees had to rely on false documents to reach safety, and Corbyn (Labour) added, "Indeed, hero films are made about people using forged documents to get out of Nazi Germany and other places." Meadowcroft (Liberal) regretted that for the sake of national interests the Western powers after World War II "sent Slavic refugees back to Russia, to a certain death, rather than accept them." Shadow Secretary Kaufman concluded, "It is sometimes claimed that Britain has an outstanding record on acceptance of refugees. There have been times when that record has been outstanding, when it

has enhanced our reputation for humanity in the eyes of the world. But there have been other times, as when refugees from Hitler were excluded from this country when they could have been saved, when our reputation has been less glorious. Sadly, this Bill takes us into one of those less glorious times."

Of course, these moral arguments are laced with the charge that the other side is immoral. Corbyn (Labour) accused the government of only being interested in appealing to xenophobia and of turning its back on refugees: "I hope that there will be a greater sense of civilised values on this side of the House when we come to vote against the Bill than has ever been shown by the Tory Party." And Shadow Secretary Kaufman (Labour) condemned the Conservative Party for playing the race card, charging: "They have abandoned any standards of decency on this matter, at any rate until the general election is over. . . . Let them make the most of this electorally—I am sure that they will. If any of them still have consciences, let them live with them." Remarkably (and in contrast to the Swiss and German debates) not a single supporter contested these charges of moral shortcomings. In fact, the only such comment came from Meadowcroft (Liberal), an opponent of the bill, who reminded Kaufman (Labour), "No one on either side of the House has a monopoly of virtue or an exclusivity of compassion."

## The 1993 Debate

Even though the number of asylum-seekers in Britain never reached the levels of Germany or Switzerland, Britain nonetheless kept tightening its asylum legislation and administrative regulations throughout the late 1980s and early 1990s. A significant step in this direction was the 1993 *Asylum and Immigration Appeal Act,* which had its first reading on October 22, 1992, its second reading on November 2, 1992, and its third reading on January 11, 1993. The House of Commons approved the bill 293–243.

One provision of this new bill was uncontroversial and won the support of the opposition: all rejected asylum-seekers received access to an oral appeal in front of an independent adjudicator. Controversy arose with the provision that gave authorities the right to fingerprint all asylum-seekers as a means of securing their identity in case they had improper papers, and with the introduction of a "safe third country" rule similar to those introduced in Switzerland and Germany. Furthermore, the bill limited the duty of housing authorities to provide shelter while an asylum case is being heard, and it placed a two-day limit to file appeals for rejected asylum-seekers who were declared "manifestly unfounded." Finally, the bill stripped the right of appeal for visitors and students who are denied entry

into Britain, a step the government justified by arguing that some visitors and students, once in Britain, make illegitimate asylum claims, and if Britain refuses them initial entry based on that suspicion, this refusal should be immune to appeal.

Like in the 1987 debate, the issue of asylum was blurred with the issue of immigration. Conservatives were especially deliberate in confounding these two issues, repeatedly referring to *immigrants* instead of *asylum-seekers.* The opposition was quick to charge that the Conservative Party was shifting the focus from asylum to the unpopular issue of immigration in order to stir up anti-asylum sentiment and to win political points. Opposition Front Bench Spokesman on Home Affairs Allen (Labour) pointed out, "In its previous incarnation this Bill was known as the Asylum Bill; it has now turned into the Asylum and Immigration Appeals Bill. Why 'immigration?' My colleagues and I do not believe that immigration matters have any place in an asylum Bill. The government threw in immigration only in order to make what they see as political capital out of the Bill. . . . This deliberate confusion is a smokescreen to sell the idea that . . . asylum-seeking is somehow linked to the mass migration policies pursued 30 years ago."

Lester (Conservative), a supporter of tighter asylum, joined this critique and urged his colleagues to keep the issues separate. Lester, who served on the British Refugee Council, expressed regret that the two issues appear together in the title of this bill and he stressed, "Immigration is a separate issue and should be handled differently from asylum. I hope that all hon. Members will try as far as they can to ensure that the two are not related in the public mind."

Related to this issue of blurring asylum and immigration, supporters of the tighter bill again charged that its opponents were not serious about controlling immigration. Marlow (Conservative) said bluntly, "Obviously, the difference between the government and the opposition is that we are concerned with the interests, wishes, and desires of the people of this country, whereas the opposition are concerned about foreigners." Home Secretary Clarke (Conservative) charged that when confronted with this proposal to fight asylum abuse the opposition "retreat into a Mickey Mouse, make-believe world" in which everybody who applies for asylum in the United Kingdom is a genuine refugee. The Labour Party strongly objected to the charge that it wanted to open the doors for all to come. Shadow Home Secretary Blair (Labour) responded, "[Clarke] knows perfectly well—that is what is so deplorable about the way in which the government play this issue—that when he makes his claim about open-door policy, it is reported outside as if the opposition say that anyone who wants to come here can do so, while the government say that that should not be the policy. Nobody is suggesting that."

In support of his claim that the opposition was plagued by "naivety in the extreme," Home Secretary Clarke (Conservative) pointed to the case of Viraj Mendis, a Sinhalese who had supported the Tamil cause in Sri Lanka, then made an unsuccessful asylum claim in Britain but was given sanctuary by a church in Manchester until the police entered the church, arrested him, and deported him back to Sri Lanka. Clarke said, "Although [Mendis] was passionately believed in by those who campaigned on his behalf, his case turned out to be total nonsense." Kellett-Bowman (Conservative) added that when Mendis arrived back in Sri Lanka, "The only people who met that person were members of the press—nobody else. He had no difficulty whatsoever." Corbyn (Labour) took exception to these accounts and countered that Mendis, who was "bundled out [of Britain] by the most enormous police phalanx I have ever seen in my life," spent "a year of absolute nightmare" back in Sri Lanka evading death squads, changing his name every few days and remaining in hiding while the authorities harassed his family until he finally received permission to live in Germany.

One difference from the 1987 debate was that the tone in 1993 was milder. Perhaps this change is because the Shadow Home Secretary of the Labour Party in 1993 was Tony Blair, who was intent on creating a more moderate Labour Party and who in 1997 led the party to its landslide victory over John Major's Conservative Party. In his tone, Blair was considerably more moderate than Gerald Kaufman who had been the Shadow Home Secretary in the 1987 debate, and because party discipline is high in Britain, these leaders' different tones may have rubbed off on their colleagues, although to be sure some Labour backbenchers did hold out against this more moderate tone. Another reason for the 1993 debate's more moderate tone was that a general election did not loom in the near future, whereas the 1987 debate had taken place a few months before the general election and this proximity had brought forth increased rhetorical posturing from both sides.

As in all previous debates analyzed, supporters of tighter asylum primarily argued that asylum was being abused as a form of immigration. As in the 1987 British debate, however, supporters offered only a narrow range of vague problems that they attributed to this abuse. Crime, integration, and other social problems that were prominent concerns in Switzerland and Germany, did not figure much into their arguments. Foreign policy, whether with regard to the European Union, Eastern Europe or the Third World, also played no significant role. Perhaps because the election was already behind them, supporters did not even stress that their position represented the will of the majority of people, a mainstay in all previous debates that tightened asylum.

It was simply difficult for supporters to point to *current* problems and therefore they focused on potential *future* problems. Home Secretary Clarke (Conservative) staked out this line of argument in his opening comments when he warned of the "enormous potential movements of people" from Eastern Europe, Africa, and Asia into Western Europe over the next decade. He said that "open entry . . . would lead to terrible pressures on our employment, on our housing, on our social services, on our health service and on our education services. If we are too generous, it is the population of our inner cities, our urban poor and our homeless who will be the main sufferers from misguided liberalism." In response to Maclennan (Liberal) who urged the government to keep Britain's asylum problem in perspective, Home Secretary Clarke acknowledged, "I accept that the pressures in Germany are much greater than our own, as are the difficulties. I do not, however, believe that we should wait for the problem to assume German dimensions here before we take action to get rid of the manifest inefficiencies in our system."

Supporters of tighter asylum especially focused on the future of race relations in Britain and argued that the bill needed to be passed for the sake of racial harmony. Home Secretary Clarke argued, "Good race relations are heavily dependent on strict immigration control. Race relations in Britain are not perfect—they could be better—but they are better than they are almost anywhere else in western Europe or north America. One reason for that is that our host population feels comfortable with a system that restricts to manageable numbers the influx of people from overseas." Ward (Conservative) said, "We are often reminded of how crowded our country is. An unrestricted influx of additional people would not only overload our social system but cause resentment among the population, with results that, tragically, we have seen elsewhere, especially in western Europe." Arnold (Conservative) said that "a vast horde of aspirant economic migrants" has brought a "phoenix-like rise of fascism in Germany." He complained that "it is now respectable in French political circles to use hateful racist language," and he warned that without tight immigration controls, Britain too risked "the resurgence of the National Front and other such nasty activists." To turn back the opposition's charge that this bill would in fact spawn further racism, Home Secretary Clarke (Conservative) said that support for this bill was not limited "to the redneck reactionaries in the United Kingdom," and Arnold (Conservative) stressed that his 7,000 Sikh constituents supported this bill because they too resented this form of back-door immigration, which they saw as queue-jumping.

As for the opponents of this tighter asylum bill, they again argued that it harmed democratic principles. They complained that the bill was deceptive because it brought the *immigration* issue into an *asylum* bill. This charge was

particularly leveled at Clause 9, which stripped rejected visitors and students of the right to appeal. Shadow Home Secretary Blair (Labour) charged: "Not once was that provision put before the people in an election manifesto; it was concealed before the election and introduced afterwards." Spokesman Allen charged that such deception was typical of "the arrogance of an unchecked government" that had "deeply stained" British democracy. Similarly, Gapes (Labour) charged: "The Bill sets out an entirely unjustified and undemocratic approach and it must be stopped. Only a government who have been in office too long and who are so arrogant that they feel that there is no need to worry would dare to introduce such proposals."

Not only did opponents charge that the government's arrogance and deception were undemocratic, they also argued that the bill itself harmed democratic principles. Opponents, especially Shadow Home Secretary Blair, argued that this bill violated the principle of *natural justice,* which they said was a long-standing, fundamental principle of British law. In his opening comments, Blair framed the debate around the central question of due process of law and "about fairness and whether our procedures conform to the rules of natural justice." Opponents argued that especially the removal of the right to appeal for rejected visitors violated this principle. Spokesman Allen (Labour) said that the right to appeal was a fundamental right that even convicted murderers enjoy: "For all systems of administration this right offers the possibility of redress when a decision has been wrongly taken. This basic tenet of natural justice has survived intact for several hundred years—until the advent of this government." Similarly, Khabra (Labour) charged: "In the past this country has provided natural justice and people had recourse to the courts for mistaken decisions. That fundamental right is being taken away and that is against this country's history and traditions." Supporters of tighter asylum denied the charge that the bill violated this legal norm. Garnier (Conservative) said, "Our procedures must be clearly subject to the rules of natural justice, as they are. We have a well-established system of law, which is respected throughout the world. Our existing immigration appeal system and the system that we are debating fall well within the rules of natural justice."

And opponents argued that this bill harmed democracy further by increasing the arbitrary power of bureaucrats. This argument was the principle one made by Shadow Home Secretary Blair (Labour), who framed the debate in terms of whether the bill was "fair." He said that instead of spelling out clear rules so that asylum claims could be decided fairly, the bill was "an accident of procedures that are at best faulty and at worst entirely arbitrary." In response to the government's complaint that rejected visitors placed too heavy a burden on the system so that their right to appeal should be removed, Blair said, "It is a novel, bizarre and misguided

principle of the legal system that if the exercise of legal rights is causing administrative inconvenience, the solution is to remove the right." Corbyn (Labour) similarly stresses the undemocratic nature of removing this right to appeal: "It is surely a basis of democracy that anyone who makes a decision affecting others should be subject to challenge."

Related to this issue of bureaucratic power, opponents complained that this tighter asylum bill was less the work of British parliamentarians and more the work of Eurocrats who were working to harmonize the asylum policies of the European Union. Simpson (Labour), Madden (Labour), and Corbyn (Labour) argued that this bill reflected a move away from open, democratic deliberation in the British parliament, and toward secret negotiations among bureaucrats in Brussels. Spokesman Allen (Labour) warned of delivering the British parliament to the Schengen and Trevi groups and a "Masonic college of European committees." This point was made most extensively by Hattersley (Labour) who put forth:

> I deeply resent the idea that our immigration regulations should be determined by secret meetings of the Trevi[33] group, where the Home Secretary commits himself—without any publicity, notability, acceptability or accountability—to a course of action which he then agrees to impose on parliament. If some of the Euro-sceptics in the Tory Party were more perceptive, they would have asked the Home Secretary why, having promised them that immigration should not be a part of common competence, he has chosen to prejudice our immigration regulations to make it a part. If ever there were a case for individual rather than collective decision-making, it is on immigration policy.

To Grant's (Labour) question of whether this violation of British sovereignty was a reason to vote against the Maastricht Treaty, Gapes (Labour) responded: "No. We must work for a democratic and accountable Community. We must give more powers to this parliament and the European Parliament so that they can resist bureaucrats, unelected officials and Ministers who choose to hide behind decisions taken in secret by saying that the result is not their responsibility."

