NEGOTIATING DOMESTIC AND INTERNATIONAL PRESSURES

FRANCE AND GERMANY ON REFUGEES

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¹ To be fair, most of my extended family members were not aware that I was undertaking this project, but it worked out just fine.
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I. INTRODUCTION:

In 2015, the United Nations High Commissioner for Refugees (UNHCR) estimated that 65.3 million people were forcibly displaced from their homes. Of these numbers, 21.3 million are refugees, half of whom are under the age of 18. Today, approximately 34,000 people are forcibly displaced every day as a result of conflict or persecution,² making this an issue of international concern. The question of refugees is one that has risen to prominence over the past few years, especially since the Arab Spring in 2011. According to a comprehensive report for 2014 by UNHCR, the number of refugees, asylum seekers and people forced to flee within their own countries reached nearly 60 million, which when compared to the latest figures indicates an upward trend. The UNHCR was created in 1950 to support Europeans who were displaced by World War II. However, most of the current flow of refugees is from the Middle East and sub-Saharan Africa. Among countries, Syria is the biggest contributor of refugees: in 2014, 1 in 5 displaced people worldwide was Syrian. Additionally, Somalia is the source of more than a million refugees, which makes up the world’s third-highest total.³

Congruent with the rise in refugees has been the rise in anti-refugee sentiments. Several wealthy countries across the globe have had a tough response, largely due to political pressure among populations that are hostile to the influx of migrants. France and Austria have stepped up police checks at crossings with Italy, leaving migrants to camp out at train stations in Rome and Milan. In 2015, Hungary announced plans to build a 12-foot fence along its border with Serbia.

As a result, the vast majority of refugees in 2014 were hosted by poor countries, with nearly 9 out of 10 refugees living in the developing world. This has led to several appeals by UNHCR, other aid groups and even Pope Francis for a more equitable share of the burden and a cooperative approach to dealing with the global challenge.4

Europe has been the focus of this dilemma, given its proximity to refugee-generating countries and rise in anti-refugee sentiments in several of its countries. Over 1 million refugees, displaced persons and other migrants have made their way to the European Union (EU), escaping conflict in their country and in search of better economic prospects. According to UNHCR, by June 2016, approximately 156,000 people had reached Europe since the start of the year. Many of them arrived after perilous land or sea journeys, in search of basic humanitarian assistance, such as provision of clean water, healthcare, emergency shelter and legal aid.5 Under these circumstances, European views on refugees have gained importance. Many Europeans are concerned that the influx of refugees will increase the likelihood of terrorism and impose a burden on their countries.6 However, this threat assessment varies from country to country, with majorities in Poland, Hungary, Greece and Italy of the view that refugees from places like Iraq and Syria are a major threat to their countries. On the other hand, only a third or less of people in

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4 Ibid.
6 On a more positive note, only a relatively small share of Europeans – a median of 30% across 9 countries – felt that refugees were more to blame than other groups for crime in their countries.
Germany and Sweden – two countries that have taken in a large number of migrants – share their view.\(^7\)

In an attempt to measure worldwide friendliness towards refugees, Amnesty International conducted the Refugee Welcome Index survey in 2016. The survey ranked 27 countries across all continents centered on people’s willingness to let refugees live in their countries, towns, neighborhoods and homes. Based on the results, countries were placed on a scale from 0 to 100, where 0 means that all respondents would refuse refugees entry to the country and 100 implies that all respondents would accept refugees into their neighborhood or home. The survey was carried out by a strategy consultancy firm, GlobeScan, and asked more than 27,000 people their level of agreement with the following questions:

1) People should be able to take refuge in other countries to escape from war or persecution.

2) Our government should do more to help refugees fleeing war or persecution.

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3) How closely would you personally accept people fleeing war or persecution? Would you let them live in your household? In your neighborhood? In your city, town or village? In your country? Or would you refuse them entry to your country? 

The results showed China, Germany and the UK as the most welcoming countries with regards to refugees, with 85, 84 and 83, respectively, out of 100 people willing to accept refugees into their neighborhoods and homes. Russia is the least welcoming of all the 27 countries that were surveyed, with 82 people out of 100, ready to refuse refugees entry into the country. Out of the European countries surveyed, France is the least welcoming nation, excluding Turkey, and Germany is the most welcoming country.

While the robustness of the study might be called into question due to the small sample size within each country – a sample size of a 1,000 people in each country – the French and German results, relative to each other, are supported by other studies. For example, a survey published by Pew Research Center confirms that 14% more people in France view refugees from Syria and Iraq as a major threat to their country than in Germany. The following section will contextualize these sentiments with respect to the current refugee situation in the two countries.

**Understanding the Refugee Situation in France and Germany:**

With the Brexit, France and Germany are the two key players in Europe, and understanding their stance on the refugee crisis will shed more light on the situation in Europe – a region that is important given the prevalence of the refugee question in the continent. To this

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end, I graphed the number of refugees in both France and Germany, and compared them to the number of asylum applications that they received from 1990 till 2015. This is illustrative of the pressure on the country during the refugee crisis, since it shows the trends in the refugee population already within the country along with the popularity of the country amongst new asylum seekers.

![Chart 1: Refugee Population and Asylum Applications - France](image)

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Chart 1 shows the refugee population in France steadily increasing from 193,000 refugees in 1990 to 273,126 in 2015. If the trends are broken down further, the number of refugees were on a downward trend in the 1990s, meaning that refugees were either leaving France or were being made to leave France. Supporting this decline was an observed fall in the number of asylum applications that the country received. Looking back to this period, it is plausible that the spike in refugees can be attributed to the Bosnian crisis of the 1990s Balkan wars, when approximately 2 million refugees fled west. They were granted temporary asylum in the west, and were required to return once the conflict subsided. Thus, the number of refugees fell because they were going back to their original countries once the situation stabilized.

Starting in 2002, the number of refugees in the country started increasing again, matched by an increase in the number of asylum applications starting from 2006 onwards. This is due to the new wave of refugees stemming from former French colonies in North Africa and the Middle East, which will be discussed in more detail in Chapter 2.

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Chart 2 shows a gradual decrease in the number of refugees in Germany from 816,000 in 1990 to 316,115 in 2015. Breaking this down further, there was an increase in numbers till 1993, after which the population has been on a steady decline. The number of asylum applications have also followed the same trend during the specified time, indicating that this was again due to the Balkan Wars. The number of applications received by Germany started increasing from 2008 onwards, but it wasn’t until 2013 that this increase reflected in the refugee population. In 2015, the number of applications exceeded the number of refugees in the country by more than 160,000.
In comparing the number of asylum applications that the two countries received over the years in Chart 3, France has witnessed a slow increase, whereas Germany has shown a lot of variability, with two peaks: one in 1992 and the other in 2015. The first peak was during the Balkan Wars when Germany had a favorable policy for refugees stemming from its World War II guilt. Additionally, the higher numbers as compared to France is also because Germany is closer to Eastern Europe, the region generating refugees during this time, than France. The second peak is a direct consequence of Angela Merkel’s vocal pro-refugee attitudes in recent years, which have led more refugees to apply to Germany.

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15 German World War II guilt refers to Germany’s penitence regarding the atrocities committed by the Third Reich during World War II, and the Federal Republic of Germany’s subsequent attempts to make amends for the same through compensations to victims and asks for forgiveness. (Thomas U. Berger, “Germany: The Model Penitent,” in War, Guilt, And World Politics After World War II (Cambridge: New York, 2012), 35-82.)

In Chart 4, I scaled the total refugee population in each of the countries to their total population. Again, we see that Germany experienced a growth during the Balkan Wars, after which the population has been steadily decreasing, whereas it has stayed the same for France, with a slight increase in recent years. Currently the two countries are near the same level of scaled refugee population, with refugees making up approximately 0.4% of their total population. Both countries’ trends can be explained by the composition of the international flow of refugees. In the 1990s, a large proportion of the international flow of refugees was comprised of Eastern Europeans. Given that Germany’s population comprises mostly of people of European descent and that one reaches Germany before France while walking from east to


\[\text{“Germany Ethnic groups,” IndexMundi, last accessed on March 24, 2017, http://www.indexmundi.com/germany/ethnic_groups.html.}\]
west, it is logical that Germany received a lot more asylum applications during the Balkan wars, and accepted more refugees than France.

In recent years, the number of Europeans in the flow have decreased and people from the Middle East and North Africa compose majority of the flow.\(^{20}\) As will be illustrated in Chapter 2, these regions share a colonial past with France, which explains the slow rise in refugees in the country as well as the number of asylum applications received. The slow rise in France can be distinguished from Germany’s sudden increases since it is a consequence of a shared historical past that provides consistency, thereby increasing the number of refugees over the years. Germany’s peaks, on the other hand, are due to external shocks which led to consequent increases. Additionally, the increase in the number of refugees in France is because it is more easily accessible to people coming from the Middle East and Africa than Germany since it borders the Mediterranean Sea. In this manner, consideration of the two countries’ historical ties and locational characteristics thus help us understand their refugee reality. In the following chapter, I will discuss France and Germany’s unique histories that give them a personal stake in the refugee crisis. However, prior to that, in the next section, I will introduce the two-level game that influences government decisions, which forms the foundation for the rest of the paper.

**The Two-Level Game:**

National governments are faced with the daunting task of balancing domestic interests at the international level. This is especially pronounced for countries with some form of representative democracy, since leaders in power want to maintain favor with their constituents. Robert Putnam theorizes the relationship between international and domestic politics as a “two-level game”: at a national level, domestic groups pursue their interests by pressuring the

\(^{20}\) “Refugee Population by country or territory of origin.”
government to adopt favorable policies, and politicians seek power by constructing coalitions among those groups, while at the international level, national governments seek to maximize their own ability to satisfy domestic pressures while minimizing the adverse consequences of foreign developments. Neither of the two games can be ignored by central decision-makers so long as their countries remain interdependent, yet sovereign, as is true in the case of France and Germany.

Over the years, scholars have recognized that central decision makers, i.e. “the state,” must be concerned simultaneously with domestic and international pressures. In his argument, Putnam identifies that domestic determinants of foreign policy and international relations must stress “politics: parties, social classes, interest groups (both economic and non-economic), legislators, and even public opinion and elections, not simply executive officials and institutional arrangements.” The process of negotiating is broken down into two levels:

1. The first level comprises of bargaining between the negotiators at the international level, leading to a tentative agreement. This level is called Level I, or the negotiation phase.

2. The second level refers to separate discussion within each group of constituents about whether to ratify the agreement. This is called Level II, or the ratification phase. The actors in this level are not only limited to the parliament, but may also represent bureaucratic agencies, interest groups, social classes, or public opinion.

The complexity of the game portrayed by Putnam demonstrates the interplay between the two levels. While Putnam’s paper is concerned with coming up with a formula for determining

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22 Ibid, 431-432.
23 Ibid, 436.
when an international treaty or negotiation will be successful, I will be using his insight to understand the approach that the French and German governments have taken to respond to their refugee pressures. The chief negotiator, or the state, must not only be aware of the kinds of outcomes and positions that will be acceptable back in the country, but also gauge the sentiment of other actors in the international sphere. Putnam hypothesizes that the determinants of a “win-set” or a successful international agreement are based on the preferences and coalitions that prevail at Level II and the institutions at Level II, as well as the Level I negotiators’ strategies. Therefore, it can be surmised that the actions that a government takes is that government’s “win-set,” since it was taken after careful consideration of the game at both levels.

My aim in this paper is to study the determinants of the Level I and Level II games facing the French and German governments, to understand their policies better. Using Putnam’s components of a “win-set” as my framework, I will be analyzing public opinion at the domestic level in order to understand the preferences that prevail, government structure and election data as variables for institutions at Level II, and both countries’ commitments at the international level for negotiating strategies pursued by them in Level I. Since the refugee levels in countries are the result of the implementation of government policy and the country’s law, I will be using the number of refugees in each country from 1990 to 2015 as an indicator of government action.