Opponents also argued that the bill was unnecessary because the small number of asylum-seekers coming to Britain did not warrant a new one, and because the problems that have emerged in the asylum sphere should be addressed by allocating more resources and improving government policy rather than adopting new legislation. Similarly, opponents complained that the government was using the bill to divert attention from its own failed policies. Maclennan (Liberal) argued that it was absurd to think this bill would help the current housing shortages and that it would in fact make matters worse. Gordon (Labour) agreed that this bill would drive up

homelessness by reducing the government's commitment to sheltering asylum-seekers, and Jackson (Labour) and Corbyn (Labour) argued that the current housing shortages were not to be blamed on asylum-seekers, but on bad government policy. Roche (Labour) agreed that the government was not only using asylum-seekers as scapegoats for its own failed housing policy, but also for the "catastrophic economic difficulties" it had created. Simpson (Labour) added, "There is a serious and sustained attempt to deflect the failures of capitalism, and the governments who have enthusiastically embraced it, on those who have been most cruelly exploited by the process and been its primary victims."

This *scapegoat argument,* which is familiar from the other debates, is closely linked to the opponents' mainstay argument: the bill catered to racist tendencies and would thus harm race relations. Shadow Home Secretary Blair denounced the bill for having disproportionately adverse effects on minorities and for encouraging "the most virulent type of nationalism" among certain sectors of society. Vaz (Labour) expressed pride in how far Britain had come since Enoch Powell's "River of Blood" speech in 1968, but he feared "that Bills of this nature will set the nation back and create even more prejudices than they seek to avert."

This charge of racism was linked to the charge that the bill was politically motivated to promote the Conservative Party instead of the national interest. Shadow Home Secretary Blair said, "It is part of a design to play up this issue not for any interests of the public or the country, but simply for the interests of the Conservative Party which sees that political capital can be made of it." Austin-Walker (Labour) mocked Arnold's (Conservative) earlier claim that the National Front's decline was due to strict immigration controls; instead, he said, "The decline of the National Front owes more to the 'swamping speech' by the former Prime Minister [Thatcher], which led to members of the National Front leaving in droves to support the Conservative Party." Home Secretary Clarke's personal political motives came under attack as well. Hattersley (Labour) denounced Clarke's defense of the bill as "pub-talk" and Spokesman Allen (Labour) chided him for using this issue as a way to claim the Tory leadership: "Every aspirant to the Tory leadership needs to keep the Neanderthal right on board, particularly a Europhiliac like the Home Secretary."

In contrast to the first British debate, numerous supporters of this tighter bill stressed that it conformed to the 1951 UNHCR Convention. The debate began with this opening line from Home Secretary Clarke (Conservative): "We all willingly accept in this country the obligations laid on us by the 1951 Geneva convention." Some supporters like Garnier (Conservative) pointed out that Britain's acceptance of this obligation was so strong that the bill contained an explicit reference to the Convention:

"The convention, with its specific mention in the Bill, provides the government with an opportunity positively to assert asylum-seekers' rights and demonstrates the government's commitment to protect asylum-seekers and uphold the 1951 convention. Therefore, the specific mention of the convention is welcome because it will provide valuable protection for asylum-seekers in the courts."

At least one supporter, however, seemed critical of this explicit commitment to an international norm, which he saw as a threat to sovereignty. Marlow (Conservative) asked Home Secretary Clarke (Conservative), "The 1951 convention is now ensconced within the legislation and it takes primacy over anything else in the legislation. Does it take primacy over anything else that parliament might do in the future? Has any convention such as this been written into legislation in the way that has been done this time?" Home Secretary Clarke responded, "It is certainly the first time that the 1951 convention has been put into legislation in this way. That is an innovation in the Bill. Off the cuff, I cannot recall such an international convention being written into legislation. . . . There is no question—the one point on which all parties agree—but that the 1951 Geneva convention imposes obligations that we are happy to accept."

Despite talk of imposing obligations, supporters of tighter asylum argued that international norms enabled them to pass this tighter bill. Home Secretary Clarke argued that the 1951 Convention allowed Britain to adopt the safe third country rule, and Lawrence (Conservative) pointed out that every EU country except Ireland had the power to fingerprint asylum-seekers: "We shall be falling in line with more or less the rest of the Community in a procedural matter, which seems to be sensible." Besides comparing themselves favorably to standards set by the United Nations or the European Union, a few supporters also noted with satisfaction that Britain compared favorably to the standards of individual countries. Duncan-Smith (Conservative) said, "Historically, we stand head and shoulder above almost any other nation is our reception of genuine asylum-seekers," and Home Secretary Clarke praised Britain's tight immigration policy for fostering race relations that were better than "almost anywhere else in western Europe or north America."

Although supporters certainly mentioned the 1951 Convention more often than they had in the 1987 debate, international norms nonetheless remained an unexplored issue for them. Supporters did not delve into specific articles, and the principle of *non-refoulement* went noticeably unmentioned. Supporters also did not raise other relevant international instruments such as the 1948 Universal Declaration of Human Rights or the European Human Rights Convention. Instead, they were content to note that the bill conformed to the 1951 Convention, and leave it at that.

Opponents of this tighter asylum bill more or less conceded that the bill conformed to the 1951 Convention, although a few, including Roche (Labour) and Watson (Labour), charged that the fingerprinting provision was a violation. Shadow Home Secretary Blair did point out that Amnesty International, which he called "the body that has perhaps done as much as any other to bring the plight of refugees to the notice of the world," wrote that the bill is "broadly inconsistent with internationally recognised standards for the examination and determination of asylum applicants, such as those set out in the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status.*"

Opponents in fact faulted the bill for adhering too strictly to the Convention, especially to its refugee definition. They described this definition as "strict" and "narrow," and implied that the UN definition was in fact *too* narrow to protect large numbers of suffering people who flee their homes. When supporters of the tighter bill argued that only 5 percent of the asylum-seekers fit the UN refugee definition (and thus the British definition) and that the rest were bogus, Shadow Home Secretary Blair responded, "The term bogus does not merely cover claims that are made in bad faith, which is what the word often suggests, but claims which, technically, may not comply with the terms of the United Nations convention. . . . It is false to regard all claims that do not fall within the terms of the United Nations convention as claims in bad faith, because they are not. Many such claims are made in good faith but do not fit strictly into the United Nations convention." It is worth noting that Lester (Conservative), a supporter of the tighter bill, similarly addressed the narrowness of the refugee definition: "We all know of cases which could not be narrowly defined as asylum cases under the 1951 convention but which, in all humanity, required help and assistance. . . . I have often wondered whether we should redefine refugees and asylum-seekers, but I recognise that that would be incredibly difficult to do internationally."

Opponents of this tighter bill also complained about EU norms, arguing that they harmed British sovereignty and democracy. Spokesman Allen (Labour) argued "It is clear that the governments ruling the nation states of Europe have played more than a small part in drafting the Bill. Those governments—many even more laughably unaccountable to their Parliaments than ours—meet in secret to decide our laws and the fate of refugees whom they will never meet. . . . The United Kingdom is not even a member of the Schengen group, yet its footprint lies heavily on the Bill, and it is not even accountable to the European Commission, let alone the European or British Parliaments."

Because norms set by international organizations such as the United Nations and the European Union were of limited use to them, opponents

instead pointed to the norms set by other states to argue that Britain's behavior was already below par, and they argued that this new bill would drop Britain even further. Gordon (Labour) claimed that other European states had a more humanitarian approach toward those asylum-seekers who did not technically fit the UN refugee definition. With this bill, Spokesman Allen (Labour) argued, "It appears that the United Kingdom is adopting a tougher line than are many of our European partners. . . . [In fact], far from harmonising our rules with those of Europe, it seems that we are bringing our European partners down to our level—that level being the lowest common denominator." He also criticized the government's "shameful" response to the war in ex-Yugoslavia and said, "It defies belief that our country can assist its European partners to the extent of taking only 4,000 people, or 1,000 and their dependents, when other nations have done so much more." In a more global comparison, Roche (Labour) noted that in Somalia one person in six was a refugee, while in Britain, the figure was only one in 5,500. Simpson (Labour) assessed, "If we examine Britain's real international contribution, it is revealed as abject—miserable. We do not contribute greatly to any alleviation of the sufferings of refugees or asylum-seekers. I spent some time in Mozambique and in southern Africa, and that brought home to me the real meaning of humanitarian support and the human conscience operating in a day-to-day context."

Finally, regarding morality, supporters of this tighter asylum bill made the now familiar argument that the bill would help fulfill the moral obligation to help refugees by weeding out abuse. In his opening remarks, Home Secretary Clarke (Conservative) said, "If we do not control entry, we shall not be able to deal promptly with the claims of the genuinely persecuted and of the stricken families whom the British public most want to help." As in the 1987 debate, however, supporters did not convey as much moral concern for refugees as supporters had in the German and Swiss debates, and this difference is evident in both their tone and frequency of expressed concern. Now, that does not necessarily mean that their *intentions* to help refugees were less sincere, but certainly their *language* lacked conviction.

What little was said by supporters regarding morality mentioned the liberal value of tolerance. A few supporters argued that asylum abuse was wearing down the tolerance of citizens, and this tighter bill would halt the erosion of this moral good. Duncan-Smith (Conservative) clearly articulated this position: "Historically, the United Kingdom has been tolerant of asylum-seekers. The public have always felt that they should tolerate those who have faced harder circumstances than their own and who have been forced to leave their country of origin. We should applaud such tolerance, which has always been a fact of life. However, it has been subject to enormous strain in the past seven years because of the number of asylum-seekers who have been

proven bogus." And a few supporters of tighter asylum also spoke of a moral duty to citizens. Ward (Conservative), who referred to Britain as a crowded island, spoke of the duty "to maintain the way of life which people already living in this country want and to provide the social and welfare services for which they have paid and which they expect to receive. We should be failing in our duty if we allowed an overload of new people to destroy that way of life."

Finally, a few supporters noted that not only should refugees be helped in Britain, but also in their own countries because the problem of global migration had to be tackled at its political and economic roots. Greenway (Conservative) argued, "Many parts of the world are in turmoil and many people wish to leave their place of birth and country of origin. The world rightly has a conscience about that, but no one has yet pointed out in this debate that our nation and others should fight much more strongly for peace in, say, Africa, and for better food production in areas of starvation. We should help people where they are so that they do not feel the need to uproot themselves and move to places that they must love less than their own, however welcoming we may try to be." Also focusing abroad, Garnier (Conservative) stressed the duty "to make sure our immigration and asylum rules are clear and well published throughout the foreign lands in which we are represented" so that foreigners are not misled into believing that they can easily come to Britain. He said, "There is nothing worse than people coming here under a misapprehension about our laws and procedures and having to be turned away at the air or sea ports."

Such expressed concern for refugees met the moral scorn of opponents who were quick to deride supporters as hypocrites for passing a bill that Khabra (Labour) denounced as "evil and immoral." In addition to charging some supporters with hypocrisy, opponents appealed to others to act on their conscience. Gapes (Labour) appealed to all "liberal, fair-minded Conservative members with a conscience" to reject this bill, while Khabra (Labour) complained, "It is a sad day when Conservative Members are forced against their consciences to support this Bill." Like in the 1987 British debate (and unlike in the Swiss and German debates), such moral charges garnered no reaction from the supporters of the tighter bill.

The tenets of Liberalism suggested to opponents of this bill that it violated individual freedoms and rights, especially the provision allowing for fingerprinting. Shadow Home Secretary Blair described fingerprinting as "a matter of principle that is of deep concern" because one is unsure how the state will use this information or into whose hands it may fall. Maclennan (Liberal) said the idea of fingerprinting all asylum-seekers and their dependents was "thoroughly undesirable," and Watson (Labour) called it "scandalous" and "a basic and fundamental breach of human rights." From

the liberal's perspective of limited government, Maclennan (Liberal) also stressed that the local housing problem cannot and should not be solved with further federal legislation but rather by allocating more resources to local authorities in need.

Opponents also referred to Britain accepting refugees who fled fascism in the first half of this century by arguing that had this bill been in place at that time, many of those refugees would have been denied entry. Gapes (Labour) noted, "My constituency contains a large number of people whose parents or grandparents came as refugees from Nazi oppression. Had the bill been enacted then, they would not have been able to seek refuge and safety in Ilford." This moral argument is noticeably different from the *World War II* arguments made in Germany and Switzerland, where the past had been faulted. In Britain, opponents of this 1993 bill did not fault Britain's past refugee policies and did not claim that an obligation now existed to make amends. On the contrary, opponents warned that this bill betrayed Britain's tradition of accepting refugees.

## Summary Remarks

From differences in rhetoric and blurring of terms to historical contexts and entanglement of arguments, these British debates solidify our impression of asylum's complexity and our skepticism toward the tug-of-war image that is prevalent in the literature. The difference in rhetoric in these two British debates is noteworthy; the first debate took place shortly before the general election of 1987 and it was harsher than the second debate that came well after the 1992 election. Not only was the rhetoric of these debates influenced by the difference in proximity to an election, but also by the moderation of the Labour Party between 1987 and 1993. In the 1987 debate, the Party's tone, set by Shadow Home Secretary Gerald Kaufman, was rather acrimonious. When Kaufman was jeered by Conservative Members near the end of his opening statement, he responded, "The way in which Conservative Members leer and giggle about these matters is one of the most nauseating aspects of their approach to the issue. This is the most despicable parliamentary Conservative Party that I have encountered during the past 17 years." This assessment brought the following exchange:

> *Waddington (Conservative):* There is no need to be so unpleasant.
> *Kaufman:* Not as unpleasant as the right hon. and learned
>     Gentleman is, without effort.
> *Waddington:* Nasty.
> *Kaufman:* However hard I may try to be nasty, I could not succeed
>     as effortlessly as the right hon. and learned Gentleman does.