Structure of the Paper:

The focus of this paper is to explain the number of refugees residing in France and Germany as a result of the domestic and international pressures facing the governments. However, in order to do this, it is necessary to understand the domestic and international pressures facing the countries in the first place. At the international level, France and Germany

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24 Ibid, 442.
are both signatories of various international conventions on refugees, which have influenced their own laws regarding asylum seekers and refugees. As Putnam theorized, their accession to the conventions are a result of their domestic pressures, and imply that the international norms are in line with their domestic goals. Chapter II describes the unique histories and motivations of the two countries that lend them an interest in the refugee crisis, and thus, in signing onto the international conventions, while in Chapter III, I will expound on these international commitments and analyze their influence on the countries’ laws. Chapter IV includes a regression analysis, which comprises of variables that are indicative of domestic and international pressures. The goal of the regression is to determine which factors were significant in the government’s decision to admit the number of refugees that they did in the country. Following Chapter IV is the conclusion that sums up the findings presented in the paper and illustrates scope for further study in the topic.
II. BACKGROUND AND CONTEXT:

The refugee problem poses an interesting puzzle: why are sovereign countries willing to act with goodwill, especially when it comes to helping individual people to whom they have no obligations? This is an important question since it provides insight into the motivations for governments entering refugee conventions and honoring their commitments. Some theorists have explained this as a way for countries to seek praises and benefits for ratification within the existing international human rights regime that rewards support.\textsuperscript{25} However, I will also argue that Germany and France have a vested interest in the refugee crisis due to their unique pasts that not only shape their refugee realities differently but also led to the formation of the European Union (EU), which further anchors the humanitarian spirit in them. Additionally, national desires to be leaders at the international level should also ideally incentivize France and Germany to accede to international norms for protecting refugees at a governmental level. In this chapter, I will develop these ideas and expand on how aiding refugees fits into the personal narratives of the two countries and the larger history of the EU.

National Histories of France and Germany:

As Chapter 3 will expand further, France and Germany are faced with a rather homogenous structure at the international level regarding the refugee crisis, so they should be responding to the call for humanitarian aid in the same way. This suggests that we should be seeing welcoming indicators in both countries, but as the discussion of the refugee situation in France and Germany in Chapter 1 illustrated, there are variations in the way that the two countries have responded to the crisis. These variations can be explained by the different

historical experiences of both countries, which also provide legitimizing objectives in acting with goodwill towards individual people who flee war, destruction and persecution in their own countries.

French connection to the current refugee crisis is through its former colonies. Chart 5 shows the international flows of refugees from former French colonies in Africa and the Middle East, namely Benin, Burkina Faso, Central African Republic, Cote d’Ivoire, Cameroon, the Republic of Congo, Comoros, Djibouti, Algeria, Gabon, Israel, Lebanon, Morocco, Madagascar, Mauritania, Mauritius, Niger, Nigeria, Senegal, South Sudan, Seychelles, Sudan, Syrian Arab Republic, Chad, Togo and Tunisia.\textsuperscript{26,27} As is visible in the graph, refugee flows from former French colonies have increased nearly seven times since 2011. When plotted with the number of asylum applications that France received over the years,\textsuperscript{28,29,30} we see a sharp increase since 2006. This trend will only strengthen further given that former French colonies contributed to approximately 6.5 million refugees in 2015. Therefore, French connection to the crisis cannot be denied.

\textsuperscript{29} Data on Asylum Applications 1998-2007: “Asylum applicants by citizenship till 2007 Annual data (rounded).”
\textsuperscript{30} Data on Asylum Applications 2008-2016: “Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded).”
The French colonizing mission lasted in Africa for almost a century and a half in the form of a substantial colonial empire that stretched from Maghreb through the Western and Central sub-Saharan regions. Though direct rule ended in the early 1960s, France maintained its influence in Francophone Africa and its colonies in the Middle East through political, security, economic and cultural connections. While the first three kinds of connections give France an interest in the geographical region of Africa, the cultural dimension results in a concern for the people of Africa. At the time when the French colonial empire was disintegrating, Charles de Gaulle perceived “that French world power and French power in Africa were inextricably linked and mutually confirming.” The most common way for the colonizer to create an everlasting tie is through social engineering efforts that aimed to promote French ideals in native life, politics and

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education.\textsuperscript{32} The International Organisation of La Francophonie (OIF) estimates that the number of French speakers will rise from 220 million in 2012 to 715 million in 2050, 80 percent of whom will be in Africa.\textsuperscript{33} Today, France continues to strive to maintain its cultural legacy in Francophone Africa. Various inter-governmental organizations and conferences have “operated under the hub of the \textit{Agence de cooperation culturelle et technique} in an effort to institutionalise the linguistic, cultural and educational links between France and francophone Africa.”\textsuperscript{34} As a testament to the importance of cultural affinity, the ethnic composition of the country also includes significant proportions of people from its former colonies.\textsuperscript{35} This, in conjunction with increasing refugee contributions from former French colonies, leads to the logical conclusion that France has an interest in playing an important role in the current refugee crisis.

While French history provides a unique rationale to be welcoming to certain types of populations, German experience post-World War II (WWII) provides incentive to be open to a more general population. German WWII guilt refers to Germany’s penitence regarding the atrocities committed by the Third Reich during World War II, and the Federal Republic of Germany’s subsequent attempts to make amends for the same through compensations to victims and asks for forgiveness.\textsuperscript{36} Germany still harbors a substantial sense of guilt about the country’s WWII regime and the Holocaust, which caused enormous flows of refugees and indirectly led to the founding of the state of Israel. After the end of WWII, more than 10 million ethnic Germans

\textsuperscript{32} Ibid.
\textsuperscript{34} Benneyworth, “The Ongoing Relationship.”
who fled the country during the Nazi regime flooded into the country from neighboring states. The memories of the tragedy and horror of WWII are still fresh in the minds of the older generation of voters, who experienced unprecedented levels of population displacement from the country, thereby resulting in a more open-minded and accepting older generation, which is the portion of population that tends to be more anti-immigration in other countries.\footnote{Mike Bird, “Germany’s history explains why it’s so accepting of refugees – and why it wants austerity for Greece,” Business Insider, September 9, 2015, last accessed on April 16, 2017, http://www.businessinsider.com/germanys-history-explains-why-its-so-accepting-of-refugees-and-why-it-wants-austerity-for-greece-2015-9.}

The liberal asylum system of West Germany was again put to the test in the late 1980s and the 1990s as war in the Balkans broke out and the Cold War came to an end.\footnote{Ibid.} Even though Germany has not changed its warm openness to refugees – a trend that is rooted in German history surrounding WWII – it is evident from the data presented in Chapter 1 that its refugee population has declined sharply since the refugee crisis of the 1990s. While this may imply that guilt played a bigger role for European refugees in the half century following the end of WWII, the increase in refugees and acceptances in the last couple of years should not be discounted; perhaps Germany is responding to the plight of refugees with a lagged effect.

**Operating in the International Context: Global Leaders with Interests in the EU project:**

When the histories of the countries fall short in providing an incentive to be proactive in the face of the refugee crisis, French and German interests in playing leadership roles at the international level should also provide incentives to take a stance on the crisis and help refugees: States have a desire “to avoid public criticism…[and] avoid positions in which they would stand alone against other states, especially those with similar identities.”\footnote{Nielsen and Simmons, “Rewards for Ratification,” 199.} Therefore, given the
emphasis on human rights in international politics, ideally they would not want to be caught on the wrong side of the trend.

The legal regime for international human rights has been one of the three main pillars of international order in the post-Cold War period, alongside international dedication to peace and security, and trade liberalization.\(^{40}\) Some theorists explain human rights ratification by stressing the importance that governments attach to the approval of the international community. “States ratify treaties, in this view, out of a desire to ‘belong’ as a ‘member in good standing’ to the international community of ‘modern’ nations…Governments are ‘socialized’ to care about what other states think of them…[and] international law plays a central role in that process.”\(^{41}\) In light of the emphasis on human rights in contemporary international politics, being a proponent of refugee rights increases the countries’ social standings at the global level since the international convention regarding refugees – the 1951 UN Convention Regarding the Status of Refugees – is grounded in Article 14 of the 1948 Universal Declaration of Human Rights.\(^{42}\)

At the European level, France and Germany play integral roles, with their histories closely intertwined with the history of the region. Franco-German relations have been often described as the “engine in Europe,”\(^{43}\) and the elimination of the “age-old opposition of France and Germany” formed the foundation for the common European project that led to the creation

\(^{40}\) Ibid, 205.
\(^{41}\) Ibid, 199.
of the EU.\textsuperscript{44} Thus, the EU is the result of an attempt to bring peace and trust to a region that has a history of conflict. True to its mission, it has promoted laws and norms in the global context, and “exported” rules to non-EU states concerning sensitive political issues such as human rights, democracy, and good governance.\textsuperscript{45} Therefore, as leaders of the EU, France and Germany should espouse EU values as a sign of their affirmation of its objectives; taking heed of the refugee crisis and leveraging their position to do their part is integral to achieving this end.

Additionally, the European project, which sought to cement peace in the aftermath of WWII, itself is a symbol of the humanitarian regime and provides an anchor for pursuing human rights objectives. WWII finally ended after the defeat of the Axis powers in 1945. However, by this time, much of Europe, Asia and parts of Africa lay in ruins. In addition to a large loss in civilian and military lives, combat and bombing had flattened cities and towns, destroyed bridges and railroads, and scorched the countryside. Post war countries were confronted with shortages in food, fuel and other consumer products. Countries had spent more money on WWII than in all previous wars combined, which further led to severe economic problems that frustrated reconstruction efforts after the war. Inflation levels skyrocketed, war-torn Europe was in debt, and countries were struggling to overcome their trade and balance of payments deficits. Only the United States had emerged from the war with the strength and resources to help the regions that

had been ravaged by war.\footnote{“Destruction and Reconstruction (1945-1958): Money Matters: An IMF Exhibit – The Importance of Global Cooperation,” International Monetary Fund, last accessed on March 12, 2017, https://www.imf.org/external/np/exr/center/mm/eng/mm_dr_01.htm.} Europe, which was earlier a formidable global power, now lay weakened in the aftermath of WWII.

This was not the first time that hostilities in Europe sparked conflicts on the continent, that later embroiled the whole world. World War I (WWI) pitted the Central Powers – mainly Germany, Austria-Hungary and Turkey – against the Allies, which were mainly France, Great Britain, Russia, Italy and Japan, and from 1917, the United States. It ended with the defeat of the Central Powers in 1918, and caused unprecedented levels of slaughter, carnage and destruction.\footnote{John Graham Royde-Smith, “World War I,” Encyclopaedia Britannica, last updated on December 9, 2016, https://www.britannica.com/event/World-War-I.} The history of Europe is one of hostility, which led to bloody conflicts in the twentieth century. Under these circumstances, Winston Churchill promoted the idea of a United States of Europe as a way of transcending the negativity of the past, in his famous Zurich speech in 1946: “We must all turn our backs upon the horrors of the past. We must look to the future. We cannot afford to drag forward across the years that are to come the hatreds and revenges which have sprung from the injuries of the past. If Europe is to be saved from infinite misery, and indeed from final doom, there must be an act of faith in the European family and an act of oblivion against all the crimes and follies of the past.”\footnote{Ann Rigney, “Transforming Memory and the European Project,” New Literary History 43.4 (2012): 611, last accessed on April 16, 2017, http://muse.jhu.edu/article/497937.}

The EU is a result of these sentiments, though its creation occurred in stages. As a means of ensuring peace on the continent and preventing the outbreak of another war, some Western European countries signed onto various treaties, that were refined and whose membership were expanded over the years. This process finally culminated into the Maastricht Treaty, which
established the EU in 1992. In 1950, Robert Schuman, the French foreign minister, conceived of the European Coal and Steel Community (ECSC), “to make war not only unthinkable but materially impossible.” In 1951, the leaders of six countries, namely Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany, signed the Treaty of Paris that founded the ECSC when it took effect in 1952. It created a free-trade area for several key economic and military resources, including coal, coke, steel, scrap and iron ore. Several supranational institutions were established to oversee the ECSC – these included a High Authority to administrate, a Council of Ministers to legislate, a Common Assembly (later renamed the European Parliament) to formulate policy, and a Court of Justice to interpret the treaty and to resolve related disputes. Through subsequent treaties and versions of supranational European institutions, the EU was finally created with the signing of the Maastricht Treaty in 1992.

Having laid the groundwork for the creation of the EU, this paper is concerned with the treaties that aimed to facilitate free movement of people as it concerns immigration.

In March 1957, the six ECSC members signed the two Treaties of Rome the latter of which created a common market, thereby eliminating most barriers to the movement of goods, services, capital and labor, and prohibited public policies and private agreements that inhibited market competition, a common agricultural policy, and a common external trade policy. The treaty required members to eliminate or revise important national laws and regulations, and cooperate in area where countries had traditionally acted independently. It also created the European Social Fund, which was designed to enhance job opportunities by facilitating workers’ geographic and occupational mobility. Like the ECSC, the European Economic Community

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(EEC) that was created through the first Treaty of Rome, established four major governing institutions: a commission (European Commission or The Commission), a ministerial council (Council of the European Union), an assembly (European Parliament), and a court (European Court of Justice or ECJ). The EEC, European Atomic Energy Community (Euratom), and the ECSC, collectively referred to as the European Communities, later became the principal institutions of the EU.  

The Single European Act (SEA) of 1987 significantly expanded the EEC’s scope. It called for more intensive coordination of foreign policy among members, though foreign policy decisions were made outside community institutions. The SEA created the European Regional Development Fund to encourage development of economically depressed areas, incorporated provisions for the protection of the environment, provided a common research and technological-development policy, and set out a timetable for the completion of a common market. Meanwhile, the Schengen agreement was signed in the town of Schengen in Luxembourg in 1985 and took effect in 1995. The Schengen Agreement abolished many of the EU’s internal borders, enabling passport-free movement across most of the bloc. While the main feature of the agreement is the creation of a single external border and a single set of rules for policing it, common rules on asylum are also part of the agreement amongst other measures included. Under the Schengen rules, signatories may reinstate internal border controls for 10 days due to “public policy or national security” reasons, and a maximum extension of two years is allowed under Article 26 of the Schengen Borders Code in “exceptional circumstances.”

51 Ibid.  
52 Ibid.  
Finally, in 1992, the Maastricht Treaty created the EU. The treaty met with substantial resistance in some countries, but an amended version of the treaty officially took effect on November 1, 1993. It consisted of three main pillars: 1) the European Communities, 2) a common foreign and security policy, and 3) enhanced cooperation in domestic affairs and justice. The EEC was changed to the European Community (EC), and had broader authority that included formal control of community policies on development, education, public health and consumer protection. The EC also had an increased role in environmental protection, social and economic cohesion, and technological research. It established EU citizenships, which entailed the right of EU citizens to vote and to run for office in local and European Parliament elections in their country of residence, regardless of national citizenship.\(^{54}\) While the EU enabled free movement of people within the EU zone, the Schengen Agreement doesn’t necessarily apply to all EU members. However, France and Germany are signatories of the Agreement.\(^{55}\)

As part of the Maastricht Treaty’s second and third pillars, members defined and implemented common foreign and security policies, and worked towards free movement of people within the EU’s border. There was an agreement that wherever possible, members would adopt common defense policies that would be implemented through the Western European Union, a security organization that includes many EU members. Joint actions, which were not subject to the monitoring or enforcement by the Commission or the ECJ, required unanimity. The conflict between national immigration, asylum and residency policies, and the elimination of border controls featured high on the common concerns related to the free movement of people within the EU. Since national civil codes across countries were different, it became difficult to

\(^{54}\) Gabel, “European Union.”
\(^{55}\) Europe, “Schengen.”
combat crime and apply laws uniformly. Therefore, there was a need for new Europe-wide policies that created a common European code for domestic affairs and justice.\footnote{Gabel, “European Union.”}

Despite its noble intentions of encouraging cooperation and peaceful resolution of conflicts between member states, the EU model has come under a lot of criticism. The Brookings Institution’s Robert Kagan argues that the EU has “turned ‘away from power’ and has moved into a ‘self-contained world of laws and rules and transnational negotiations and co-operation.’”\footnote{Zielonka, “Why the World Should Worry About Europe’s Disarray,” 12.} However, true to its objective of discouraging war, it has not shied from power; rather, it has broken away from the traditional exercise of power.\footnote{Ibid, 12.} By rejecting the balance of power politics and military deterrence within the continent, integrated Europe no longer generates insecurity but instead instills security. “Security, which was once based on ‘walls,’…came to be based on openness, transparency, mutual vulnerability, and accountability….Security was provided by economic interdependence and delegating traditional state powers to supranational European authorities.”\footnote{Ibid, 8.} Earlier, conflicts primarily centered on borders and jurisdiction over them, whereby states tried to balance each other or line up behind a hegemon. Therefore, the aim of the EU project was to overcome the “Westphalian syndrome,” which it has been successful in doing as evidenced by the nature of contemporary conflicts that are no longer about borders, but rather the shape of European institutions and the transgressions of common laws. European states still maintain armies, but their purpose is not to wage wars with other EU member states.\footnote{Ibid, 8.}

\footnote{56 Gabel, “European Union.”
58 Ibid, 12.
59 Ibid, 8.
60 Ibid, 8.}
The integrated framework enables the EU to maintain non-threatening relations with its non-EU neighbors too, since it is a civilian and not a military power. As a result, other European powers like Turkey or Russia do not need to fear, balance or deter it. Additionally, they don’t have to be insecure about being invaded or subjugated since territorial acquisitions by the EU have proceeded by invitations where neighbors have been asked to adopt EU laws and norms in return for access to EU decision-making and resources, without coercion. Modern history has witnessed numerous attempts to overcome the legacy of war through agreements on certain universal principles of morality and government, but none before European integration succeeded in this regard. Six decades have passed without a war among the integrated states of Europe. This is an unprecedented amount of time in the history of the continent. The EU won a Nobel Peace Prize in 2012 for its historic role in “promoting reconciliation and peace.” Because of the centrality of peace and cooperation to the concept of the EU, it is in the interests of member states to act in good will and help individual refugees.

Thus, France and Germany’s individual histories and their centrality to European integration, in addition to the EU’s symbol as a peaceful institution form mutually reinforcing factors that give them a stake in the refugee crisis and motivate them to sign onto conventions that help people to whom they have no obligation. The following section will study the international refugee conventions that both countries are signatories of and analyze their impacts on the countries’ national laws. The section is aimed towards understanding the commitments that both France and Germany face at the international level, in order to understand the Level I game and negotiating strategies in the countries.

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61 Ibid, 8.
62 Ibid, 12.
63 Ibid, 7-8.
III. INTERNATIONAL COMMITMENTS:

The preceding chapter contextualized French, German and European historical experiences within the larger refugee narrative. This chapter will analyze the international commitments facing France and Germany through a discussion of the international refugee regime and its influences on national refugee laws in both countries. Since France and Germany operate within accepted international norms, as well as European Union (EU) standards, it is important to understand the United Nations (UN) and EU laws before studying their laws. As evidenced at the end of the chapter, French and German law are severely limited by the limits and framework set forth by the UN and EU laws, and therefore resemble each other.

International Laws Concerning Refugees:

Grounded in Article 14 of the Universal Declaration of human rights 1948, the United Nations Convention relating to the Status of Refugees, adopted in 1951, is the centerpiece of international refugee protection. Article 1 of the Convention defines a refugee as “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.” The 1951 Convention entered force on April 22, 1954 and has been subject to only one amendment – the 1967 Protocol in New York – which removed its geographic and temporal limits and broadened the coverage. To date, there are 147 State Parties to one or both instruments.

The fundamental principles of non-discrimination, non-penalization and non-refoulement characterize the spirit of the Convention. Under these principles, Convention provisions are to be applied without discrimination as to race, religion, country of origin, sex, age, disability,

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64 This article recognizes the right of persons to seek asylum from persecution in other countries.  
sexuality, or other prohibited grounds of discrimination; subject to specific exceptions, refugees should not be penalized for their illegal entry or stay, thereby recognizing that seeking asylum can require them to breach immigration rules; and refugees are provided safeguards against involuntary expulsion in any manner whatsoever to a territory where he or she fears threats to life or freedom. Finally, the Convention lays down minimum standards for the treatment of refugees, without prejudice to States granting more favorable treatment. These rights include access to the courts, to primary education, to work, and the provision for documentation, including a refugee travel document in passport form.66, 67

The Convention, however, does not apply to everyone who might otherwise satisfy the definition of “refugee” under Article 1. These exceptions include people (a) for whom there are reasons to believe that they have committed war crimes or crimes against humanity, or who are guilty of acts contrary to the purposes and principles of the United Nations, (b) to those who benefit from the protection or assistance of a United Nations agency other than the United Nations High Commissioner for Refugees (UNHCR), and (c) to refugees who have a status equivalent to nationals in their country of asylum.68

Thus, the UN Convention sets guidelines for countries that accede to it on how to respond to asylum requests by defining the type of people that they can accept as part of the refugee regime. While it doesn’t detail the process or the considerations that countries should take into account while making a decision on applications, it does delimit the treatment of refugees within the countries once the contracting state has reached a decision on the application. In addition to

66 Most State parties to the Convention issue this document, which has been widely accepted as the former “Nansen passport,” an identity document for refugees devised by the first Commissioner for Refugees, Fridtjof Nansen, in 1922.
67 Ibid, 3.
68 Ibid, 4.
stipulating how states are and are not allowed to act towards refugees, the convention specifies situations when refugees should be treated like nationals versus when they should be given the same status as non-nationals. The procedure used when considering applications is left up to the countries. The EU policy on refugees, however, steps into this vacuum and provides a structure for EU countries to coordinate their asylum policies since the free flow of people within borders calls for a common asylum policy.

**European Union (EU) Policy Regarding Refugees:**

Due to the focus of the EU on creating a common external border and facilitating the free flow of people across the region, it became essential to create a unified asylum policy. While asylum policy is still a national issue, the aim of EU asylum policy is to harmonize asylum procedures in the Member States by establishing common asylum arrangements. The Common European Asylum System (CEAS) is based on the 1951 UN Convention Relating to the Status of Refugees, as amended by the New York Protocol of January 1967 Relating to the Status of Refugees. It is composed of several directives and regulations, which have been recast, i.e. the consolidation of previous legislations and all the amendments made to it. It guarantees a set of common standards and requires stronger cooperation by EU members to ensure that asylum seekers are treated fairly and equally irrespective of where they apply.

CEAS affirms the principle of non-refoulement that is underscored in Article 33 of the Geneva Convention. Article 18 of the Charter of Fundamental Rights of the European Union guarantees a right to asylum based on the UN Refugee Convention, and Article 19 contains a ban on returning a person to a country where they have a well-founded fear of being persecuted, or

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face a real risk of being tortured or subjected to inhuman or degrading treatment. The Court of Justice of the European Union (CJEU) ensures the correct interpretation and application of asylum law through the adoption of preliminary rulings, infringement proceedings against Member States who fail to comply with obligations laid down in EU asylum law, or actions for annulment when the legality of a provision of EU legislation is challenged. Additionally, EU members, as members of the Council of Europe Treaties, the case law of the European Court of Human Rights (ECHR), and other ratified international agreements that may apply, such as the Convention on the Rights of the Child in the case of minors.\footnote{Ibid.}

Per the CEAS, third-country nationals who reach the EU borders, including territorial waters and transit zones, and who wish to apply for international protection are subject to national legislation, which must comply with EU asylum legislation. “International protection” is defined as a request made by a third-country national or a stateless person who seeks refugee status or subsidiary protection. Member States must guarantee the right to effectively make a claim for international protection without obstructions or undue delay. EU Members can adopt or retain more favorable standards as to who qualifies as a person in need of international protection and on reception conditions, as long as they are compatible with EU rules.\footnote{Ibid.} Thus, the legislation provides Member States with the flexibility to make their own decisions on applications received, but provides a common procedure and structure that they have to follow.