In the 1993 debate, Labour's Shadow Home Secretary was Tony Blair who, while certainly not handling his opponents with satin gloves, did have a more moderate rhetorical approach than his predecessor. Blair's opening argument, for example, was more of an analysis of specific legalistic aspects of the bill rather than a sweeping accusation of the Conservative Party's politically racist motives. That Blair moderated Labour's asylum rhetoric is no coincidence: he had been instrumental in steering the party more to the center, and it was under his leadership that the party swept into 10 Downing Street in a landslide victory in 1997.

Noteworthy of the Conservative Party's rhetoric was their blurring of the *asylum* issue with the *immigration* issue. This tactic went a crucial step further than in Germany and Switzerland where supporters of tighter asylum only blurred the terms *asylum-seekers* and *refugees* and where it was understood that the asylum issue was clearly separate from the immigration/guest-worker issue. The fact that British supporters blurred asylum and immigration is an important element for understanding these British asylum debates. Since the late 1950s when controversy over Commonwealth immigration had become an important political issue, the Conservative Party had successfully used the immigration issue for political gains. When asylum became an important issue in the late 1980s, Conservatives hoped to associate this new issue of asylum with the older issue of immigration. In both the 1987 and the 1993 debates, Conservatives focused less on asylum and more on immigration and they charged that the opponents of tighter asylum, despite their rhetoric, were not serious about controlling immigration, a charge opponents vehemently denied.

In these two debates, national interest arguments played out similarly. Supporters argued in both debates that tighter bills were needed to cut down on foreigners who abused the asylum process as a form of back-door immigration that threatened racial harmony. While they broadly complained about asylum abuse, supporters had a rather difficult time credibly arguing that specific problems had emerged with the arrival of asylum-seekers because the number of asylum-seekers was in fact remarkably modest. Realizing this dilemma, supporters shifted their focus to mainly argue that tighter bills were needed to ward off future problems.

The national interest arguments of opponents also varied little between 1987 and 1993. They argued that the bills (and the government's tactic behind them) were deceptive because they confounded the issues of asylum and immigration. They also complained that these bills catered to xenophobic elements in British society and used asylum-seekers as scapegoats for failed government policies. As in Germany and Switzerland, it is im-

portant to note that British opponents of tighter asylum focused on the harm tighter asylum bills brought rather than on the benefits refugees brought.

While the national interest arguments in the 1987 and 1993 debates were similar, the arguments based on international norms differed. In the 1987 debate, only the two government representatives (Home Secretary Hurd and Minister Waddington) stressed the bill's conformity to the 1951 UNHCR Convention, while other supporters of tighter asylum at most compared the bill favorably to standards being set by other countries, but more often they simply did not look beyond their borders at all. In 1993, however, numerous supporters stressed that the bill conformed to the 1951 Convention, while one supporter complained that it constrained British sovereignty. They did not, however, spend much time exploring the Convention and they hardly referred to other international instruments of refugee protection.

Opponents argued in 1987 that the bill violated both the letter and spirit of the Convention, but in 1993 they reluctantly conceded that the bill did not, although they did complain that the Convention's refugee definition was narrow, implying that it was too narrow. And Grant (Labour), fed up with the government's reliance on UNHCR to justify tightening asylum, argued that UNHCR is not an independent body but in fact "an organization that is the servant of the United Nations and a lackey of the British government." More common than referring to United Nations standards, opponents of the 1993 bill turned their attention to criticizing European Union norms, which they said harmed British democracy because these norms were the work of unelected Eurocrats. This hostility to EU norms is in marked contrast to the German debates, where both sides stressed the importance of EU norms; this difference offers insight into Britain's difficult relationship with Brussels. Finally, opponents in both debates stressed that tightening asylum would sink Britain even further below the refugee standards upheld by other countries.

Although supporters of tighter asylum did mention that their bills would fulfill the moral duty to help refugees, their arguments did not carry the weight they did in Germany or Switzerland. That is not to say that their intentions were less moral, but their language did lack moral credibility. Their arguments scarcely dwelled on the sources of this moral duty to help refugees, and they explicitly rejected the argument that Britain's refugee policy during the World War II era now posed a moral obligation to help.

Opponents of tighter asylum were quick to point out the moral shortcomings of the supporters, but they themselves did not explore the moral

dimensions of asylum thoroughly either. Instead, they derided supporters of tighter asylum as hypocrites for pretending to help refugees when in fact their bills were doing the opposite. Oddly, unlike their Swiss and German counterparts, British supporters of tighter asylum did not respond to these claims of moral superiority. Not a single supporter in either debate complained of this monopolization of morality. This lack of chagrin, coupled with the Conservative Party's meager asylum record, may indicate the role morality has played in shaping recent asylum policies in Britain.

# Chapter Five

## Conclusion

This book set out to explore the assumption, gleaned from the limited asylum literature and from intuition, that asylum policies result from a tug-of-war between national interests pulling to tighten asylum, and international norms and morality pulling to loosen it. To probe this assumed struggle, the book explored the arguments presented by parliamentarians when they drew up important asylum legislation in Switzerland, Germany, and Britain between the late 1970s and the mid 1990s. While this tug-of-war image did sometimes appear, these debates reveal that asylum is shaped by a far more entangled and counterintuitive mix of motives, and these findings force us to reexamine how we conceptualize the setting of asylum policies.

The complexity of asylum is already evident in the rhetoric of these debates. Parliamentarians from both sides blurred the terms *asylum-seekers* and *refugees* when in fact these two groups are at quite different stages in the asylum process: asylum-seekers are seeking asylum, whereas refugees have received it. Because of this difference in their status, refugees conjure up considerably more empathy than do asylum-seekers, most of whom are suspected by governments of making illegitimate claims. Aware of this difference, supporters of tighter asylum often spoke of asylum-seekers when they actually meant refugees, while opponents of tighter asylum spoke of refugees when they should have spoken of asylum-seekers.[1] In Britain supporters of tighter asylum, in particular, took such rhetorical tactics a step further by blurring *refugees* and *asylum-seekers* with *immigrants,* even though immigration is an entirely different issue from asylum. Because of Britain's especially negative view of immigration, those British supporters of tighter asylum who blurred these two terms hoped that by associating asylum with immigration, they would win political points.[2]

Another important term to note is *refugee advocate.* In Chapter One of this book, I had used the term to describe those who argue for looser asylum, yet as the evidence unfolded it became clear that *all* parliamentarians claimed to be refugee advocates and defenders of asylum. While there were plenty of disparaging remarks made against asylum-seekers who abuse the process, not a single parliamentarian in any of these debates spoke against refugees or against the principle of asylum. Because everyone claimed to be a refugee advocate, I deliberately began to avoid this term and instead wrote of *supporters* and *opponents* of tighter asylum.

Not only do these parliamentary debates require a careful analysis of the rhetoric, but they must also be placed in a historical context. The Swiss, German, and British cases all demonstrate that external factors significantly affected these debates. In Britain, the arrival of 64 Tamil asylum-seekers at Heathrow airport the previous month heavily influenced the 1987 debate, while the major overhaul of the Labour Party moderated its arguments in the 1993 debate under the Shadow Home Secretary Tony Blair. The 1986 Swiss debate was affected by the national referendum held the previous day, which rejected Switzerland's membership in the UN, and the 1994 Swiss debate reflected numerous government scandals that had come to light in the late 1980s and early 1990s. Perhaps the best example of such external pressures on parliamentary debates were the massive demonstrations held outside of the German parliament during the 1993 debate, which gave the whole proceedings a siege mentality. And in all three countries, the debates were affected by whether a national election loomed on the horizon. Without contextualizing these debates, an analysis would remain shallow.

These parliamentary asylum debates reveal that national interests, international norms, and morality often act counterintuitively, with national interests also pulling to *loosen* asylum, and international norms and morality also pulling to *tighten* it. In other words, the simple tug-of-war image commonly found in the literature is of limited use. Furthermore, while this tug-of-war image paints a rather clear-cut picture, these debates demonstrate that national interests, international norms, and morality are significantly entangled. Parliamentarians on both sides of the issue worked hard to combine all three, arguing that their position served national interests, conformed to international norms, and fulfilled moral obligations. This entanglement posed an important challenge for studying asylum debates. To deal with this issue, I used national interests, international norms, and morality as ideal types for analytical purposes, but stressed throughout that in practice these three motives are significantly entangled. Far from leaving us with a discouraging mess, this entanglement is an important finding because it points to the importance of international norms and morality in

shaping asylum. While it would be difficult to quantify precisely the relationship between these three factors (is the ratio 5:3:1 or 2:10:7?), the fact that parliamentarians relied on all three indicates that more than national interests shape asylum. Let us briefly return to the roles of these three factors, always keeping in mind that their separation is an analytical, rather than a descriptive, tool.

Regarding national interests, parliamentarians rarely defended their positions on the grounds of foreign policy concerns. Only in the 1993 German debate did foreign policy arise to any significant extent. Supporters of the tighter law argued that the law would further Germany's foreign policy goal of European unity by promoting the harmonization of European asylum laws, while opponents of the tighter law complained that it would dump Germany's asylum problems on its newly democratized eastern neighbors and thereby strain relations.

Even more remarkable was the near absence of a discussion over the economic impact of asylum-seekers and refugees. No supporter of tighter asylum in any of these debates argued that asylum should be tightened because of threats to the labor market. At most, some complained of the financial burden that a loose policy placed on the asylum process, and of housing shortages brought on by the rising number of asylum-seekers. Meanwhile, opponents of tighter asylum were silent about the positive economic impact of asylum-seekers and refugees.[3] One explanation for this lack of economic arguments from either side is that, despite all the controversy, the number of asylum-seekers and refugees in these three countries is really quite small. Throughout this period, they usually comprise below 1 percent or 2 percent of the total population, so parliamentarians realized that they simply do not have much of an economic impact, whether positive or negative. Reflecting upon this point, Muheim (Christian Democrat) said in the 1986 Swiss debate, "Whether the boat is full or not is determined by the mood of the people, not by something quantitative. This mood is not measurable in terms of thousands or tens of thousands of refugees or in terms of percentage of our total population. It involves measuring public sentiment, which is difficult to understand and to influence and is beyond the power of politicians."

Furthermore, neither side addressed to any significant extent the positive or negative impact of asylum-seekers and refugees on the host society's culture. Only in the 1979 Swiss debate that loosened asylum did some parliamentarians refer to positive cultural impacts, but even then they spoke only of refugees of the distant past such as the Huguenots, not of those coming presently. And only in the 1994 Swiss debate did supporters of tighter asylum refer to any significant extent to a negative cultural impact, namely, the increased drug trade in Zürich, which they

largely attributed to asylum-seekers. What explains this lack of arguments regarding cultural impacts? Perhaps parliamentarians who were positively inclined toward asylum-seekers and refugees understood that the public generally rejected arguments regarding the benefits of creating a multicultural society. Likewise, negatively inclined parliamentarians may have shied away from stressing the preservation of their national culture because such arguments can easily be perceived by the public as racist. Therefore, because the public in Switzerland, Germany, and Britain generally reject both multi-culturalism and racism, parliamentarians decided to avoid this issue.

Instead, when relying on national interests, both sides mainly appealed to the political interests of *internal harmony* and *effective governance,* but they differed sharply in their interpretations of promoting these interests. Supporters of tighter asylum laws consistently made the following argument: tighter laws are needed to fight asylum abuse, which is increasingly irritating citizens who demand such laws. This argument was especially stressed in the 1993 German debate, which followed a year of significant far-right-wing violence against foreigners. Marschewski (Christian Democrat) made this argument most dramatically by drawing a historical parallel: "If history can teach us anything, then the 1920s and the early 1930s are revealing: Weimar failed because the democrats could not agree. We must prove ourselves by demonstrating that we are capable of resolving these problems." Consistently, supporters of tighter asylum argued that such laws would effectively fight abuse, combat racism, and carry out the will of the people.

Opponents of tighter laws simply tended to reverse this argument: tighter laws are ineffective in fighting abuse, they fuel racism and therefore they violate democratic principles. They argued that instead of passing new laws existing ones only needed to be applied more effectively, or they argued that new, tighter laws were ineffective in stemming the flow of asylum-seekers into their countries because this flow was the result of global problems. While acknowledging that the majority of people supported tightening asylum, opponents argued that other factors need to be weighed as well. Meadowcroft (Liberal), for example, said in the 1987 British debate, "The Home Secretary said that he believed that his proposals were supported by a majority of hon. Members, and by an overwhelming majority outside the House. That may be true, but with some issues that should by no means be an overriding concern. We should not set public opinion aside lightly, but some issues, although they are important to a relatively small number of people, are crucial to those individuals. We should try to do what is right: we should maintain the international conventions, and treat people with fairness and justice." Similarly, Braunschweig (Social Democrat) argued in the 1986 Swiss debate, "This [tighter]

revision has been influenced by xenophobia found in segments of our population. But throughout the ages, jurists and legal scholars have rejected emotional law-making (*Stimmungsgesetzgebung*)," and he went so far as to argue that if popular opinion was driven by xenophobia, then politicians needed to have the moral courage to oppose it.