In accordance to Article 3(1) of the Dublin Regulation 603/2013, EU Member States must examine any application for international protection lodged by a third-country national or a stateless person, and the application must be examined by only one Member State. This
regulation is binding on Member States, as well as Norway, Iceland, Liechtenstein and Switzerland. It covers applications for international protection that were lodged as of January 1, 2014. This aims to reduce inefficiencies in the system by ensuring that the application review process is not duplicated by other Member States when it is already being examined by one. The criteria specified to determine which Member State of the EU is responsible for reviewing the application for international protection, is applied in hierarchical order: (a) the existence of a family in a Member State; (b) having a visa or residence permit in a Member State; and (c) entry into a Member State, whether illegally or not. These rules are also designed to deter individuals from abusing the system by filing applications in more than one Member State, and to avoid national authorities sending asylum seekers from one Member State to another. If no Member State can be designated as responsible by following the criteria, then the first Member State in which the application for international protection was lodged must take responsibility for examining it by default.

The CEAS accepts the definition of a refugee as put forth in the UN Convention, but also creates an additional category of “subsidiary protection” for people who do not qualify for refugee status. Applications for international protection that are submitted by third-country nationals or stateless people are governed by Directive 2011/95/EU of the European Parliament and of the Council, which establishes common standards to grant international protection to those who qualify. The authorities must assess on a case-by-case basis whether an applicant for international protections is a refugee, as defined by Article 1(a) of the 1951 Refugee Convention, or a person eligible for subsidiary protection. Following the definition provided in the Directive, persecution can be committed by the state, parties or organizations controlling the state, or

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73 Ibid.
74 Ibid.
parties or organizations having under their control a substantial part of the territory. It may also include non-state actors, if they cannot or are unwilling to protect victims of persecution.

Additionally, while the CEAS protects the principle of non-refoulement, it is qualified with the exception that under certain circumstances, a person, whether formally recognized or not, may be removed from the EU territory if they pose a threat to the security of an EU Member State, or are deemed a threat to the host country after the commission of a crime.\textsuperscript{75}

According to the Directive, the criteria that must be satisfied in order to be granted refugee status are as follows:

1) Face a well-founded fear of persecution.

2) The grounds of persecution must be related to the applicant’s race, religion, nationality, or membership in a particular social group.

3) A causal link must exist between the well-founded fear of persecution on the grounds of one’s race, religion, nationality, political opinion, or membership in a particular social group and the acts of persecution.

4) The acts of persecution may take a variety of forms, such as physical or mental violence, including sexual violence, and, only in the case of a minor, may also include acts of a gender-specific or child-specific nature.

Applicants who don’t qualify for refugee status but for whom there are substantial grounds to believe that they would face a real risk of suffering serious harm if returned to the country of origin, can be granted subsidiary protection. Facing a “real risk of suffering serious harm” includes the death penalty or execution, torture or other inhuman or degrading treatment or

\textsuperscript{75} Ibid.
punishment, or a serious and individualized threat to the minor due to violence in the case of internal armed conflict.\textsuperscript{76}

In line with the provisions of the UN Convention, the Directive stipulates that after granting refugee status or subsidiary protection, Member States are required to provide applicants with the following entitlements: residence permit, travel documents, access to employment, education, and social welfare and healthcare. Furthermore, Directive 2011/51/EU allows refugees and beneficiaries of international protection to be able to acquire long-term resident status on a similar basis as other third-country nationals legally living in the EU for more than five years. Member States were given time to comply with this Directive by 2013. The UK, Ireland and Denmark did not take part in its application, and therefore, are not bound by it. After five years, those applicants accorded long-term status will be able to enjoy freedom of movement within the EU and the right to become a resident in another Member State. Under certain conditions, they will also enjoy equality of treatment with citizens of the EU Member State in which they reside, in a wide range of economic and social matters. These include education, access to the labor market, and social security benefits.\textsuperscript{77}

During 2015, the EU sought to ensure a coordinated European response to the refugee crisis. Various EU agencies provided assistance, financing, training, and experts to the Member States to implement CEAS. The European Commission also allocated over €10 billion to address the refugee crisis and assist Member States, particularly those most impacted. To prevent the collapse of the Schengen system of passport-free travel throughout Europe due to temporary border controls by individual countries, and to ensure better security of its external borders, the EU proposed the creation of a European Border and Coast Guard; they would have new powers

\textsuperscript{76} Ibid.
\textsuperscript{77} Ibid.
and shared responsibility for the EU borders along with Member States. In November 2015, the Commission signed an Action Plan with Turkey designed to reduce the migration flow entering the EU through Greece.78

Therefore, the EU asylum policies are aimed to create a mechanism for coordinated response to refugees and asylum applications. It sets guidelines to ensure that resources are maximally utilized with no duplication of efforts, and that asylum applications and consequently those who are awarded refugee and subsidiary protection are treated uniformly across countries. It builds off the UN Convention, using the framework provided by it to create EU-specific guidelines that take into account the consequences of European integration. In light of the recent refugee crisis, the EU increased resources allocated to the functioning of the European refugee regime that aimed to increase aid to institutions overseeing the application process, and cooperated with neighboring countries to decrease the refugee pressure on the region.

**German Refugee & Asylum Law:**

German asylum law makes a distinction between political refugees, refugees and those awarded with subsidiary protection. The right to asylum is a constitutional right in Germany, codified in Article 16a of the German Basic Law, and is granted to everyone who flees political persecution by the state. Political persecution is defined as “persecution that causes specific violations of individual rights and, due to its intensity, excludes the individual from the ‘general peace framework of the state unit.’” The constitutional right to asylum protects human dignity and reflects the view that no state has the right to persecute an individual for his or her political or religious beliefs or other personal characteristics that mark him or her as different. Not every disadvantage or material hardship supports a right to asylum. Unlike the broader definition of

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78 Ibid.
perpetrators of persecution set forth in the EU legislation, only persecution that is perpetrated by the state is relevant in German law in determining political asylum.\textsuperscript{79}

However, the definition for refugees is broader. As a signatory of the 1951 Geneva Convention Relating to the Status of Refugees, Germany has implemented its provisions into German law and incorporated the definition of a refugee under this Convention, into Section 3 of the German Asylum Act, under which refugee status may be granted for humanitarian reasons. The Asylum Act and the Residence Act are two of the most important immigration laws in Germany that provide rules for the admission of refugees and the handling of refugee claims. The Asylum Act codifies the process and consequences of granting and denying asylum, whereas the Residence Act provides rules concerning the entry, stay, exit and employment of foreigners in general. An asylum seeker is allowed to stay in Germany while he/she is seeking protection from political persecution or seeking international protection, which includes refugee status and subsidiary protection, or if the responsible German agency declares a deportation prohibition. If the application is denied, the applicant has a duty to leave Germany or will be subject to deportation proceedings.\textsuperscript{80}

As discussed before, political asylum is granted under Article 16A of the German Basic Law, while refugee status can be granted for all those reasons as well as a broad range of other humanitarian reasons. In accordance with the EU directives, applicants who are awarded either political asylum or refugee status receive a three-year residence permit (Aufenthaltserlaubnis), after which a settlement permit (Niederlassungserlaubnis) with no time limit is issued if the Federal Office for Migration and Refugees (BAMF) does not object.\textsuperscript{81}

\textsuperscript{80}Ibid.
\textsuperscript{81}Ibid.
Subsidiary protection is codified in Section 4, Paragraph 1 of the Asylum Act and is awarded to applicants who can prove that they are threatened with serious harm in their country of origin. In accordance with CEAS, “serious harm” is defined as the “imposition or application of capital punishment, torture or inhuman or degrading punishment or treatment, or a serious individual threat to the life or integrity of a civilian as a result of indiscriminate violence in an international or internal armed conflict.” Applicants who are awarded with subsidiary protection are initially granted a residence permit for one year, which can be extended for two additional years. Moreover, the government may not deport the applicant if there is a prohibition against deportation according to Section 60, Paragraphs 5 or 7 of the Residence Act. Deportation is prohibited according to Paragraph 5 if it is inadmissible under the terms of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (ECHR). Applicants may not be deported to a country in which he/she faces a substantial and concrete danger to his or her life, limb or liberty. Asylum seekers often invoke this provision when there is a risk of a substantial deterioration of health after the return to their country of origin.

A refugee can either register as an asylum-seeker at the border or from inside the country. The authorities then direct him/her to the closest reception facility, where the staff issue a certification of registration as an asylum seeker that includes personal details and a photo. The authorities then determine which German state is responsible for processing the asylum application. If the reception center in which the asylum seeker is registered is not the one that is responsible for handling his/her case, the seeker must travel to the responsible center. Asylum

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83 “Refugee Law and Policy: Germany.”
seekers who enter Germany from safe third countries have no right to asylum and are removed to the country they came from. The safe third countries include other EU countries, Norway and Switzerland.\textsuperscript{84}

At certain airports that have the capacity, asylum seekers who enter by air are subject to the “airport procedure.” If the asylum seeker entered without proper papers or with false or expired papers, or via a safe country of origin, the asylum procedure is carried out directly in the airport transit area. Safe countries of origin are all EU countries, Albania, Bosnia and Herzegovina, Ghana, Kosovo, Macedonia, Montenegro, Senegal, and Serbia. While the application is pending, the asylum seeker must stay in the airport transit area and cannot enter Germany. The BAMF must decide within two days whether the asylum application is justified or not. If the application is denied, the applicant will be denied entry into Germany and threatened with deportation if he/she enters Germany illegally. The applicant has the right to an attorney and can appeal the decision within three days. A judge will issue a ruling in an emergency proceeding within fourteen days.\textsuperscript{85}

In order to determine whether a person is entitled to refugee status, an in-person interview is conducted and country-specific resources and experts are consulted. Every applicant over the age of fourteen must submit to measures establishing his/her identity and provide fingerprints, which are cross-checked with national and European databases and the Visa Information System. Refugees are generally housed in reception facilities, which provide them with essential items like food, housing, heat, clothing, health care, and household items in kind.

\textsuperscript{84} Ibid.
\textsuperscript{85} Ibid.
or in the form of vouchers, whereas persons who are housed outside of reception facilities primarily receive cash allowances to purchase essential items.\(^{86}\)

While an asylum application is pending, applicants are not allowed to leave the area of the reception facility without permission. If a refugee has no independent means of subsistence, a residence permit may also be restricted territorially. Article 34 of the 1951 UN Convention on Refugees mandates that Contracting States must “make every effort to expedite naturalization proceedings.” The Federal Ministry of the Interior has interpreted this provision to mean that a period of six years of legal residence in Germany is sufficient for recognized refugees to gain citizenship, instead of the regular eight-years stipulation for a foreigner. Additionally, the Federal Administrative Court has concluded that due to the existence of Article 34 and the fact that German Basic Law awards asylum seekers special protection, discretionary naturalization is the appropriate naturalization category since the naturalization process for refugees is in public interest.\(^{87,88}\)

Several amendments to current laws have been adopted in recent months due to the refugee crisis. On October 24, 2015, the Act on the Acceleration of Asylum Procedures entered force. The Act amended several laws, thereby accelerating the asylum process, substituting in-kind benefits for cash benefits, reducing the financial burden on the German states and municipalities, reforming integration policies for refugees, and designating Albania, Kosovo, and

\(^{86}\) Ibid.

\(^{87}\) In Germany, there are two categories of naturalization: naturalization by entitlement and discretionary naturalization. Under the latter type, if one of the requirements for naturalization is not fulfilled, a foreigner may still be granted citizenship if the government agency processing the application determines that certain minimum requirements have been met and the naturalization is in the public interest. In the case of refugees, the discretion of the agency is reduced and the naturalization process is presumed to be in public interest.