With regard to national interests, then, neither side made much of foreign policy, economic or cultural arguments, and instead consistently stressed that asylum laws had to satisfy the political interest of being effective, anti-racist and democratic. That laws should be effective, anti-racist, and democratic is, of course, a rather bland and unrevealing assertion about national interests. The controversy here is not *what* the interests are, but *how* to achieve them. Supporters of tighter asylum laws argued that such laws would effectively fight the abuse that had come to irritate citizens who demanded action. Opponents argued that such laws were an ineffective way to fight the abuse and that they merely pandered to xenophobic pressures from citizens, thus violating democratic principles. These contradictory arguments raise nagging questions. Can tighter asylum laws effectively fight abuse or do the problems lie elsewhere? Do tighter asylum laws reassure citizens and reduce their racism or do they cater to existing racism and justify it? Is it in the national interest for parliamentarians to follow the will of the people or to lead it? These are difficult questions and they illustrate that national interests are not objective truths that are discoverable, but are in fact subjective claims that are contestable and that can pull asylum in opposite directions.

Regarding morality, these debates reveal that morality, too, can pull asylum in opposite directions. Parliamentarians on both sides of the issue stressed the moral obligation to grant asylum to refugees and insisted that their position best served this moral end. Contrary to expectations stemming from the asylum literature, these moral arguments were rarely religiously based—the French village of Le Chambon this was not. When religious arguments were made at all, they tended to be made by opponents of tighter asylum, who argued not so much that a Judeo-Christian obligation exists to loosen asylum, but rather that members of Christian-based parties who supported tightening asylum were not living up to their parties' ideals. The argument was not *I am a Christian and therefore I support looser asylum laws,* but rather *You claim to be a Christian and yet you support tighter asylum laws.*

The best example of this back-handed religious argument came in the 1993 German debate when Gysi (Party of Democratic Socialism) leveled it at the Christian Democrats. He began, "A glance at the Bible makes it perfectly clear that the Christian Democratic Union and the Christian Social Union should renounce the term 'Christian.'" He then quoted several Bible

passages and reminded the chamber that Jesus considers only those people to be righteous who feed the hungry and accept strangers. His sermon caused extraordinary consternation in parliament, partly because of the irony of Gysi citing the Bible. Marschewski (Christian Democrat) yelled, "It also says, 'The sanctimonious go to hell'" and "The fifth commandment says 'Thou shall not lie.'" Other Christian Democrats called, "It also says, 'You shall not bear false witness'" and "A misuse of the Bible." At this point Gysi asked President Süssmuth to restore order, and she replied, "The speaker asks for silence although he demands a great deal of us," which was applauded by the Christian Democrats, Free Democrats, and Social Democrats. Gysi then shot back, "It is news to me, Ms. President, that the Bible is considered impudent in the German parliament," to which Rüttgers (Christian Democrat) shouted, "What a joker!" and Feilcke (Christian Democrat) responded, "He's not a joker! He's crazy!" (*Das ist keine Witzfigur! Der spinnt!*)

Moral arguments based on the central tenets of Liberalism also did not pan out as expected. While liberals in the literature stress that *equality* promotes cosmopolitanism and a (more) open world and that *liberty* demands free(er) movement of people and less state power, most parliamentarians who opposed tightening asylum were unwilling to argue their case so strongly. Instead, they limited themselves to arguing that the concept of liberty had to protect their own citizens from poorly conceived and unjust laws. In other words, liberal arguments were less concerned with granting asylum to refugees and more concerned with protecting citizens from an intrusive state. Such arguments were most extensively made in the 1994 Swiss debate in reaction to numerous government scandals that had emerged in the previous years.

Less prominent in the asylum literature is a third moral argument claiming that events of the World War II era now pose a moral obligation to grant asylum to refugees. This argument had a noteworthy resonance in these debates, although it varied significantly across time and place. In Britain, supporters of tighter asylum explicitly rejected any suggestion that Britain's poor refugee policy during that era now posed a moral obligation. British opponents of tighter asylum also did not stress the faults of that policy; if they mentioned that period at all, they tended to claim that if these currently debated tighter asylum laws had been in place at that time, then fewer refugees would have been able to enter Britain.

This World War II argument played out differently in Switzerland. In the 1979 debate that loosened asylum, numerous parliamentarians spoke of the moral obligation stemming from Switzerland's poor refugee policy during the war. This argument, however, faded over the years and played almost no role in either the 1986 or the 1994 debates, as if some kind of

statute of limitations on moral guilt had run out. One might have expected the opposite to happen: as the war generation was replaced by a younger, more critical generation, Switzerland's role during the war would be increasingly questioned. That was not the case. In fact, only recently has Switzerland's role during the war come under heavy attack and only because of pressure from abroad regarding Swiss banks still holding Nazi gold and accounts of Jews who perished in the Holocaust.

In Germany, not surprisingly, World War II played a prominent role in all of the debates, and numerous parliamentarians on both sides of the issue spoke of an obligation toward today's refugees because of the Nazi era. Bühling (Social Democrat) was typical in expressing this oft-heard moral obligation when he spoke of Germany's liberal policy stemming from "the bitter experiences of the Nazi time, during which many Germans had to flee abroad and could consider themselves lucky if they found asylum there." If read carefully, this statement reveals a curious twist. The focus is on "Nazi" persecution and on how "Germans" suffered under it. Contrary to what one might expect, the argument was not *We Germans persecuted others during that period so we now have an obligation to grant asylum to those who are persecuted*. Instead, the argument was consistently *We Germans were persecuted during that period so we now have an obligation to grant asylum to those who are persecuted*. In all of these German debates, only a single parliamentarian spoke of "German crimes" and of "monstrous historical German guilt."[4]

While morality certainly helped shape asylum laws, it faced three important limitations. First, the moral principle of helping refugees is abstract and there is a great distance between this abstract principle and its practical implementation. For parliamentarians, this vast distance makes it difficult to agree on how to put the abstract principle of "helping refugees" into practice, and this difficulty limits the power of morality to shape asylum.[5] It was precisely this distance that Olderog (Christian Democrat), a supporter of tighter asylum, addressed in the 1986 German debate. He said, "It is praiseworthy when citizens orient their lives around high ethical and moral standards and help refugees according to Christian principles. The Christian command to 'love thy neighbor' is especially applicable for refugees who face such a difficult and bitter lot. But the Gospel according to Matthew is unfortunately no recipe for practical politics." This comment brought catcalls from opponents of tighter asylum, and Ströbele (Green) yelled, "You should be ashamed of yourself!"

While not a single parliamentarian in any of these debates rejected the abstract principle of helping refugees, they strongly disagreed about how best to put this principle into practice. Given the moral obligation to accept refugees, does that mean *all* refugees must be accepted? Most observers would agree not, because the numbers would simply be overwhelming.

Therefore, some kind of upper limit must be set, but any discussion (moral or otherwise) of such a limit was noticeably absent in these debates, demonstrating the difficulty of quantifying morality.

Another difficulty raised by the distance between the abstract and the practical is how best to fight the asylum abuse that hinders the process and thus harms refugees. It is important to note that many supporters of *tighter* asylum laws argued that such laws were moral because they helped "real" refugees by weeding out asylum abuse committed by "undeserving" ones. If sincere, this moral argument belies the simple tug-of-war image often presented in the asylum literature, which has morality only pulling for looser asylum laws. Ward (Conservative) was typical in expressing this argument when in 1993 he said, "Our main concern must be for the genuine asylum-seeker who has real fears and nowhere else to turn. Unfortunately, in recent years our system for dealing with applications from those seeking asylum in the United Kingdom has become totally discredited by the number of people abusing the system. The [tighter] Bill will go a long way toward controlling a potentially dangerous situation and restoring confidence in the system." While such apparent moral concern for refugees was widely denounced by opponents of tighter asylum as hypocritical and self-serving, one must wonder how best to fight asylum abuse whose existence virtually everyone acknowledges.

Another difficulty raised by supporters of tighter asylum is the moral obligation parliamentarians have toward their own citizens. The British Home Secretary Hurd (Conservative) stressed that the "overwhelming majority of people" supported tightening asylum, and McCrindle (Conservative) noted the need to listen to the will of the people: "A balance has to be struck between humanitarian acceptance of some people seeking asylum and the pressure of public opinion, which we are supposed to represent, to limit the number of people whom we accept." Moral obligations toward citizens can be at odds with moral obligations toward refugees, and it is not always clear how to balance the two.

Finally, some supporters of tighter asylum suggested that it is unclear whether granting asylum to refugees is even the best way to help them. They argued that it may be better to help refugees in their own region rather than granting them asylum in Europe. Van Essen asked rhetorically in the 1993 German debate, "Is it inhumane to argue: We do not solve the problems in their country by accepting people here, so it is better to offer financial and other assistance to built up the economic infrastructure there?" Aware that such an argument would meet skepticism, Lüchinger (Free Democrat) in the 1986 Swiss debate said, "You may claim that this suggestion is a sign of a guilty conscience. But it is my firm conviction that we can better help refugees (but also economic migrants) from faraway countries by supporting

them in their own culture instead of trying to accept them at any cost in our culture, which to them is strange and unfortunately also sometimes hostile." So, while all parliamentarians acknowledged an abstract moral responsibility toward refugees, the difficulty of its practical implementation led to bitter disagreements about both the quantity and the quality of this obligation. This distance between the abstract and the practical set an important limitation on the effect morality had in these parliamentary asylum debates.

Closely linked to this first limitation is a second one that stems from differences in interpreting moral obligations, which is especially evident when the moral obligation is historically based as on World War II.[6] While in the Swiss case, references to World War II in these asylum debates faded over the years, the war has recently reemerged as a controversial topic. Writing in the *New York Times* (2/5/97), Thomas Friedman, for example, condemned Switzerland's "moral bankruptcy" and described its role during World War II as the "neutrality myth." He asked, "What does it mean to be neutral between the perpetrators of the worst crime against humanity in modern history and their victims?" Such reinterpretations of Switzerland's role during World War II have not been accepted easily by the Swiss. In his first major response to such criticism, the rightist Christoph Blocher (Swiss People's Party), one of Switzerland's most influential politicians, wrote in the *Neue Zürcher Zeitung* (3/3/97), "There is no doubt: even if individual decisions were wrong and the actions and attitudes of a few were questionable and accommodating, in general Switzerland's role during the war deserves respect, reverence, and admiration. There is no reason to apologize for anything—quite the opposite: the Swiss people were spared war, foreign occupation, death, hunger, and misery through hard work, privation, endurance, and resoluteness." The polarity of Blocher and Friedman over Switzerland's role during World War II demonstrates the dramatic variations in historical interpretations, and it raises questions about the role of morality in future Swiss asylum debates: Will the war's moral burden reemerge to play the role it did in the 1979 debate, or will parliamentarians simply ignore (or even praise) Switzerland's war history as they did in the 1986 and 1994 debates?

In the German asylum debates, parliamentarians consistently interpreted the moral obligation of World War II as stemming from the persecution of Germans by Nazis. This "Germans-as-victims" argument is noteworthy in light of the popularity (and controversy) of a recent book that argues Germans were "Hitler's willing executioners."[7] In this book, Daniel Goldhagen places the blame of the Holocaust squarely on "Germans." He criticizes those who use "convenient, yet often inappropriate and obfuscating labels, like 'Nazis' and 'SS men'" and he argues, "The most appropriate, indeed the only appropriate *general* proper name for the Germans who perpetrated the

Holocaust is 'Germans.'" While he acknowledges that other nationalities were involved with the Holocaust, Goldhagen insists it was "above all a German enterprise; the decisions, plans, organizational resources, and the majority of its executors were German. Comprehension and explanation of the perpetration of the Holocaust therefore requires an explanation of the *Germans*' drive to kill Jews." I am not interested in weighing in on these contrasting views of the role of Germans during the Nazi period, but I want to highlight these differing interpretations because they show the conflicting moral lenses through which this period is still viewed today.

The third limitation to morality in these parliamentary asylum debates is the fact that moral arguments play on guilt and lead to resentment. In political debates, resentment inspires antagonism not compromise and may therefore be an ineffective tool. As noted, supporters of tighter asylum often claimed that such laws were in fact moral because they would benefit real refugees by fighting abuse. Opponents scoffed at such moral arguments and charged that their true motives were cold-hearted, racist, and immoral. Allen (Labour), for example, said in the 1993 British debate, "For all the perfumed phrases about humanitarianism, it is the whiff of racism which lingers around the [tighter] Bill." Many supporters of tighter asylum greatly resented such accusations and complained that opponents do not possess a monopoly on morality. Such resentment was especially high in the bitter 1993 German debate, although it must be noted that such resentment was curiously absent in either of the British debates. This limitation to moral arguments was recognized in the 1986 Swiss debate by Leuenberger (Social Democrat), an opponent of tighter asylum, who in his opening remarks said (although perhaps in a backhanded way) that he was not going to rely on moral arguments because of the guilt they arouse among supporters of tighter asylum. Indeed, Dreyer (Christian Democrat) said in this Swiss debate that he resented being made to feel guilty about his support of tightening asylum, which he said was an excruciatingly difficult choice to make and one that deprived him of "the calm sleep of the righteous" (*du sommeil du juste*).