\(^{88}\) Ibid.
Montenegro as safe countries of origin. This amendment will allow authorities to function efficiently in the face of increasing applications, by reallocating more resources and labor to them and introducing stricter laws regarding safe countries of origin.

The Bundestag also instituted acts that would improve the quality of life for not only the awardee of international protection, but also for the German people. On November 1, 2015, the Act to Improve the Housing, Care, and Treatment of Foreign Minors and Adolescents entered into force in order to improve the situation of young unaccompanied refugees and provide them with appropriate care. On August 1, 2015, the Act to Redefine the Right to Stay and the Termination of Residence entered effect. It amended the Residence Act by ordering a ban on entry and residence for applicants from safe countries of residence and in case of repeat follow-up applications. Additionally, the Act grants a residence permit to persons who can prove that they are well-integrated after a period of eight years and to well-integrated minors after four years.

Lastly, on February 3, 2016, the German government agreed on a set of stricter asylum measures, labeled “Asylum Package II,” which was passed in the German Bundestag in early 2016. This set of regulations will accelerate the asylum application process; suspend family reunification for refugees with subsidiary protection status for a period of 2 years; decrease asylum seeker’s monthly cash benefits; facilitate deportation; establish a new Federal Police unit to help procure replacement documents; improve safety of refugee minors; and designate Algeria, Morocco, and Tunisia as safe countries of origin.

89 Ibid.
90 Ibid.
92 “Refugee Law and Policy: Germany.”
Germany asylum law therefore follows the structure laid out by the UN Convention and the EU policies to determine the different categories of international protection that should be offered by the country, the type of asylum seekers who qualify, and the benefits that are offered for each. Recent changes to asylum law is not only aimed at decreasing the workload of the overseeing agencies in light of the refugee crisis, but also aims to improve quality of life for the successful asylum seekers and the German population by focusing on their integration into society and the provision of stricter law and order in the country. A stronger law and order body will help lessen discord and increase trust in society, thereby leading to greater harmony.

**French Refugee & Asylum Law:**

France has a long tradition of offering asylum to foreign refugees. One of the constitutions drafted during the French revolution - the Constitution of 1793 – provided that France should “give asylum to foreigners who have been banished from their homeland for the cause of liberty,” and should “refuse [asylum] to tyrants.” While the Constitution of 1793 was never actually implemented, French asylum law today gains authority from the preamble to the French Constitution of 1946, which was incorporated into the current constitution by reference. It declares that “[a]ny man persecuted in virtue of his actions in favor of liberty may claim the right of asylum upon the territories of the Republic.” In 1993, the Constitutional Council, the French high court with jurisdiction over questions of constitutionality, confirmed that asylum is a constitutional right for persons who qualify for it, based on this constitutional provision. Consequently, it ruled that asylum applicants have a general right to stay in France until a decision has been reached on their asylum request, and that barring any threat to public order, all persons who qualify for asylum must be allowed to stay in France.\(^9^3\)

French asylum law has mostly been codified in the Code of Entry and Residence of Foreigners and of the Right of Asylum (CESEDA), and is influenced by international and European law. Of particular importance are the UN Convention, and the EU Regulation of June 26, 2013, i.e. the Dublin Regulation. The French asylum law has undergone many changes, especially in response to the challenges posed by the current refugee crisis. In particular, French legislators enacted a law in July 2015 that reformed several aspects of asylum law to ensure that all those eligible for asylum receive a more dignified response through lower application processing times and a directed housing system. The bill also made the removal of rejected asylum seekers a priority. This section describes French asylum law as it currently stands after the implementation of this 2015 law.

There are two basic types of asylum protection in France, that of the refugee status and subsidiary protection. Refugee status is assigned to “any person persecuted for his/her action in favor of liberty,” as well as any person over whom the United Nations High Commission for Refugees (UNHCR) has competence under Articles 6 and 7 of its statute, and any person who is covered by Article 1 of the UN Convention. To the criteria for persecution listed in the Convention, French law adds gender and sexual orientation as factors to consider as well. The persecution feared by the asylum seeker does not necessarily have to come from his/her country’s government, but can also be at the hands of a non-state actor, if the country’s

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94 The Dublin Regulation establishes the Member State responsible for the examination of the asylum application. The criteria for establishing responsibility in hierarchical order, range from family considerations, to recent possession of visa or residence permit in a Member State, to whether the applicant has entered the EU regularly. (“Country responsible for asylum application (Dublin),” Migration and Home Affairs, European Commission, last updated on April 17, 2017, https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants_en.)
95 “Refugee Law and Policy: France.”
97 “Refugee Law and Policy: France.”
government is unable or unwilling to protect the asylum seeker. A person may be denied refugee status, or such status may be revoked, if (a) there is serious reason to believe that his/her presence in France presents a grave threat to the security of the state; or (b) he/she was found guilty of an act of terrorism or of a crime punished by more than ten years of incarceration, and his/her presence in France presents a grave threat to the society.  

In accordance with the CEAS, France offers subsidiary protection in addition to refugee protection. Subsidiary protection is given to any person who does not fulfill the conditions to be recognized as a refugee, but for whom there are serious and known reasons to believe that he/she is in real danger of suffering the following violations in his/her country: (a) execution, (b) torture or inhumane or degrading treatment, or (c) if the person is a civilian, a serious and individual threat to his/her life or person by reasons of indiscriminate violence in situations of international or internal armed conflict. As with refugees, protection can be denied, however the criteria are different. Subsidiary protection may be denied to a person when there are serious reasons to believe that (a) he/she has committed a crime against peace, a war crime, or a crime against humanity; (b) he/she has committed a serious crime; (c) he/she is guilty of acts contrary to the objectives and principles of the United Nations; or (d) his/her activity on French territory presents a grave threat to public order, public security, or the security of the state. Additionally, protection may be denied if there is credible reason to believe that he/she has committed a crime that would be punishable by prison had it been committed in France, and that he/she only left his/her country of origin to escape punishment for that crime.  

Refugees and beneficiaries of subsidiary protection have the right to live and work in France, and to bring their spouse and children. Following the spirit of the European directives,

98 Ibid.
99 Ibid.
those granted refugee status can apply for naturalization immediately. Both refugees and beneficiaries of subsidiary protection have the right to obtain travel documents from the French government, and have similar rights to social benefits as French citizens do, but only have access to certain special aid programs during the time that their application for asylum is being processed. They are also required to attend some civic training programs and, if necessary, language classes, to help with assimilation.\textsuperscript{100}

Applicants for asylum must be either on French territory or at a French border crossing point to request asylum. Asylum seekers may also request a special visa for the purpose of asylum from a French embassy or consulate before coming to France. Those with the visa must follow the same procedure as other asylum seekers once in France, but are authorized to work while his/her application for asylum is being processed and evaluated, unlike other applicants who are kept in a “waiting zone” for a few days while the Ministry of Interior decides whether they should be allowed inside the country or not.\textsuperscript{101}

Once allowed into France, asylum seekers must register at a local prefecture that verifies whether France would be responsible for protecting the asylum seeker under European Union rules. If no other country is found to be responsible for protecting the asylum seeker under the Dublin Regulation, the prefectural services give the applicant a document certifying that he/she is registered as an asylum seeker, as well as information on the application process, the applicant’s rights and obligations, assistance that he/she is entitled to, and any local organizations that help asylum seekers. The next steps of the application process include sending

\textsuperscript{100} Ibid.
\textsuperscript{101} Ibid.
the application to the French Office for the Protection of Refugees and Stateless Persons (OFPRA), which determines who is eligible for refugee status or subsidiary protection.\textsuperscript{102}

The OFPRA must reach a decision within six months, though in certain situations it may take longer. They evaluate all relevant evidence, and usually conduct an interview of the applicant as part of its investigation. The OFPRA’s decisions may be appealed to the National Court for Asylum Law (CNDA) within one month of being notified of the decision. They may either (a) deny the applicant’s appeal, (b) reverse the OFPRA’s decision and grant asylum to the applicant, or (c) quash the OFPRA’s decision and send the case back to it for further investigation.\textsuperscript{103} In short, like Germany, stipulations from the UN Convention, as well as the CEAS provide the basis for the way that France organizes its asylum categories, carries out administration and review of asylum applications, and approaches assimilation.

To conclude, France and Germany have similar asylum laws in their countries, especially in terms of their definitions of those who qualify as refugees and receivers of subsidiary protection, their application decision process, and the benefits that they provide to recipients of international protection. This is a logical outcome given that both laws are centered on the framework provided by the UN Convention and the CEAS. However, based on data collected on the number of refugees in the countries and the number of asylum applications that were received every year, it is evident that both countries differ in their response to the refugee crisis despite similar commitments at the international level. Since the actual number of refugees present in the country is a measure of the policy stance of the government, the next chapter delves deeper into the reasons for these differences through a regression that uses Putnam’s two-level game theory as its basis.

\textsuperscript{102} Ibid.
\textsuperscript{103} Ibid.
IV. THE REGRESSION:

The previous chapter illustrated that France and Germany face the same international commitments regarding refugees that resulted in similar laws being implemented in both countries. However, their refugee trends and situations differ. Since this is a result of government implementation of laws that are already in place, and government implementation is a result of the negotiation of international pressures with domestic sentiment, this chapter will analyze certain measures of the two-level game in both the countries. In order to do so, I will run regressions that include three measures of domestic variables, which capture public sentiment on foreigners and refugees and the generosity of the government in providing social welfare, and two measures of international pressures that are related to the refugee crisis. A discussion of the results, focused on explaining the differences in the refugee situation in France and Germany, will follow the regression.

Methodological Considerations:

This section will analyze the refugee situation in France and Germany from 1990 to 2016 using separate time series regressions that will give an insight into the two-level games in the two countries, and a panel data regression that will use data from both countries observed across the given time-period to produce a combined result. The rationale behind this course of action is that the results from the time series regression will help shed more light about the panel data results. The time series regression is a sequence of the dependent and independent variables indexed by time, while a panel data combines the data from both countries and sequences their dependent and independent variables by time, thus revealing more about the interaction between the two games in both the countries.
The dependent variable is the scaled refugee population in the two countries to the total population, and the independent variables include measures of domestic and international pressures on the governments of the two countries. The following is the final list of independent variables in the regression: a linear time trend (year) that accounts for the change in the proportion of refugees due to the passage of time holding all other factors fixed,\textsuperscript{104} the proportion of votes that anti-immigrant parties received in the federal elections (fed_votes), the proportion of total seats that anti-immigrant parties received in regional elections across the country (reg_seats),\textsuperscript{105} the amount of government spending on the social safety net as a percentage of GDP (govt_ssn), the number of asylum applications received by the country scaled to the total world flow of refugees during that year (asy_flow), and the voter turnout in the country for EU elections expressed in percentage terms (eu_turnout). The summary statistics and correlation matrix for the variables are included in the Appendix.

The time series regression for both countries takes the following form:

\[ ref_{pop_t} = \beta_0 + \beta_1 year_t + \beta_2 fed_votes_t + \beta_3 reg_seats_t + \beta_4 govt_ssn_t + \beta_5 asy_flow_t + \beta_6 eu_turnout_t + u_t, \]

where \( t \) refers to the year-specific entry for the variable, and \( u_t \) is the error term in time-period \( t \) that represents factors that affect the scaled population of refugees in the country other than the variables included in the regression. I ran a fixed effects panel data regression, that controls for omitted variables that differ between the two countries but stay constant over time, after running a Hausman test. The Hausman test tests the null hypothesis that the coefficients estimated by the


\textsuperscript{105} I used the proportion of seats acquired by anti-immigrant parties in my regression as a way of weighting the share held by the parties by the total number of seats in the state, while calculating the national figures.
efficient random effects estimator are the same as the coefficients estimated by the consistent fixed effects estimator. If the Pr(Chi^2) is larger than 0.05, then we fail to reject the null hypothesis that both these coefficients are the same, and it doesn’t matter which regression is used. However, my Pr(Chi^2) was less than 0.05, and therefore, I rejected the null hypothesis and used the fixed effects regression. The equation for the panel data was:

\[
ref\_pop_{it} = \beta_1 \text{year}_{it} + \beta_2 \text{fed\_votes}_{it} + \beta_3 \text{reg\_seats}_{it} + \beta_4 \text{govt\_ssn}_{it} + \beta_5 \text{asy\_flow}_{it} + \beta_6 \text{eu\_turnout}_{it} + a_i + u_{it},
\]

where \(i\) is equal to 1 for France and 2 for Germany, \(a_i\) is the country-specific intercept, and \(u_{it}\) is the error term for country \(i\) in year \(t\).

**The Indicators and their Significance:**

**Voting Dynamics:**

The percentage of votes that anti-immigrant parties received at the federal level and the proportion of seats that they won at the state level aim to measure public sentiments in France and Germany regarding refugees and foreigners. The theoretical foundation for using the two variables stems from the notion that political institutions are responsive to citizens’ preferences. In representative democracies, it is the responsibility of the government officials to carry out the desires of their constituents; those who wish to remain in office must consider the views of those who elected them and therefore, must pay attention to the trends in public opinion. One way of determining views of those that they represent is to study the election of

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office-holders. While many considerations factor into the vote decision, candidates who are successful in their bids for office can surmise with some confidence that their constituents support their positions. Therefore, the popularity of anti-immigrant parties in elections gives us an insight into the temperament of the citizens and to some extent, informs us of the trends we can expect government decisions to follow.

Despite the fact that refugee laws are national decisions and not state decisions, it is still important to look at the power of anti-immigrant parties at the state level since they provide more accurate information about public sentiment on issues as they are closer to the ground. Parties competing at the state level are “responsive to local needs…[and] indeed, the local level is often where issues that subsequently become national policy first appear.” Not only do they provide better information about the prevailing mood on the ground, but it is common for candidates who run for the higher offices to start their careers from the regional organizations of their party. Hence, if successful, these candidates can help determine the policy direction of the party, thereby leading to what was earlier a regional phenomenon, influencing national politics.

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While both are representative democracies, Germany and France have differing electoral systems. In its federal elections to the Bundestag that are held every four years, Germany uses a personalized proportional voting system with two votes: the first vote is for a direct candidate in a district and the second vote is for a party. There are 299 electoral districts, and a party must receive at least 5 percent of the second votes or three direct mandates to be represented in the Bundestag. In my regression, I looked at the second votes received by anti-immigrant parties because they were the votes that were cast in support of the party and its platform. Additionally, I included the federal vote share instead of the seat share because the 5 percent obstacle would have led to biased numbers in Germany if I had looked at the latter. In fact, for the time-period in question, anti-immigrant parties did not hold any seats in the Bundestag. In 2013, the election law in the country was amended to remedy the problem of overhang seats that occurred when a party’s first votes exceeded the proportion of seats that they would have been allocated on the basis of their second votes. According to the current law, if a situation of overhang seats now occurs, to ensure that each party receives seats proportionate to its share at the federal level, additional balance seats are awarded. At the state level, elections are conducted in the 16 German states under various rules set by the states themselves, and the dates of elections vary from state to state. While searching for data on the results of the different state elections, I found that the election period was generally four to five years.

I collected data from four political parties in Germany whose stance against foreign immigrants and refugees comprised a big part of their party platform: National Democratic Party

113 Ibid.
(NPD), German People’s Union (DVU), The Republicans (REP) and Alternative for Germany (AfD). The NPD, which is Germany’s oldest national party that has been in existence since 1945, is one of the few patriotic organizations not yet banned by the government. The party platform is opposed to migrants and asylum-seekers and incites Islamophobia, in particular, amongst its supporters. The DVU’s appeal was to those Germans, “particularly young, male, rural, less educated, blue-collar workers who fear[ed] for their economic future and regard[ed] the large pool of asylum-seekers as competitors for housing, social programs, and jobs.” In 2010, the NPD and DVU attempted to merge, but a legal challenge by a group of state-level DVU organizations successfully blocked the move. In similar vein, The Republicans call for restrictions on foreign residents and an end to immigration, among other demands. In the late 20th century, the rightist REP and DVU were the most visible of Germany’s fringe parties, but had been unsuccessful in surmounting the 5 percent barrier at national elections due to their tiny memberships. The AfD is a new force in German politics, and is “first and foremost an anti-immigration party…[whose] successes in local elections last year has been largely put down to public anger over Angela Merkel’s welcoming policy towards refugees.” The party emphasizes the primacy of German language and traditional German culture, and rejects the idea that Islam

118 Ibid.
is a part of German society.\textsuperscript{119} While none of the parties received any seats in the national parliament, they have experienced several successes in certain states over the years.\textsuperscript{120,121,122}

For France, 577 representatives or deputies are elected to the legislative body by direct universal suffrage for five-year terms through a two-round voting system. They are elected to discrete, single-seat legislative districts, and the number of legislative districts in each département, which is the main administrative subdivision of French territory, varies according to the census population. French citizens residing abroad are also represented in the Parliament by eleven deputies.\textsuperscript{123} I included the data from the first-round votes in my regression since they provide a more accurate representation of anti-immigrant public opinion, when voters are faced with the full set of alternate candidate choices.

At the start of 2016, the number of regions in metropolitan France – which is continental France including the island of Corsica – decreased from 22 to 13 regions, resulting in a total of 18 French regions: 13 in European France and 5 overseas regions. Each region has its regional council, which is presided by a regional president and includes a local administration too.\textsuperscript{124} The members of the council depend on the population of the region and are elected approximately every five years. Regional councils are responsible for local affairs, including economic

development, transportation, public education, sustainable development and planning, urban zoning and land management, and support of small and medium-sized businesses. They also share responsibility for tourism, culture and sports with internal departments in the region. The elections are conducted in two rounds like the legislative elections; any list/party exceeding 50 percent of the votes in the first round will be declared the winner and is automatically allocated 25 percent of the seats, with the remaining 75 percent of the seats divided amongst lists who received at least 5 percent of the votes. If no list/party reaches 50 percent of the votes, then those who obtained at least 10 percent will be included in the second-round elections, and the seats will be allocated amongst the winners in the same way as in the first round. List/parties that won at least 5-10 percent of the votes in the first round can merge and form a new list/party in the second round.125

The most prominent anti-immigration political party in France is the National Front (FN), whose party platform is associated with French nationalism, xenophobia, anti-Semitism and a call for control on immigration. In its first decade of existence, FN dwelt on the fringes of French political life. However, it has grown in popularity since the 1990s. In 1995, Jean-Marie Le Pen, the leader of the National Front from 1972 to 2011, captured more than 15 percent of the vote in the presidential elections, and the party had major successes in mayoral elections in several regions. In 2011, Marine Le Pen assumed leadership from her father and distanced herself from the extreme views that had been traditionally associated with her father and FN. However, she continued to present immigration, particularly from Islamic countries, as a threat to France.126

In recent years, FN has witnessed major strides in regional and national-level elections. In the 2012 presidential elections, Le Pen finished third behind Nicolas Sarkozy and François Hollande, winning 18 percent of the vote. However, she did not earn a place in the second-round elections. In May 2014, the party rode a wave of Euroskepticism\textsuperscript{127} and finished first in elections for the European Parliament by capturing approximately one-fourth of the votes. In the December 2015 regional elections, FN performed well in the first round, but lost the regional presidencies because the Socialist Party strategically withdrew poorly polling candidates ahead of the second round to ensure that anti-FN votes were not split.\textsuperscript{128} While collecting data, I created three separate variables for anti-immigrant parties in France based on different definitions of “anti-immigrant”: the first solely included National Front data, the second definition was slightly broader and included the category of “Miscellaneous Extreme Right-wing (DivED),” and the third definition was the broadest and contained numbers from “Miscellaneous Right-wing (DivD)” victories too. However, there were no significant changes in the results from the regression by using different definitions. Thus, I only included the narrowest definition of “anti-immigrant” in my regressions, i.e. only FN data.\textsuperscript{129,130,131}

**Government Spending:**

The third variable included in the regression to measure domestic temperament is government spending on the social safety net to determine the generosity of the country.

\textsuperscript{127} “Euroskepticism” refers to a political doctrine that advocates disengagement from the EU. (Michael Ray, “Euroskepticism,” *Encyclopaedia Britannica*, last updated on June 24, 2016, https://www.britannica.com/topic/Euroskepticism.)

\textsuperscript{128} Ray, “National Front.”


Compared to the United States, European social programs are more generous and reach a larger share of citizens.\textsuperscript{132} Literature on the relationship of welfare institutions and migration suggests that there should be a negative correlation between this variable and the number of refugees in each of the countries due to competition between citizens with immigrants for scarce resources, exacerbated by a sense of conflict that is motivated by perceived differences in race, religion and ethnicity.\textsuperscript{133} However, a study of the forced migration patterns in seventeen Organisation for Economic Cooperation and Development (OECD) countries between 1980 and 2003 suggests that “comprehensive welfare state institutions [positively] correlate with the solidaristic act of accepting forced migrants.” These results can be understood using the theoretical framework that institutions shape and influence norms, values and trust in the society. The study argues that comprehensive welfare state institutions are beneficial for social solidarity since they lessen conflicts over redistribution of resources by reducing the separation between the “‘us’ (the taxpayers) and ‘them’ (the receivers of welfare, the poor).” Consequently, welfare institutions promote a generalized trust by promoting a sense of shared fate in society and reducing inequality, and illustrate that the state is willing and able to commit and implement heavy tasks that are related to social solidarity. Thus, the study concludes, welfare institutions promote the view that “the state both should and can ‘administer solidarity’ on a large-scale basis,” thereby


increasing likelihood of welfare states in implementing less restrictive policies regarding forced migrants – asylum seekers and refugees.\textsuperscript{134}

I collected data on government spending from the OECD website\textsuperscript{135} and summed government spending on Housing and Community Amenities, Health, Education and Social Protection to derive numbers on the social safety net spending in both France and Germany from 1995-2015, as a percentage of the respective country’s GDP. Analysis of the data suggests that France is more generous with its social programs than is Germany, with its social safety net ranging from 34 to 40 percent of the GDP, compared to the mere 30 to 33 percent in Germany. However, both countries experienced increasing trends in government spending on welfare and social safety nets over the 20 years that the data spanned.

\textbf{International Pressures:}

The remaining two variables in the regression relate to international pressures on the governments of France and Germany. The proportion of the total flow of refugees that the country received in the form of asylum applications is illustrative of the pressure on the government to fulfil their international obligation as signatories of two international refugee conventions. I used the asylum application and total population data from Chapter 1 to create this variable. The second variable measures voter participation in the two countries for European Union (EU) Parliament elections. The rationale behind including this variable is that if voter participation is high in the two countries, then the French and German people care about their involvement in the EU, which will make them more likely to meet their international obligations. Voter turnout data suggests that voter turnout is higher in Germany, ranging from 43 percent to

\textsuperscript{134} Ibid, 219-220 & 227.

62 percent. In the 1990s, voter participation was at a high of 62 percent and kept decreasing until the 2004 EU elections where it hit an all-time low of 43 percent. In the 2014 elections, voter participation increased to 48 percent. In France, turnout ranged from 41 percent to 53 percent. In the 1994 elections, voter turnout peaked at 53 percent, and then kept falling until the 2014 EU elections when it rose to 42 percent.\footnote{Data on EU voter turnout: “Results of the 2014 European elections,” European Parliament, last accessed on April 9, 2017, http://www.europarl.europa.eu/elections2014-results/en/turnout.html.}

**Analysis of the Regression Results:**

The following section will discuss the results from both time series regressions and the panel data regression.