When asked in personal interviews how they would convince parliamentarians to vote for looser asylum laws, representatives of UNHCR, Amnesty International, and Swiss Refugee Aid also spoke of the limits of moral arguments.[8] Alain Bovard of Amnesty International said that moral arguments were difficult to make because they appealed to sensibility that is often too "personal." Similarly, Suzanne Auer of Swiss Refugee Aid said moral arguments were "delicate" (*heikel*) because they bordered on being "emotional." Instead, she, Bovard, and Lucie de Lophem of UNHCR said they preferred to make legal and factual arguments. Lophem described moral arguments as "weaker" than arguments based on international norms.

There is certainly good evidence of international norms constraining a country's ability to tighten asylum. An example of this power is the Swiss government's decision in 1996 to declare invalid a popular initiative by the far-right Swiss Democrats. This initiative (entitled "For a Reasonable Asylum Policy" [*Für eine vernünftige Asylpolitik*]) demanded that Switzerland immediately expel without a hearing all asylum-seekers who enter Switzerland illegally regardless of the principle of *non-refoulement*. Because of its clear disregard for this fundamental international norm, the Federal Council and parliament declared this initiative invalid and did not allow it to come up for a popular vote. It was only the fourth time in Swiss history that an initiative had been declared invalid, and more importantly it was the first initiative to be declared invalid because it violated an international norm. The Swiss Democrats denounced this decision as unconstitutional because, they argued, the Swiss constitution allows an initiative to be declared invalid only if it covers more than one issue or if it is practically infeasible. To this charge, Trix Heberlein (Free Democrat) responded, "Even though our constitution does not explicitly state it, according to practically all experts, peremptory international law has precedence over domestic law in all civilized states. Therefore we cannot present the voters with an issue whose implementation would be illegal."[9] This case of the invalid initiative shows the willingness of the Swiss government to subsume the demands of 100,000 Swiss citizens[10] (and arguably its own constitution) to international legal norms.

While international norms can certainly constrain the tightening of asylum, the parliamentary asylum debates in Switzerland, Germany, and Britain over the past two decades tell a far richer and more complex story, and one that corrects the commonly held but misleading tug-of-war image. The two most important international norms are the *definition of a refugee* and the *principle of non-refoulement,* and it is crucial to note that none of these tighter asylum laws proposed changing either of these two international norms. In fact, many supporters of the tighter laws, especially cabinet representatives, stressed that the tighter laws conformed to international norms, and they argued that international norms enabled them to tighten asylum. In essence, these parliamentarians argued that international norms were good, and that these tighter laws conformed to international norms and therefore they too were good.

However, some supporters of tighter asylum laws, especially members of the far-right, wanted to tighten them even further and complained that international norms constrained them from doing so. Such supporters of tighter asylum argued that international norms were wrong and that parliamentarians should ignore them and tighten asylum as they pleased. And

if not outright rejecting international norms, some supporters of tighter asylum did at least see such norms as annoyingly constraining.

It was precisely this constraining role of international norms that some opponents of tighter asylum also stressed but for the opposite reason. They argued that these tighter asylum laws had to be rejected because they violated the letter (or certainly at least the *spirit*) of international norms. These opponents argued that international norms were good and that the tighter asylum laws violated these norms and therefore should be rejected.

Finally, other opponents of tighter asylum laws conceded that these laws conformed to international norms and complained that such norms enabled the tightening of asylum. Their argument, in short, was that international norms were flawed and that parliamentarians should ignore them and reject tighter asylum laws for other reasons, including morality and national interests.

From this complex role that international norms played in these asylum debates, we derive a 2x2 table taken from the 1994 Swiss debate (Figure 8). Koller stressed international norms because he believed they enabled Switzerland to tighten asylum. Weder stressed that international norms constrained Switzerland from tightening asylum. Plattner complained that international norms enabled Switzerland to tighten asylum. Keller complained that international norms constrained Switzerland from tightening asylum further. This 2x2 table clearly belies the simplistic struggle over asylum that is commonly presented in the literature.

While these parliamentary debates demonstrate striking similarities in the role international norms played in shaping asylum laws, it is also important to note the variations across place and time. International norms played a more important role in Switzerland than in Germany or Britain, as Swiss parliamentarians more often than their German or British coun-

**Figure 8   The Multifarious Roles of International Norms in Asylum Debates**

### Attitude Toward International Norms

|                                      |         | Positive | Negative |
|--------------------------------------|---------|----------|----------|
| **Attitude Toward Asylum**           | **Tighter** | Koller   | Keller   |
|                                      | **Looser**  | Weder    | Plattner |

terparts referred to norms such as the 1951 Refugee Convention, the 1948 Universal Declaration of Human Rights, and the European Human Rights Convention. One may speculate that this attention to international standards is largely due to Switzerland being a small, neutral country that is often an intermediary in international disputes and that is host to numerous international organizations. The only norms that British and German parliamentarians referred to more often than their Swiss counterparts were the Dublin Convention and the Schengen Agreement, whose intent it is to harmonize asylum policies within the EU to which Switzerland does not belong. It is noteworthy that EU norms were considerably less often mentioned in the British debates than in the German debates, and this difference may reflect the different attitudes toward Europe in these two EU countries.

The role of international norms also varied across time. The 1993 German asylum debate was one of the bitterest political debates in the Federal Republic's history because it involved rewriting Germany's unique constitutional right to asylum. This right was established to amend for the Nazi past, and it made Germany an especially attractive asylum haven in Europe. Because of the intense controversy surrounding this 1993 tightening of asylum, supporters stressed more than in any other German debate that this new law conformed to international norms.

The exact opposite happened in the 1986 Swiss debate in which international norms, because of historical circumstances, were much less prevalent than in the other Swiss debates. On March 16, 1986, the day before the National Council began debating this new asylum law, Switzerland voted overwhelmingly against joining the UN. In a popular vote, the people rejected membership in the international organization by a 3:1 ratio. After this defeat, the subject of international organizations, international norms, and international obligations may have been so sore that neither supporters nor opponents of tighter asylum believed they would gain by repeatedly referring to international norms.

This research, then, reveals that recent asylum laws in Switzerland, Germany, and Britain have been shaped by a complex configuration of national interests, international norms, and morality. Depending on the historical, legal, political, and cultural context, this configuration changes and emphasizes different aspects at different times. This constant flux makes it difficult to disentangle the driving force behind asylum, thereby confounding conventional approaches of International Relations that seek to isolate objective national interests.

Furthermore, contrary to the simple tug-of-war image in the asylum literature, these debates demonstrate that parliamentarians relied on national interests to also loosen asylum, while they used international norms

and morality to tighten it. And, while none rejected national interests or morality, some parliamentarians on both sides of the issue rejected international norms because the norms did not support their position. In other words, while parliamentarians were always able to tie national interests and moral obligations into their arguments, they found international norms less flexible and therefore sometimes bothersome.

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

While this book is an inadequate format for answering this question, I would like to suggest a possible direction for future research. A number of scholars have also been weighing this question of why states admit "unwanted immigrants," although much of this work focuses on immigration and not asylum. In both cases, this scholarship addresses the question by focusing either on international or on domestic constraints that states face in controlling such admission.[11]

Those scholars focusing on international constraints generally argue that globalization and the rise of an international human rights regime are constraining states' abilities to control their borders, thereby forcing them to accept unwanted foreigners.[12] They speak of a decline in sovereignty and of a decrease in the capacity of states to keep such foreigners out. In short, states admit unwanted foreigners because there is increasingly little they can do to prevent it. This perspective seems heavily influenced by the situation in Europe in the early 1990s—those of us who were following this issue at the time certainly remember the stark maps of Europe overlaid with big, bold, arrows pointing from east to west, which warned ominously of the potential for millions of people flowing out of the East Bloc and the former Soviet Union.

As the parliamentary asylum debates in this book show, international norms and moral sensibility that are enmeshed in an international human rights regime can indeed constrain a state's ability to control its asylum process. This constraint is especially evident in the inability or unwillingness of a state to carry out deportations of rejected asylum-seekers if these may violate the principle of *non-refoulement*. What these asylum debates also make clear, however, is that international norms and morality can en-

able a state to tighten asylum. The calls to harmonize asylum in Europe, to uphold the UNHCR definition of a refugee, and to fight asylum abuse for the sake of "real refugees" are excellent examples of a state's ability to tighten control over asylum and to limit the number of people it accepts as refugees. Scholars who see asylum and human rights regimes as only constraints miss a great deal of asylum's complexity.

Regarding the claim that globalization constrains a state's ability to control borders, it is certainly true that economic restructuring has uprooted vast numbers of people across the globe and that this restructuring has forced (or enabled) an increasing number of them to reach Europe. Furthermore, it is true that Switzerland, Germany, and Britain can do little to control the outflow of people from Sri Lanka, Turkey, Nigeria, Ghana, Lebanon, etc., who arrive at their borders seeking entry. Irrespective of the parliamentarians who argue that more ought to be done to help people in their own countries so they are not compelled to leave in the first place, it is hard to imagine any short- or medium-term actions that European governments (alone or together) can undertake to fundamentally alter the current unequal distribution of wealth, which drives many poor people to migrate. This globalization argument, however, only helps to explain why people are on the move, but not why states continue to accept them. In fact, as Freeman argues convincingly, European states have increased, not decreased, control over their borders.[13] And such control over borders could continue to increase significantly if European states would be willing to make such an expansion of their infrastructure a priority as, for example, the East Bloc did. Now of course, they will not take it so far, and to understand why not, we need to shift our focus away from international constraints to domestic constraints.[14]

In his analysis of border control, Freeman focuses on the domestic constraints imposed by political dynamics.[15] He writes that the primary obstacles to immigration control are political, not economic, demographic, or technical, and he specifically focuses on the lobbying process that occurs on behalf of immigrants to counter tighter laws. He argues that this pro-immigration lobby is often successful because those who stand to benefit from admitting foreigners are more concentrated and more easily organized than those who may be harmed by it. While convincing in the case of immigration in the United States and the guest-workers programs in Europe, this explanation is less strong for asylum. For as we see in these asylum debates, parliamentarians do not speak of the benefits that refugees bring to their countries. Indeed, it is rather remarkable that even those parliamentarians most adamantly opposed to tighter asylum laws did not lobby for refugees, but rather lobbied against the laws—a perhaps subtle but crucial distinction.

Also focusing on domestic constraints is Joppke, who generally agrees with Freeman but adds a legal dimension.[16] Joppke argues that the legal process is less prone than the political one to the swings of populist anti-foreigner sentiments, and this stability is an important factor in explaining why European states accept unwanted foreigners. He writes that, especially in Germany, an activist judiciary has aggressively and expansively defended the rights of foreigners, despite the political rhetoric.

The evidence from these parliamentary asylum debates suggests adding to these domestic constraints an ideological dimension, and this proposition dovetails with Freeman's discussion of "anti-populist norms" and Joppke's emphasis on liberal values.[17] It must be remembered that these debates never considered abandoning asylum, and there seems to be an unequivocal acceptance in Switzerland, Germany, and Britain to grant asylum to refugees despite seeing no benefits. The acceptance of this norm, I suggest, is a function of the identity of liberal democracies. In making the argument that liberal democracies maintain asylum because the asylum principle constitutes an important part of their liberal identity, I share Joppke's wariness of stating a tautology.[18] I also stress that identities are malleable constructions that change as the literature on nationalism and national identity reminds us.[19]

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

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

essential to Switzerland's national character (*Wesensgehalt dieses Staatsvolkes*).

Importantly, both supporters and opponents of tighter asylum stressed the role of identity, as exemplified by the following remarks from the 1987 British debate. Lawler (Conservative) argued that passing a tighter asylum law would strengthen Britain's tradition of granting asylum: "Many speakers have pointed out that the country has had a long history of accepting genuine political asylum-seekers. I hope that that tradition will continue. It will continue as long as the threat of abuse is minimised and prevented. For that reason I give the Bill my strong support." Dubs (Labour) opposed the tighter asylum law and said, "I regret that we could not continue with our normal tradition of tolerance and welcome for all asylum-seekers who seek refuge here. That tradition is many centuries old, and tonight the Government have closed the door on it."

Having concluded my analysis that asylum is shaped by a complex configuration of national interests, international norms, and morality, it is worth noting that *identity* encompasses this entire configuration. For how parliamentarians see themselves and their countries and how others see them is a function of what they want (interests), fulfilling expectations (norms), and doing good (morality). Because political debates are expressions of identity, parliamentarians usually work hard to combine all three types of arguments in defense of their position. This tripartite configuration is especially evident in the argument that asylum laws must be effective, democratic, and anti-racist. For analytical purposes, I labeled these goals as national interests because of the standard use of this term. However, if we loosen the analytical restraints, we see that in fact these goals are also norms that democracies abide by, and they do so in large part because they believe these goals serve moral ends. This entanglement is seen in Solms' (Free Democrat) summary of why the tighter 1993 German asylum law is needed: "We do this out of responsibility to the politically persecuted. We do this out of responsibility to the security of the constitutional state. We do this out of responsibility to the stability of the democratic order. Last but not least, we do it out of responsibility to the coalescence of Europe." More than just expressing concern for national interests, international norms, and morality, Solms is expressing how he sees himself, his party, and his country, and he is inviting others to see this identity as well. Arguing about asylum is more than just arguing about interests, norms, and morality. It is arguing about identity.