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**Table 1. Time Series and Panel Data Regression Results for France and Germany**

*Standard errors in parentheses
***\ p<0.01, **\ p<0.05, *\ p<0.1*
The time series regression from France yielded government spending on the social safety net and the voter turnout in EU elections as practical variables in predicting the refugee population in France relative to the total population.\footnote{A test for serial correlation proved no serial correlation in the model.} Congruent with the study on the impact of welfare state institutions on government decisions with regards to forced migration, government spending is positively related to the refugee population in France in this regression. The variable is significant at the 1 percent significance level and states that when government spending on social welfare increases by 1 percent of the GDP, the refugee population will increase by 2.4 percent of the total population. Thus, welfare state institutions can be viewed as a political commitment to “protect the well-being of individuals…[and] the strength of this commitment depends on…the generosity of the welfare state.”\footnote{Boräng, “Large-scale solidarity?,” 219.}

Additionally, voter turnout in France during the EU Parliament elections is also significant, but at the 5 percent significance level, and implies that a 1 percent increase in voter turnout increases refugee population by 0.6 percent of the French population. This is also in line with our previous hypothesis since higher participation in EU elections can be used as a measure of greater concern for the country’s international involvements. A joint significance test for both the domestic election variables failed to yield a significant p-value, leading to the conclusion that the population value of the domestic election variables jointly is equal to zero, or is insignificant. Hence, our measure of domestic public opinion failed to lead to conclusive evidence in France.

For Germany, the linear time trend, federal vote share of anti-immigrant parties and the scaled asylum applications yielded significant coefficients.\footnote{Again, there was no evidence of serial correlation in the model.} The linear time trend is negatively correlated to the dependent variable, implying that with each successive year, the number of
refugees fell by 0.05 percent of the total population. This phenomenon can be attributed to the Balkan refugees who were leaving Germany throughout the 1990s, and whose effects can still be felt today as evidenced in the graph explaining the current refugee situation in Germany in Chapter 1. Similarly, the positive coefficient of the scaled asylum applications on the proportion of refugees in the country can be explained by the two peaks in the number of asylum applications received by Germany and the subsequent increases in the refugee population, also seen in the first chapter.

The federal vote variable in the time series regression states that as votes for the German anti-immigrant parties increases by 1 percent, the refugee population decreases by 12.9 percent of the total population. The significance of the federal level elections over the regional elections is logical given that refugee and immigration law is a federal issue in Germany due to the distribution of power between the federal and state governments. Thus, even though no anti-immigrant party has held any seats in the federal level government during the time-period in question, having failed to clear the 5 percent hurdle, support for them still influences decision making as incumbent parties have an interest in remaining in office. This is witnessed in Angela Merkel’s recent shift to the right, the most recent of which has been support for the ban of full-face veils. Other examples include increased border patrol, decreased social benefits for refugees, deported asylum seekers and a deal with Turkey to stem the flow of refugees arriving in Europe.140

The fixed effects panel data regression resulted in significant coefficients for the linear time trend and government spending on the social safety net at the 1 percent significance level.

The proportion of seats held by anti-immigrant parties for both countries was significant at the 10 percent level; this is a marked change from the time series regressions because this variable wasn’t significant in either of the previous individual regressions. The time trend in the panel data regression has a negative coefficient and suggests that with the passage of time, the proportion of refugees in France and Germany will decrease by 0.04 percent of the total population on average. Since the time trend in the French time series regression was positively correlated to the dependent variable, it can be surmised that the time trend in the panel data is influenced more strongly by Germany’s data.

The panel data variable measuring government spending is positively correlated to the proportion of refugees in both the countries and implies that an increase of government spending by 1 percent of the GDP, leads to an increase in the proportion of refugees by 7.49 percent of the total population in both countries on average. Again, this result is influenced more by one country than the other: the government spending variable in Germany was negative while it was positive for France, and therefore, suggests that the French data overpowered German data in the regression. While some can argue that the negative correlation of the variable in Germany disproves the theory that welfare states are more generous to refugees than non-welfare states, the variable’s coefficient in Germany is not significant, meaning that there is a less than 90 percent chance that the true population value of the coefficient is not equal to zero. Thus, no conclusions should be drawn based on this result.

The significance of the regional elections at the 10 percent level in this regression raises questions since it did not show any tendencies for significance in previous regressions. My conjecture is that when the data for both countries was aggregated, public opinion trends in the voting patterns at the regional levels showed more correlation with the level of refugees in the
countries, since it is closer to the ground. In addition to the significance of the proportion of regional seats held by anti-immigrant parties, a joint F-test for both the domestic elections variables produced a F-statistic of 4.16. A F-statistic of this magnitude means that the null hypothesis that the two variables are jointly insignificant, can be rejected, and therefore, we can conclude that the two variables are important in determining the level of refugees in the countries relative to the total population. The coefficients of the two variables are negative, which is in line with the expectations put forth earlier in the chapter.

In summary, at the country-specific level, the time series regressions suggest that a combination of domestic considerations and international pressures influence the refugee levels in both countries. In France, the welfare state institution and people’s commitment to the country’s international involvement seem to play a greater role, while in Germany, the time trend, public opinion at the federal level and the proportion of asylum seekers headed towards Germany were influential. The results of the panel data regression add a layer of depth to these results and yield significant results for the measures of domestic pressure that I included in the regressions. Thus, I conclude that the differences in domestic pressures between France and Germany play an important role in explaining why their current refugee realities are different. The next chapter will apply these findings to understand why the German public is currently more welcoming towards refugees than the French, and will discuss the implications of the trends suggested by the data for the future of the two countries and the EU.
V. CONCLUSION:

This study sought to analyze the domestic and international pressures faced by the French and German governments to better understand the policies pursued by them with regards to refugees. In order to do so, Chapter 1 discussed Robert Putnam’s two-level game theory that formed the foundation of my analysis, and explored the current refugee situation and pressures faced by France and Germany. Chapter 2 illustrated that both countries had incentives to take on a leadership role in the current refugee crisis due to their unique historical experiences and the central role that they played in the peaceful enterprise of European integration. Chapter 3 examined the constraints placed on France and Germany by way of their international commitments to refugees, and theorized that since the pressures facing them were similar but their responses were not, the two countries must differ in their approach because of differences at the domestic level. Chapter 4 tested the hypothesis by conducting individual time series regressions, as well as a panel data regression. Since this paper was motivated by the Refugee Welcome Index that was created by Amnesty International after a survey of 27 countries and found that the German public was more welcoming towards refugees than the French, the current section will now interpret the results of the regression to explain Amnesty International’s findings. Additionally, I will explore the significance of the trends in the data and their implications for the future.

Review of the Regression and its Main Findings:

The previous chapter concluded that domestic pressures included in the regression exerted instrumental influence on the proportion of refugees in France and Germany relative to the total population in the countries. This result sheds light on why the refugee situations in the two countries differ despite facing similar pressures at the international level. The variables in
my regression aimed to capture public sentiment, government structure and the influence of the unique histories of the two countries: the election variables, namely the federal vote share and regional seat share of anti-immigrant parties, attempted to capture public xenophobia, while the voter turnout in European Union (EU) elections sought sentiment on the importance of the EU – and therefore of the country’s commitments at the international levels by proxy. Government generosity was measured by the spending on social safety nets, while government structure was evidenced in the election results since they determine if anti-immigrant sentiments translate into policy and impact the number of refugees in the country. The histories and individual characteristics of the two countries were accounted for in the proportion of asylum seekers to the overall world flow of refugees since decisions by asylum seekers would include a combination of the following considerations: is there a personal and cultural connection with the country; is the country more welcoming to foreigners and sympathetic to their plight; is the journey long, perilous and difficult?\textsuperscript{141}

At a country specific level, Germany’s time series regression revealed that public opinion combined with government structure and personal history played an important role in determining the country’s refugee levels: as a representative democracy, even though anti-immigrant parties failed to gain seats in the parliament – the body that is tasked with determining refugee and asylum policy – growing support for far right parties decreased refugee levels in conjunction with a decrease in the numbers since the end of the Balkan wars. Simultaneous with

\textsuperscript{141} This aspect can be investigated further to see if the composition of the waves of refugees have the same effects on the country’s refugee populations. This can be done by splitting the \textit{asy\_flow} variable into two: one that measures European asylum seekers over the total flow, and the other that measures the scaled non-European asylum seekers. This approach will give us more insight into whether Germany’s history and ethnic composition caused it to take more refugees during the Balkan wars than now, and whether France is appropriately responding to refugee requests by people from its former colonies. However, since data on the nationality of asylum seekers in France and Germany was not available, I could not pursue this approach readily. This is a scope for further study.
the decrease, Angela Merkel’s vocal welcoming of refugees led to an increase in the number of scaled asylum applications in recent years that may explain the current increase in the refugee levels in Germany.

Meanwhile, in France, government generosity and public opinion about French international involvement were significant. As a bigger welfare state than Germany, government generosity yielded a significant positive coefficient in the country’s regression, as did the turnout for the EU Parliament elections. While it is interesting that variables measuring unique French characteristics were not significant, historical ties and geographical connections play a role in determining people’s perceptions about the continuing importance of the EU for their country. The EU has responded to the refugee crisis by increasing aid to countries that have been overwhelmed with refugees and putting its mechanisms at the disposal of the member states to help them navigate the crisis. Therefore, a vote in favor of the EU is a vote in favor of its humanitarian and civil protection response by proxy.

Relating Findings to the Refugee Welcome Index:

The regression in Chapter 4 not only helps us understand the differences in the current pressures facing French and German governments regarding the crisis, but also sheds light on public sentiment regarding the issue. The Refugee Welcome Index published by Amnesty International and discussed in the Introduction informs us that there is more resistance to refugees by the public in France than in Germany. These findings can be explained by analyzing the domestic variables from the regression. While both countries are experiencing an increase in support for anti-immigrant parties, as Charts 6 and 7 show, National Front (FN) has enjoyed a

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142 “Refugee crisis in Europe.”
143 These charts were created using the federal vote share and regional seat share data that I collected for the Regression in Chapter 4.
greater percentage of the votes at the federal level and seats at the regional level than anti-immigrant parties in Germany. This is because while both countries experienced the growth of far-right parties as, first, a radical phenomenon and as fringe parties, FN has enjoyed greater successes at the federal level in French politics than its German counterparts, who have been held back by failing to individually secure the 5 percent votes necessary to gain representation in the Bundestag.

FN’s beginnings are rooted in a protest vote that had very little grassroots presence or local organization. Voting for it was “taboo and utterly frowned upon:” its voters found it “inconceivable” to show their support for the party with neo-Nazi roots and anti-Semitic links outwardly for fear of being “attacked on all sides” when they did. However, it is now a national phenomenon, having made great strides in regional elections and securing its place as the “first party of France” after winning a quarter of the votes in the European Parliament elections.144 Meanwhile, in Germany, memories of the rise of Adolf Hitler following national success for a far-right party has resulted in far-right anti-immigrant parties having remained as fringe parties in the country’s politics, which has been solidly liberal since the reunification of Germany in 1990.145 However, the country’s politics seems to be at a turning point in its history, with the rapid rise of far-right Alternative for Germany (AfD) that has accomplished in less than four years what took other populist European parties, such as the FN in France, more than four decades to achieve. Despite its rapid rise, the party narrowly missed the 5 percent needed to enter the national parliament in the 2013 elections. Since no anti-immigrant party has been successful

145 Schwartz, “Germany’s Far-Right Rises Again.”
in securing a seat in the federal legislative body in Germany while the FN has established itself as a major competitor to France’s traditional political parties, anti-immigrant sentiment has had greater influence in the way it manifests in France than in Germany, both for the public and in politics.
Additionally, while government spending is a measure of the generosity of the government, group conflict theory provides answers as to why citizens of France and Germany will be opposed to letting in refugee populations even if it makes governments more welcoming towards forced migrants. This theory advocates that when resources are perceived to be scarce, regardless of whether they truly are, there is hostility between groups of people as they are seen to be fighting over the same scarce resources. Hence, when a government provides services to the general public, the beneficiaries of the services will not want to expand membership since the new members would be taking a piece of the existing pie if they join. This notion has been evidenced in refugee debates in Europe: in Germany, AfD supporters cite government support for refugees in the form of social benefits, including free shelter, food, medical services,

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approximately €216 to cover basic needs and an additional €143 a month in pocket money, as reasons for losing faith in Merkel’s refugee policy.\textsuperscript{147} Since France is a bigger welfare state than Germany, it is evident that there would be more resistance in the country to refugees than in Germany. This sentiment is strengthened by the fact that FN has been playing an active role in the politics of the country for a longer time.