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

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

# Notes

## Chapter One

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

2.  Myron Weiner, "Introduction: Security, Stability and International Migration," in *International Migration and Security,* ed. Myron Weiner (Boulder, CO: Westview Press, 1993), p. 1. He notes that asylum and migration is overlooked by such standard international relations works as: Robert Gilpin, *The Political Economy of International Relations* (Princeton: Princeton University Press, 1987); Robert O. Keohane and Joseph Nye, *Power and Interdependence: World Politics in Transition* (Boston: Little, Brown, 1977); Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984); Stephen D. Krasner, *Defending the National Interest: Raw Materials Investment and U.S. Foreign Policy* (Princeton: Princeton University Press, 1978); Kenneth Waltz, *Theory of International Politics* (Reading, MA: Addison-Wesley, 1979).

3.  For more on this critique of neoliberalism and neorealism, see a new set of literature known variously as "constructivist," "reflectivist," "post-modernist," "interpretivist," "structurationalist," "post-structuralist," and "sociological institutionalist." This literature shares the basic belief that interests are not exogenous to the political process and that norms are not merely intervening variables between interests and behavior. Instead, interests, norms, and behavior are all part of a dynamic environment in which each component affects the others, and each is constantly being interpreted and reinterpreted by actors who are themselves part of this environment. These claims, which are a significant departure from those of neoliberalism and neorealism, have been fueled by the failures of these conventional theories to explain the dramatic transformation of the international system brought

by the end of the Cold War. See, for example, Alexander Wendt, "Anarchy Is What States Make of It: The Social Construction of Power Politics," *International Organization* 46, 2 (Spring 1992), pp. 391–426; Peter Katzenstein, ed., *The Culture of National Security: Norms and Identity in World Politics* (New York: Columbia University Press, 1996); Audie Klotz, *Norms in International Relations: The Struggle against Apartheid* (Ithaca, NY: Cornell University Press, 1995); Cecelia Lynch, *Beyond Appeasement: Interpreting Inter-War Peace Movements in World Politics* (Ithaca, NY: Cornell University Press, 1999); Rey Koslowski and Friedrich Kratochwil, "Understanding Change in International Politics: The Soviet Empire's Demise and the International System," *International Organization* 48, 2 (Spring 1994), pp. 215–48; Martha Finnemore, *National Interests in International Society* (Ithaca, NY: Cornell University Press, 1996); Friedrich Kratochwil and John Gerard Ruggie, "International Organization: A State of the Art on an Art of the State," *International Organization* 40, 4 (Autumn 1986), pp. 753–76; Friedrich Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge: Cambridge University Press, 1989).

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

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

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

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

8. United Nations High Commissioner for Refugees, *The State of the World's Refugees: The Challenge of Protection* (New York: Penguin Books, 1993), p. 36.

9. Daniéle Joly, *Refugees: Asylum in Europe* (Boulder, CO: Westview, 1992), p. 33.

10. Daniéle Joly, *Haven or Hell?: Asylum Policies and Refugees in Europe* (New York: St. Martin's Press, 1996); Zig Layton-Henry, *The Politics of Immigration: Immigration, 'Race' and 'Race' Relations in Post-War Britain* (Oxford: Blackwell, 1992); Marilyn B. Hoskin, *New Immigrants and Democratic Society: Minority Integration in Western Democracies* (New York: Praeger, 1991); Myron Weiner, "Introduction," in Myron Weiner, ed., *International Migration and Security* (Boulder, CO: Westview Press, 1993).

11. Gil Loescher, "Introduction," in Gil Loescher and Laila Monahan, eds., *Refugees and International Relations* (Oxford: Oxford University Press, 1989); Sarah Collinson, *Beyond Borders: West European Migration Policy Towards the 21st Century* (London: Royal Institute of International Affairs, 1993); Andrew Shacknove, "From Asylum to Containment," *International Journal of Refugee Law* 5, 4 (1993), pp. 516–33; Daniéle Joly and Robin Cohen, eds.,

*Reluctant Hosts: Europe And Its Refugees* (Aldershot, England: Avebury, 1989); Daniéle Joly, *Haven Or Hell?: Asylum Policies And Refugees In Europe* (New York: St. Martin's Press, 1996).

12. This use of the term "generous" differs from Hakovirta, who measures generosity by contributions to the UNHCR. See Harto Hakovirta, *Third World Conflicts and Refugeeism: Dimensions, Dynamics and Trends of the World Refugee Problem* (Helsinki: The Finnish Society of Sciences and Letters, 1986).

13. United Nations High Commissioner for Refugees, *The State Of The World's Refugees: The Challenge Of Protection* (New York: Penguin Books, 1993), pp. 154–55.

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

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

16. Sarah Collinson, *Beyond Borders: West European Migration Policy towards the 21st Century* (London: Royal Institute of International Affairs, 1993).

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

18. John H. Elliott, "The Bible from the Perspective of the Refugee," in *Sanctuary,* ed. Gary MacEoin (San Francisco: Harper & Row, 1985), p. 50.

19. Elizabeth G. Ferris, *Beyond Borders: Refugees, Migrants and Human Rights in the Post–Cold War Era* (Geneva: WCC Publications, 1993), p. xxvii.

20. Elizabeth G. Ferris, *Beyond Borders: Refugees, Migrants and Human Rights in the Post–Cold War Era* (Geneva: WCC Publications, 1993); Jim Wallis, "Waging Peace," in *Sanctuary,* ed. Gary MacEoin (San Francisco: Harper & Row, 1985), p. 174.

21. Cited in Friends of Le Chambon, *Weapons of the Spirit,* written, produced, and directed by Pierre Sauvage, 90 min., First Run Features Home Video 1989, videocassette.

22. The small Catholic minority of Le Chambon was also active in protecting refugees. For more on Le Chambon, see Philip Hallie, *Lest Innocent Blood Be Shed: The Story of the Village of Le Chambon, and How Goodness Happened There* (New York: Harper & Row, 1979); Michael McIntyre, "Altruism, Collective Action, and Rationality: The Case of Le Chambon," *Polity* 27, 4 (Summer 1995); Friends of Le Chambon, *Weapons of the Spirit,* written, produced, and directed by Pierre Sauvage, 90 min., First Run Features Home Video 1989, videocassette; Carol Rittner and Sondra Myers, eds., *The Courage to Care: Rescuers of Jews during the Holocaust* (New York: New York University Press, 1986).

23. Joseph H. Carens, "Migration and Morality: A Liberal Egalitarian Perspective," in *Free Movement,* eds. Brian Barry and Robert E. Goodin (University Park, PA: Pennsylvania State University Press, 1992), p. 26.

24. Robert E. Goodin, "If People Were Money . . . ," in *Free Movement,* eds. Brian Barry and Robert E. Goodin (University Park, PA: Pennsylvania State University Press, 1992).

25. Peter Singer and Renata Singer, "The Ethics of Refugee Policy," in *Open Borders? Closed Societies?* ed. Mark Gibney (New York: Greenwood Press, 1988).

26. Robin Cohen and Daniéle Joly, "Introduction: The 'New Refugees' in Europe," in *Reluctant Hosts,* eds. Daniéle Joly, and Robin Cohen (Aldershot, England: Avebury, 1989).

27. Alan Dowty, *Closed Borders: The Contemporary Assault on Freedom of Movement* (New Haven: Yale University Press, 1989); Joseph H. Carens, "Migration and Morality: A Liberal Egalitarian Perspective," in *Free Movement,* eds. Brian Barry and Robert E. Goodin (University Park, PA: Pennsylvania State University Press, 1992), pp. 26–7.

28. Immanuel Kant "Perpetual Peace," in *Kant: Political Writings,* 2nd ed., ed. Hans Reiss (Cambridge: Cambridge University Press, 1991), pp. 105–8.

29. Joseph H. Carens, "Migration And Morality: A Liberal Egalitarian Perspective," in *Free Movement,* eds. Brian Barry and Robert E. Goodin (University Park, PA: Pennsylvania State University Press, 1992).

30. Bernard Porter, *The Refugee Question in Mid-Victorian Politics* (Cambridge: Cambridge University Press, 1979), pp. 2–3, 4.

31. See, for example, Guy S. Goodwin-Gill, *The Refugee in International Law* (Oxford: Clarendon Press, 1983); Atle Grahl-Madsen, *The Emergent International Law Relating to Refugees: Past, Present, Future* (Bergen: University of Bergen Law Faculty, 1985); Richard Plender, *The Right of Asylum* (Dordrecht, NL: Martinus Nijhoff, 1990); Jack Donnelly, *International Human Rights* (Boulder, CO: Westview Press, 1993); Erika Feller, "Carrier Sanctions and International Law," *International Journal of Refugee Law* 1, 1 (1989), pp. 48–66; Kay Hailbronner, "Nonrefoulement and 'Humanitarian' Refugees: Customary International Law or Wishful Legal Thinking?" in *The New Asylum Seekers,* ed. David A. Martin (Dordrecht, NL: Martinus Nijhoff, 1988); Kay Hailbronner, "The Right to Asylum and the Future of Asylum Procedures in the European Community," *International Journal of Refugee Law* 2, 3 (1990), pp. 341–60; James C. Hathaway, "International Refugee Law: Humanitarian Standard or Protectionist Ploy," in *Human Rights and the Protection of Refugees Under International Law,* ed. Alan E. Nash (Halifax, Nova Scotia: Institute for Research on Public Policy, 1988); James C. Hathaway, *The Law of Refugee Status* (Toronto: Butterworths, 1991).

32. Max Weber, *Economy and Society,* eds. and trans. Günther Roth and Claus Wittich (Berkeley: University of California Press, 1914 [1978]), p. 319.

33. Thomas M. Franck, *The Power of Legitimacy among Nations* (Oxford: Oxford University Press, 1990), p. 24.

34. Friedrich Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge: Cambridge University Press, 1989).

35. Friedrich Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge: Cambridge University Press, 1989); David P. Forsythe, *Human Rights and World Politics,* 2nd ed. (Lincoln, NE: University of Nebraska Press, 1989); Friedrich Kratochwil and John Gerard Ruggie, "International Organization: A State of the Art on an Art of the State," *International Organization* 40, 4 (Autumn 1986), pp. 753–76.

36. Ethan A. Nadelmann, "Global Prohibition Regimes: The Evolution of Norms in International Society," *International Organization* 44, 4 (Autumn 1990), pp. 479–526.

37. Friedrich Kratochwil and John Gerard Ruggie, "International Organization: A State of the Art on an Art of the State," *International Organization* 40, 4 (Autumn 1986), p. 768.

38. Friedrich Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge: Cambridge University Press, 1989), p. 79.

39. Elizabeth Ferris, *Beyond Borders: Refugees, Migrants and Human Rights in the Post–Cold War Era* (Geneva: WCC Publications, 1993); Sarah Collinson, *Beyond Borders: West European Migration Policy towards the 21st Century* (London: Royal Institute of International Affairs, 1993). See also Claudena M.

Skran, *Refugees in Inter–War Europe: The Emergence of a Regime* (New York: Oxford University Press, 1995).

### Chapter Two

1. For more on the Huguenots fleeing to Switzerland, see Markus Küng, *Die Bernische Asyl- und Flüchtlingspolitik am Ende des 17. Jahrhunderts* (Geneva: Droz, 1993).

2. Britain played a critical role in protecting Switzerland from its neighbors throughout much of the nineteenth century. For more on British-Swiss relations during this period, see Ann G. Imlah, *Britain and Switzerland 1845–1860: A Study of Anglo-Swiss Relations during Some Critical Years for Swiss Neutrality* (Hamden, CT: Archon Books, 1966). For more on refugees in Switzerland in the nineteenth century, see Jean-Charles Biaudet, "Der Modernen Schweiz Entgegen," in *Handbuch Der Schweizer Geschichte: Band 2* (Zürich: Verlag Berichthaus, 1977); Herbert Reiter, *Politisches Asyl im 19. Jahrhundert: Die Deutschen Politischen Flüchtlinge des Vormärz und der Revolution von 1848/49 in Europa und den USA* (Berlin: Duncker & Humblot, 1992); Irene Collins, *Liberalism in Nineteenth-Century Europe* (London: Historical Association, 1957); Gottfried Guggenbühl, *Geschichte der Schweizerischen Eidgenossenschaft: Zweiter Band* (Erlenbach–Zürich: Eugen Rentsch Verlag, 1948).

3. Hans Kohn, *Nationalism and Liberty: The Swiss Example* (NY: Macmillan, 1956).

4. Joachim Remak, *A Very Civil War: The Swiss Sonderbund War of 1847* (Boulder, CO: Westview Press, 1993).

5. Cited by Gordon A. Craig, *The Triumph of Liberalism: Zürich in the Golden Age, 1830–1869* (NY: Charles Scribner's Sons, 1988), p. 84.

6. Cited in Herbert Reiter, *Politisches Asyl im 19. Jahrhundert: Die Deutschen Politischen Flüchtlinge des Vormärz und der Revolution von 1848/49 in Europa und den USA* (Berlin: Duncker & Humblot, 1992), p. 230.

7. Werner Rings, *Schweiz im Krieg* (Zürich: Ex Libris, 1974), p. 326.

8. Cited in *Swiss Review: The Magazine for the Swiss Abroad,* 6/95, p. 4.

9. Switzerland ratified the 1951 Convention on Jan. 21, 1955, and the 1967 Protocol on May 20, 1968.

10. The original text: *Flüchtlinge sind Ausländer, die in ihrem Heimatstaat oder im Land, wo sie zuletzt wohnten, wegen ihrer Rasse, Religion, Nationalität, Zugehörigkeit zu einer bestimmten sozialen Gruppe oder wegen ihrer politischen Anschauungen ernsthaften Nachteilen ausgesetzt sind oder begründete Furcht haben, solchen Nachteilen ausgesetzt zu werden. Als ernsthafte Nachteile gelten namentlich die Gefährdung von Leib, Leben oder Freiheit sowie Massnahmen, die einen unerträglichen psychischen Druck bewirken.*

11. For more on Swiss asylum legislation, see Walter Kälin, "The Legal Condition of Refugees in Switzerland," *Journal of Refugee Studies* 7, 1 (1994), pp. 82–95.

12. Peter Arbenz, "Interview," *Refugees* 37 (January 1987), pp. 41–2.

13. *Analysen eidegenössischer Urnengänge* (VOX-Analysen), Institut der Schweizerischen Gesellschaft für praktische Sozialforschung, vol. 11, no. 32, 1987.

14. Bundesamt für Flüchtlinge, *Asylstatistik* (Bern: Eidgenössisches Justiz- und Polizeidepartement, 1991).

15. *Asylstatistik* (1990).

16. See Forschungszentrum für Schweizerische Politik, *Schweizerische Politik* (Bern: Universität Bern, 1990).

17. See *Schweizerische Politik* (1990).

18. See *Schweizerische Politik* (1992).

19. *Verständnis* could also translate as "sympathy." See *Schweizerische Politik* (1992).

20. *Asylstatistik* (1993).

21. For greater details of the legal condition of refugees and asylum-seekers in Switzerland, see Walter Kälin, "The Legal Condition of Refugees in Switzerland," *Journal of Refugee Studies* 7, 1 (1994), pp. 82–95.

22. Guest workers with temporary residency permits, on the other hand, must wait ten years before being issued permanent residency permits.

23. Walter Kälin, "The Legal Condition of Refugees in Switzerland," *Journal of Refugee Studies* 7, 1 (1994), pp. 83–4.

24. For more details, see Wolf Linder, *Swiss Democracy: Possible Solutions to Conflict in Multicultural Societies* (NY: St. Martin's Press, 1994).

25. The 1979 debate is transcribed in *Amtliches Bulletin der Bundesversammlung, Nationalrat* (Bern: Sekretariat der Bundesversammlung, December 13, 1978), p. 1814- onward, and in *Amtliches Bulletin der Bundesversammlung, Ständerat* (Bern: Sekretariat der Bundesversammlung, March 1, 1978), p. 74- onward. The 1986 debate is transcribed in *Amtliches Bulletin der Bundesversammlung, Nationalrat* (Bern: Sekretariat der Bundesversammlung, March 17, 1986), p. 257- onward, and in *Amtliches Bulletin der Bundesversammlung, Ständerat* (Bern: Sekretariat der Bundesversammlung, June 3, 1986), p. 230- onward. The 1994 debate is transcribed in *Amtliches Bulletin der Bundesversammlung, Nationalrat* (Bern: Sekretariat der Bundesversammlung, March 2, 1994), p. 74- onward, and in *Amtliches Bulletin der Bundesversammlung, Ständerat,* (Bern: Sekretariat der Bundesversammlung, March 8, 1994), p. 109- onward.

26. Countering this argument that the new law was unnecessary, Schmid (Social Democrat) acknowledged that the current asylum process already worked well, but he added, "If we were to resist putting all good policies into law, then we would probably have to switch over to the British system of governing but that would not conform to our Swiss understanding of democracy."

27. This revision of the 1979 Asylum Law also had to change the 1931 Foreigners Law (commonly known by the initials ANAG), so parliament was technically debating two different laws. However, for the sake of linguistic simplicity, I will refer to this duel legislative action simply as the revision of the 1979 Asylum Law.

28. Among the uncontroversial measures were the effort to distribute asylum-seekers more evenly across cantons to avoid their concentration in a few cantons like Vaud, Basel-City, Bern, Zürich, Ticino, and Geneva, which by 1985 had two-thirds of all asylum-seekers. The federal government also broadened its assistance to rejected asylum-seekers in their journey home as well as its compensation to cantons for handling refugees and asylum-seekers. Finally, work permits for asylum-seekers could now only be withheld by cantons for a maximum of three months.

29. Estimates vary about how many rejected asylum-seekers evade deportation by going underground. Günter (Independent) complained about the lack of statistics the federal government kept on asylum matters. "The federal government probably knows more about the circumstances of chickens in Switzerland than about the circumstances of asylum."

30. If such a detention lasted more than 48 hours, a judge had to approve it.

31. The film *Journey of Hope,* which won an Academy Award in 1990 for Best Foreign Film, dealt effectively with the issue of such smugglers.

32. Two different amnesties were actually on the table: one for the 3,000 asylum-seekers who came before January 1, 1983 and another for the 7,300 who came before December 31, 1983. Including dependents, this first amnesty would have covered between 9,000 and 12,000 individuals, while the second covered between 22,000 and 29,000.

33. Rare examples of specifics were offered by Wyss (Free Democrat), who argued that due in part to jobless asylum-seekers the unemployment rate in Basel stood at 2.6 percent, the highest in Switzerland, and by Stamm (Social Democrat), who argued that Switzerland only produced about 55 percent of its food calories and, that after Japan and the Netherlands Switzerland had the lowest arable land per capita among comparable nations. He concluded, "All ecological problems are closely linked with use of the land. That is why it is absolutely essential that today we reduce the appeal of Switzerland as an immigration country."

34. An exception was Gurtner (Progressive Organization) who dismissed the asylum problem as an exaggeration and a ploy to mask domestic problems. She argued that given the small number of people involved and the vast material and financial resources of Switzerland, there was no asylum problem and this revision was "completely superfluous" (*völlig überflüssig*).

35. It must be noted that some supporters of the revision, including Fischer-Hägglingen (Swiss People's Party), Lüchinger (Free Democrat), and Hofmann (Swiss People's Party), also expressed uneasiness with these rapid revisions of the law, but they stressed that precisely for this reason the law had to be revised thoroughly enough this time so that the next revision lay in the distant future. In fact, the next revision came within four years in response to the fall of the Iron Curtain.

36. *Bundesblatt* 138. Jahrgang, Band I, Dec. 2, 1985, p. 16.

37. A notable exception was Bauer (Liberal) who vehemently opposed the revision.

38. The 1986 asylum revision had introduced the "Deportation Detention" (*Ausschaffungshaft*), which allowed the government to detain an asylum-seeker whose initial asylum decision was negative if it suspected that he or she would slip underground to avoid deportation.

39. Justice Minister Koller and both committee chairs vehemently denied that this legislation was designed to fight drugs.

40. In assessing the role that international norms play in Switzerland, Kälin (1994, 92) concludes, "The overall implementation of the 1951 Convention insofar as it relates to the status of refugees is satisfactory for the more than 26,000 persons who actually live in Switzerland as recognized refugees with asylum status. This is particularly due to the thorough work of the legislature which—apart from a few problematic areas—has provided for an optimal implementation of the Convention regime and then complemented it with such important status rights as the right to family reunification. Such a positive assessment, however, should not conceal the existence of several factors [such as the duration of the asylum procedure, restrictive interpretation of the refugee definition, "humanitarian cases," and temporary protection] which undermine the 1951 Convention Regime in that they make it difficult for refugees to get asylum in Switzerland."

## Chapter Three

1. Matthew J. Gibney, "Crisis of Constraint: The Federal Republic of Germany's Current Refugee Imbroglio," *Government and Opposition* 28, 3 (Summer 1993).

2. Switzerland was also importing workers during this period and called them "foreign workers" (*Fremdarbeiter*), but in Germany that term was deemed inappropriate because it had been used in Nazi Germany.

3. Federal Interior Ministry Document: BMI-A5–936 047/0 (02).

4. Matthew J. Gibney, "Crisis of Constraint: The Federal Republic of Germany's Current Refugee Imbroglio," *Government and Opposition* 28, 3 (Summer 1993), p. 372.

5. See, for example, Peter J. Katzenstein, *Policy and Politics in West Germany* (Philadelphia: Temple University Press, 1987), Klaus J. Bade, ed., *Ausländer, Aussiedler, Asyl in der Bundesrepublik Deutschland* (Hannover: Niedersächsische Landeszentrale für politische Bildung, 1994), and Matthew J. Gibney, "Crisis of Constraint: The Federal Republic of Germany's Current Refugee Imbroglio," *Government and Opposition* 28, 3 (Summer 1993).

6. Hartmut Esser and Hermann Korte, "Federal Republic of Germany" in *European Immigration Policy: A Comparative Study,* ed. Tomas Hammar (Cambridge: Cambridge University Press, 1985), p. 172.

7. Hartmut Esser and Hermann Korte "Federal Republic of Germany" in *European Immigration Policy: A Comparative Study,* ed. Tomas Hammar (Cambridge: Cambridge University Press, 1985), p. 171.

8. U.S. Committee for Refugees, *World Refugee Report* (Washington, D.C.: U.S. Committee for Refugees, 1981), p. 28.

9. BMI–A5–936 047/0 (02).

10. BMI–A5–936 047/0 (02).

11. For stylistic reasons, I will use the term *Christian Democrat* to label members of both the *Christian Democratic Union* and its Bavarian affiliate, the *Christian Social Union*.

12. U.S. Committee for Refugees, *World Refugee Report* (Washington, D.C.: U.S. Committee for Refugees, 1989), p. 62.

13. Klaus J. Bade, ed., *Ausländer, Aussiedler, Asyl in der Bundesrepublik Deutschland* (Hannover: Niedersächsische Landeszentrale für politische Bildung, 1994), p. 44.

14. United Nations High Commissioner for Refugees, *The State of the World's Refugees: In Search of Solutions* (Oxford: Oxford University Press, 1995), p. 202.

15. Klaus J. Bade, ed., *Ausländer, Aussiedler, Asyl in der Bundesrepublik Deutschland* (Hannover: Niedersächsische Landeszentrale für politische Bildung, 1994), p. 31.

16. U.S. Committee for Refugees, *World Refugee Report* (Washington, D.C.: U.S. Committee for Refugees, 1994), p. 135.

17. Matthew J. Gibney, "Crisis of Constraint: The Federal Republic of Germany's Current Refugee Imbroglio," *Government and Opposition* 28, 3 (Summer 1993), pp. 386, 392.

18. *Statistisches Jahrbuch* (Wiesbaden: Statistisches Bundesamt 1994), p. 72; U.S. Committee for Refugees, *World Refugee Report* (Washington, D.C.: U.S. Committee for Refugees, 1994), p. 135.

19. *Der Spiegel* (10.26.92).

20. *Der Spiegel* (12.7.92).

21. *Der Spiegel* (12.7.92).

22. Federal Ministry of the Interior, "Recent Developments in the German Law on Asylum and Aliens," *International Journal of Refugee Law* vol. 6, no. 2, 1994, pp. 265, 266.

23. Federal Ministry of the Interior, "Recent Developments in the German Law on Asylum and Aliens," *International Journal of Refugee Law* vol. 6, no. 2 1994, p. 268.

24. BMI–A5–936 047/0 (02).

25. United Nations High Commissioner for Refugees, *The State of the World's Refugees: In Search of Solutions* (Oxford: Oxford University Press, 1995), p. 202.

26. United Nations High Commissioner for Refugees, *The State of the World's Refugees: In Search of Solutions* (Oxford: Oxford University Press, 1995), p. 203.

27. U.S. Committee for Refugees, *World Refugee Report* (Washington, D.C.: U.S. Committee for Refugees, 1994), p. 135.

28. United Nations High Commissioner for Refugees, *The State of the World's Refugees: In Search of Solutions* (Oxford: Oxford University Press, 1995), p. 203.

29. U.S. Committee for Refugees, *World Refugee Report* (Washington, D.C.: U.S. Committee for Refugees, 1994), p. 136.

30. Myron Weiner, *The Global Migration Crisis: Challenges to States and to Human Rights* (NY: Harper Collins College Publishers, 1995), pp. 52–3.

31. For greater details, see the European Council on Refugees and Exiles, *Asylum in Europe,* vol. 2 (London: European Council on Refugees and Exiles, 1994).

32. The European Council on Refugees and Exiles writes, "There is no single clear-cut provision for a humanitarian status in the law, but several possible avenues to defer deportation or grant residence authorisations on humanitarian grounds are available" such as "tolerated residence" (*Duldung*). European Council on Refugees and Exiles, *Asylum In Europe,* vol. 2 (London: European Council on Refugees and Exiles, 1994), p. 182.

33. A claim is rejected as "manifestly unfounded" (*offensichtlich unbegründet*) if, for example, the asylum-seeker has come for purely economic reasons, has come from a "safe country," or if he offers contradictory or forged information.