\textbf{Wider Implications:}

Developments in the data indicate that anti-immigrant trends in both the countries are on the upward swing, suggesting that at some point in the future, France and Germany will no longer be a place of refuge for forced migrants. As Charts 6 and 7 illustrated, support for anti-immigrant parties in the countries are trending up, and polls for the 2017 elections in both countries predict further success for FN in France and AfD in Germany. In France, according to polls, Marine Le Pen, the leader of the FN, could best her left-wing and right-wing opponents to reach the final round of the 2017 presidential race. Her surging popularity has caused a lot of anxiousness amongst the mainstream parties, with the current Prime Minister, Manuel Valls, quoted as saying, “I fear for my country.”\textsuperscript{148}

Even though political pundits predict that Le Pen does not have enough support to become the President,\textsuperscript{149} her party could upset the new French president by making big gains in the parliamentary elections due to the “odd hybrid” nature of the French political system that is a mix between the presidential and parliamentary systems usually seen in Western democracies. “On one hand, the president is elected by popular vote – which makes them the nation’s true political leader. One the other hand, the prime minister selected by the president must be

\textsuperscript{147} Schwartz, “Germany’s Far Right Rises Again.”
\textsuperscript{148} Chrisafis, “Far-right Front National.”
\textsuperscript{149} Ibid.
supported by a majority in parliament.” Hence, when the parliament is in opposition to the president, “it reduces the head of state to a figurehead.” In those situations, the prime minister holds most of the executive powers, except for the governance of foreign policy and defense, which are part of the president’s constitutional powers.\textsuperscript{150} Through a strong showing in the parliamentary elections, Le Pen and the FN would be able to exert strong influence on the country’s asylum policy. Opinion polls in France predict that the Right will win between 266 and 292 seats, leaving the Left with 188-208 seats. The National Front is expected to secure between 58 and 64 seats,\textsuperscript{151} which is a lot more than the 2 seats that it currently holds in the National Assembly.\textsuperscript{152}

In Germany, several polls show AfD as the party to get the third-most votes in the Bundestag elections after the Christian Democratic Union/Christian Social Union (CDU/CSU) coalition and the Social Democratic Party (SPD), securing between 7 to 11 percent of the votes.\textsuperscript{153} Consequently, the 2017 elections in both countries will be a defining moment for the refugee crisis since predictions of strong showings for anti-immigrant parties could indicate the beginning of the end for refugees in Europe.

In addition to growing support for FN and AfD, the demographic of the supporters for the two parties also has important repercussions for the refugee issue. Overwhelming support for the parties have come from the younger population. Recent polls show that Le Pen enjoys 40 percent


\textsuperscript{152} “June 10-17, 2012 National Assembly Election Results – France Totals.”

support among French youths aged 18 to 24, and National Front’s youth wing has increased membership from 10,000 to 25,000 members in the last five years. The party’s young supporters cite disillusionment with mainstream politics, high unemployment especially amongst the youth, massive immigration, “globalization with no borders” and lost “French grandeur” as reasons for supporting the party. Political reporter, Oliver Beaumont, attributes this support to Le Pen’s attempt to change the party’s image after expelling her father: “Young supporters don’t remember the days when the National Front was widely seen as a pariah, fringe party run by Marine Le Pen’s father, Jean-Marie Le Pen...[who] was convicted several times for hate speech.”154

Similarly in Germany, AfD has been doing better amongst younger people than older people who tend to stick to the centrist CDU or the SPD.155 The two biggest factions of support for the party are people aged 30 to 65, who make up 25 percent of AfD voters, and people under 30.156 In addition to the reasons stated by FN supporters in France, AfD’s support stems from frustration at not being able to express love for their country openly without fear of being called a Nazi. “It’s time for Germans to be allowed to be proud of their country, just like all [other] people.” A supporter argues, “I don’t think that because of these 12 black years of history [referring to Nazi Germany] I should always have my head under the table. It cannot mean that three generations later, we don’t have the right to demonstrate against things, to have another opinion than the mainstream opinion.”157 While WWII guilt makes the country’s older

156 Schwartz, “Germany’s Far Right Rises Again.”
157 Ibid.
population more sympathetic to the plight of refugees, the younger generation, who didn’t live through these experiences, is frustrated by the constraints that the guilt places on their ability to be patriots.

The voter demographic is foretelling for the refugee crisis because the younger generation is a new force in the politics of the two countries. If they are voting in this manner now, they will be voting this way in the future too, thereby strengthening fears that the countries will be less welcoming to refugees in the future. Till date, traditional political parties have been able to quash radical claims by far-right parties – either through forming coalitions and withdrawing poorly polling candidates ahead of second-round elections in France,\(^{158}\) or by instituting a 5 percent hurdle to the Bundestag to ensure that only parties with significant national support can be represented in the German legislature. However, due to evidence of increasing domestic pressure, politicians may be rendered helpless in stopping the far-right’s rise and, as in the case of Merkel’s recent tough stances on immigration issues,\(^{159}\) will have to give in to the pressure to remain in power.

Following the predicted continued upswing of nationalist parties in two of EU’s anchor countries, the future of the supranational institution is called into question. The EU has always been under attack by nationalist elements in its member countries. “The European integration project was very popular among elites and citizens all the way up to the point when it changed its character…For much of the postwar period, integration meant economic integration, and most everyone was for it. Then when it changed to turn increasingly into a political project, such as when national sovereignty was being transferred from national capitals to Brussels, that’s when it


\(^{159}\) Schwartz, “Germany’s Far Right Rises Again.”
became controversial, especially among citizens.” With FN and AfD poised to make great strides in France and Germany respectively, the EU is on shaky grounds.

The EU was praised for bringing peace onto the continent that was once ravaged by war. However, to do so, leaders were required to integrate the economies and politics of its member countries, which resulted in the creation of the supranational institution that we are familiar with today. While integration promised economic benefits through the promotion of a common market and market competition, and facilitated cooperation that instilled peace in the region, changing definitions of security in contemporary international politics to include economic and demographic facets, threaten its continued relevance in light of recent events. The Greek debt crisis and the current refugee crisis formed “the perfect storm” for EU skeptics. The debt crisis brought economic issues to the forefront by demonstrating the extent to which weaker countries in Europe relied on stronger economies in the EU, and the economic uncertainty that followed integration, while the migration crisis raised questions about the future of population compositions, and underscored a need to protect borders and regulate the stream of migrants. FN and AfD have been successful in feeding on these feelings of uncertainty in order to attract their voter base: 78 percent of AfD voters feared globalization as opposed to 45 percent of

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161 Gabel, “European Union.”
162 Economic security emphasizes a strong association between economic prosperity and stability.
163 Demographic security highlights the impact of immigration on the age structure, labor force participation rate, retirement and social security system, ethnic composition, and identity and values of the populations.
165 “Recent evolution of German politics is window into fringe parties’ gains.”
Germans overall, while 76 percent of FN voters were wary about the effects of globalization too.\textsuperscript{166}

If current trends continue, theory explaining the integration of the EU now predicts its demise, if corrective action is not taken. One such theory is that of liberal intergovernmentalism. This school of thought theorizes EU integration as “a series of rational choices made by national leaders...[which respond] to constraints and opportunities stemming from the economic interests of powerful domestic constituents, the relative power of each state in the international system, and the role of institutions in bolstering the credibility of interstate commitments.” It rationalizes support for European integration as a consequence of the preferences of national governments, where “concrete preferences” emerged “from a process of domestic conflict in which specific sectoral interests, adjustment costs and, sometimes, geopolitical concerns played an important role.”\textsuperscript{167} As the Greek debt crisis revealed, in its current form, the EU does not align with the macroeconomic preferences for the ruling coalitions in Germany and France since the system exposes both countries to risks of downturn as a result of policies followed by countries in economically precarious situations. Additionally, this scenario’s possibility is strengthened by increasing support for far-right nationalist parties that oppose immigration and whose voters support lesser involvement in global affairs. These parties are poised to make great strides in the upcoming federal elections, implying that their policies will shape foreign policy in their respective countries if predictions come true. Since Germany and France enjoy relatively greater bargaining powers because they are the most powerful member states in the EU, the commercial

\textsuperscript{166} “Here’s why so many Germans vote for the far-right AfD,” The Local, November 30, 2016, last accessed on April 16, 2017, https://www.thelocal.de/20161130/heres-why-so-many-germans-vote-for-the-far-right-afd.

interests of their domestic actors and governing parties will influence specifics of a new EU treaty;\(^{168}\) this suggests that if the EU loses support within both countries, there could be possible unraveling of the institution.

The third component of liberal intergovernmentalist theory highlights threats to the EU’s survival due to its inability to fulfil its purpose for member states: “institutional choice” suggests that EU integration was driven by governments’ “concern[s] about each other’s future compliance with the substantive deals [that were] reached. In other words,…EU governments…rely on them [EU institutions] to solve the second-order problems of control, sanctioning, and incomplete contracting – mainly through credible pre-commitments.”\(^{169}\)

However, as the recent failed attempt at collective action to respond to the refugee crisis indicates, the EU has been unsuccessful in being able to enforce compliance from member states for its policies. When countries like Hungary and Slovakia shirked the responsibility to help refugees, thereby increasing the burden on other European states, European Commission President, Jean-Claude Juncker reprimanded them for seeking to keep refugees out. He then imposed an emergency quota system that spread out the vast number of refugees across EU member states. However, the effort failed to compel Hungary, Czech Republic, Slovakia and Romania to adhere to the proposed system.\(^{170}\) This failure illustrates further room for loss of support for the EU in Germany and France since they witnessed increases in their number of


\(^{169}\) Schimmelfennig, “Liberal Intergovernmentalism,” 80.

refugees due to the lack of cooperation by the aforementioned countries. Therefore, there is an urgent need to improve functioning of the EU as it relates to achieving economic stability and certainty in the region, and to use the EU mechanism in order to effectively tackle the refugee problem. This area of study illustrates scope for further research.

The domestic pressures faced by the national governments of France and Germany on the refugee issue are integral to determining the policies pursued by them. While the primary anti-immigrant party in France has already established itself in French politics over decades, Germany’s most significant party, the AfD, is still in its nascent stages. This disparity between the AfD and FN, in conjunction with a more generous French welfare state, explains why there is more resistance to refugees currently in France than in Germany. However, in the future, both countries show signs of being less welcoming towards refugees if the current trends continue. At a larger level, the success of anti-immigrant nationalist parties spell trouble for the EU and its continued viability. Using the framework provided by liberal intergovernmentalist theory on European integration, I forewarn a decline in the importance of the EU – possibly even an unraveling of the institution – due to its failure to align with economic goals of national governments, as well as inability to secure compliance from member states for its policies. Unless leaders within France, Germany and the European Parliament can demonstrate greater success at sharing the burden of the refugee crisis, and reshaping the economic benefits from integration under current global conditions – by reducing the uncertainties that are a result of interconnectedness of economies of various levels of financial soundness – the increase in popularity of FN and AfD in response to the refugee crisis might become the linchpin issue for the beginning of the end of the EU.
BIBLIOGRAPHY:


**DATA SOURCES:**

**I. Introduction:**


**II. Background and Context:**


**IV. The Regression:**


**APPENDIX**

Time Series Regression – France:

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Table 5. Summary Statistics for Panel Data Regression

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Table 6. Correlation Matrix for Panel Data Regression