34. A claim is rejected as "inadmissible" (*unbeachtlich*) if another state is responsible for the claim according to an international agreement or if the asylum-seeker had already been offered protection in another country and can be returned to that country.

35. For more on German politics, see David P. Conradt, *The German Polity,* 5th ed. (White Plains, NY: Longman, 1993).

36. Frank L. Wilson, *European Politics Today: The Democratic Experience,* 2nd ed. (Englewood Cliffs, NJ: Prentice Hall, 1994), p. 213; *The Economist* (10.22.94), p. 59.

37. These debates are transcribed in *Verhandlungen des Deutschen Bundestages, Stenographische Berichte* (Bonn: Bonner Universitäts-Buchdruckerei, June 1, 1978), p. 7370- onward; and *Verhandlungen des Deutschen Bundestages, Stenographische Berichte* (Bonn: Bonner Universitäts-Buchdruckerei, March 6, 1980), p. 16470- onward; and *Verhandlungen des Deutschen Bundesrates, Stenographische Berichte* (Bonn: Bonner Universitäts-Buchdruckerei, July 18, 1980), p. 358- onward; and *Verhandlungen des Deutschen Bundestages, Stenographische Berichte* (Bonn: Bonner Universitäts-Buchdruckerei, October 4, 1985), p. 12213- onward; and *Verhandlungen des Deutschen Bundesrates, Stenographische Berichte* (Bonn: Bonner Universitäts-Buchdruckerei, March 1, 1985), p. 124- onward; and *Verhandlungen des Deutschen Bundestages, Stenographische Berichte* (Bonn: Bonner Universitäts-Buchdruckerei, January 21, 1993), p. 11595- onward.

38. Again, for stylistic reasons, I use the label "Christian Democrats" to describe both the Christian Democratic Union and its Bavarian affiliate, the Christian Social Union.

39. Briefs had been a member of the Party of Democratic Socialism, the successor to the old Communist Party of East Germany.

40. In the previous weeks, he had switched from the Christian Democrats to the Republikaner.

41. Formerly of the Party of Democratic Socialism, the successor to the old Communist Party of East Germany.

42. Formerly of the Party of Democratic Socialism, the successor to the old Communist Party of East Germany.

### Chapter Four

1. Rosemary Ashton, *Little Germany: Exile and Asylum in Victorian England* (Oxford: Oxford University Press, 1986).

2. Cited by Bernard Porter, *The Refugee Question in Mid-Victorian Politics* (Cambridge: Cambridge University Press, 1979), pp. 75, 77, 22.

3. Hans-Ulrich Thamer, "Flucht und Exil: 'Demagogen' und Revolutionaere," in *Deutsche im Ausland–Fremde in Deutschland,* ed. Klaus Bade (München: C. H. Beck, 1993).

4. Cited by Bernard Porter, *The Refugee Question in Mid-Victorian Politics* (Cambridge: Cambridge University Press, 1979), p. 7.

5. Bernard Porter, *The Refugee Question in Mid-Victorian Politics* (Cambridge: Cambridge University Press, 1979), p. 124.

6. Bernard Porter, *The Refugee Question in Mid-Victorian Politics* (Cambridge: Cambridge University Press, 1979), p. 119.

7. This 1905 Act, however, only affected those immigrants coming on ships carrying 20 or more passengers. It did not affect British subjects and it reaffirmed Britain's commitment to the principle of asylum for refugees.

8. Bernard Porter, *The Refugee Question in Mid-Victorian Politics* (Cambridge: Cambridge University Press, 1979), p. 218.

9. Ari Joshua Sherman, *Island Refuge: Britain and Refugees from the Third Reich 1933–1939,* 2nd ed. (Essex: Frank Cass, 1994), p. 267; Michael R. Marrus, *The Unwanted: European Refugees in the Twentieth Century* (Oxford: Oxford University Press, 1985), p. 154; Colin Holmes, *A Tolerant Country? Immigrants, Refugees, and Minorities in Britain* (London: Faber and Faber, 1991), p. 31.

10. Tony Kushner, *The Persistence of Prejudice: Anti-Semitism in British Society during the Second World War* (Manchester: Manchester University Press, 1989), p. 152.

11. Bernard Wasserstein, *Britain and the Jews of Europe 1939–1945* (Oxford: Clarendon Press, 1979), p. 345.

12. Zig Layton-Henry, *The Politics of Immigration: Immigration, 'Race' and 'Race' Relations in Post-War Britain* (Oxford: Blackwell, 1992).

13. Throughout, there has always been significant movement within the United Kingdom as well, especially from Ireland to England. Layton-Henry writes in *The Politics of Immigration* that even after their independence in 1921, the Irish have always had free access to Britain and full

citizenship rights, including the right to vote. In 1984, British citizens were given national voting rights in Ireland as well, having received local voting rights in 1965. This easy relationship does not, of course, hide Britain's mistreatment of the Irish in the past, especially in the nineteenth century.

14. Zig Layton-Henry, *The Politics of Immigration: Immigration, 'Race' and 'Race' Relations in Post-War Britain* (Oxford: Blackwell, 1992).

15. Helene Lambert, *Seeking Asylum: Comparative Law and Practice in Selected European Countries* (Dordrecht: Martinus Nijhoff, 1995).

16. Ian A. Macdonald and Nicholas Blake, *Immigration Law and Practice in the United Kingdom,* 4th ed. (London: Butterworths, 1995).

17. Zig Layton-Henry, *The Politics of Immigration: Immigration, 'Race' and 'Race' Relations in Post-War Britain* (Oxford: Blackwell, 1992), pp. 192–3.

18. Tom Rees, "United Kingdom I: Inheriting Empire's People," in *The Politics of Migration Policies: Settlement and Integration,* ed. Daniel Kubat, 2nd ed. (New York: Center for Migration Studies, 1993), p. 106.

19. Ronald Kaye, "Defining the Agenda: British Refugee Policy and the Role of Parties," *Journal of Refugee Studies* 7, 2/3 (1994), pp. 144–59.

20. U.S. Committee for Refugees, *World Refugee Survey* (Washington, D.C.: U.S. Committee for Refugees, 1980), p. 49.

21. U.S. Committee for Refugees, *World Refugee Survey* (Washington, D.C.: U.S. Committee for Refugees, 1981), p. 20.

22. Anne Ruff, "The United Kingdom Immigration (Carriers' Liability) Act 1987: Implications for Refugees and Airlines," *International Journal of Refugee Law* 1, 4 (1989), pp. 481–500; Erika Feller, "Carrier Sanctions and International Law," *International Journal of Refugee Law* 1, 1 (1989), pp. 48–66. See also Antonio Cruz, "Carrier Sanctions in Four European Community States: Incompatibilities between International Civil Aviation and Human Rights Obligations," *Journal of Refugee Studies* 4, 1 (1991), pp. 63–81.

23. Ronald Kaye, "Defining the Agenda: British Refugee Policy and the Role of Parties," *Journal of Refugee Studies* 7, 2/3 (1994), pp. 144–59. The fact that "refugees" face even greater resentment than "immigrants" in these polls is surprising, although one wonders whether the questionnaire actually asked about "refugees" or whether it in fact asked about "asylum-seekers" in which case the finding would be less surprising.

24. *CQ Researcher* (Washington, DC : Congressional Quarterly, 2/12/93), p. 132.

25. Cited in *The Guardian* (4/18/96), p. 3.

26. This is the asylum process before a new asylum law was debated by parliament in 1996 whose measures, *The Economist* (2/23/96) wrote, "look suspiciously as though they are addressed less at the country's social problems than at the government's electoral problems . . . By promoting anti-immigrant policies the government risks encouraging racism and undermining liberty. It deserves contempt, not votes, for proposing this nasty bill."

27. Richard Dunstan, "Playing Human Pinball: The Amnesty International United Kingdom Section Report on UK Home Office 'Safe Third Country' Practice," *International Journal of Refugee Law* 7, 4 (October 1995), pp. 606–52.

28. Richard Dunstan, "Playing Human Pinball: The Amnesty International United Kingdom Section Report on UK Home Office 'Safe Third Country' Practice," *International Journal of Refugee Law* 7, 4 (October 1995), p. 644.

29. Michael K. Addo, "The Legal Condition of Refugees in the United Kingdom," *Journal of Refugee Studies* 7, 1 (1994), p. 105.

30. Ronald Kaye, "Defining the Agenda: British Refugee Policy and the Role of Parties," *Journal of Refugee Studies* 7, 2/3 (1994), pp. 144–59.

31. For more on British politics, see Richard Rose, *Politics in England: Change and Persistence,* 5th ed. (Glenview, Il: Scott, Foresman, 1989).

32. These debates are transcribed in *Parliamentary Debates (Hansard), House of Commons Official Report,* (London: H. M. Stationary Office, March 16, 1987), col. 706–onward; and in *Parliamentary Debates (Hansard), House of Commons Official Report,* (London: H. M. Stationary Office, November 2, 1993), col. 21–onward.

33. The Trevi Group is a group of representatives from the Interior and Justice ministries of the EU states that meets to draw up common policy regarding various issues, including asylum and immigration.

## Chapter Five

1. In a further rhetorical tactic, Swiss and German supporters of tighter asylum would also refer to asylum-seekers as *Asylanten,* a term that was criticized by opponents such as Bühlmann (Greens) who argued in the 1994 Swiss debate, "The term *Asylant* does not belong to my vocabulary because it has derogatory connotations like the terms *Simulant* [malingerer], *Querulant* [quarreler], and *Spekulant* [speculator]. . . . In other words, with the term *Asylant* we mentally degrade people who come to us seeking asylum and that then makes their deportation and deprivation of freedom a bit easier. With language, we express our views—especially as politicians we must be aware of this fact."

2. Related to the immigration issue, it was remarkable how British parliamentarians on both sides of the asylum issue lacked praise for what immigrants had contributed to British society. While numerous German and Swiss parliamentarians from both sides spoke of guest workers having been instrumental in these countries' economic growth, British parliamentarians remained silent.

3. This lack of economic arguments further demonstrates the important difference between asylum and immigration; immigration debates revolve primarily around economic issues.

4. Ulrich Briefs (unaffiliated, formerly of the Party of Democratic Socialism, the successor of the old Communist Party of East Germany).

5. That is not to say that this distance between the abstract and the practical cannot be overcome. As mentioned in Chapter One, Judeo-Christian morality was the foundation for the French village of Le Chambon to harbor thousands of Jews during World War II, while Liberal morality guided Britain's unmatched asylum policy in the nineteenth century.

6. Aside from referring to World War II, a few parliamentarians also noted other periods in history to make moral arguments. Corbyn (Labour), an opponent of tighter asylum, argued in the 1987 British debate that Britain had a moral obligation to accept those refugees whom it was responsible for creating through its past colonial ties. In the 1979 Swiss debate Maier (National Action), a supporter of tighter asylum, also referred to moral obligations stemming from history, but he used this argument to justify turning refugees away. He said, "According to the causation principle [*Verursacherprinzip*], which is currently fashionable, the primary responsibility for granting asylum to Vietnamese refugees who are fleeing a country destroyed by 17 million tons of bombs lies with the U.S., not with Switzerland."

7. Daniel Jonah Goldhagen, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust* (New York: Alfred A. Knopf, 1996).

8. Alain Bovard, spokesperson for Amnesty International/Switzerland (July 15, 1995), Suzanne Auer, assistant director, Swiss Refugee Aid (*Schweizerische Flüchtlingshilfe*) (July 19, 1995), and Lucie de Lophem, head of Swiss Unit, UNHCR (July 25, 1995).

9. Cited in *Tages Anzeiger* 3/13/96.

10. It takes 100,000 signatures to bring an initiative to a popular vote.

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

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

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

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

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

16. Christian Joppke, "Why Liberal States Accept Unwanted Immigration," *World Politics* 50 (January 1998).

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

18. Christian Joppke, "Why Liberal States Accept Unwanted Immigration," *World Politics* 50 (January 1998).

19. Important works on nationalism include Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism,* 2nd ed. (London: Verso, 1991); John Breuilly, *Nationalism and the State,* 2nd ed. (Manchester: Manchester University Press, 1993); Ernest Gellner, *Nations and Nationalism* (Ithaca, NY: Cornell University Press, 1983); Liah Greenfeld, *Nationalism: Five Roads to Modernity* (Cambridge, MA: Harvard University Press, 1992); Eric J. Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality* (Cambridge: Cambridge University Press, 1991); Anthony D. Smith, *The Ethnic Origins of Nations* (Oxford: Blackwell, 1986); John Armstrong, *Nations before Nationalism* (Chapel Hill, NC: University of North Carolina Press, 1982). Within the international relations literature see, among others, James Mayall, *Nationalism and International Society* (Cambridge: Cambridge University Press, 1990); William Bloom, *Personal Identity, National Identity, and International Relations* (Cambridge: Cambridge University Press, 1990); Ole Waever, et al., *Identity, Migration and the New Security Agenda in Europe* (New York: St. Martin's Press, 1993); Yosef Lapid and Friedrich Kratochwil, eds., *The Return of Culture and Identity in IR Theory* (Boulder, CO: Lynne Rienner, 1996). For an excellent introduction to nationalism, see John Hutchinson and Anthony D. Smith, eds. *Nationalism* (Oxford: Oxford University Press, 1994).

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