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How do German and American approaches to immigrants and asylum seekers differ?

What is the German concept of "sanctuary" and how does it affect public policy?

Are there aspects of the German model on integration that can be useful in the United States?

## Lost in Translation: The Meaning of Sanctuary for Immigrants in the U.S. and Germany

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In his 2020 State of the Union Address, President Donald Trump forcefully condemned "sanctuary cities" and promised to retaliate against them. He called their policies "deadly practices." Citing two grisly murders, he claimed that they allow criminal immigrants to evade deportation. Trump has been trying to punish sanctuary jurisdictions since he took office. In 2017, Jeff Sessions, then attorney general, said these jurisdictions would not receive federal grants unless they gave federal immigration authorities access to jails and provided advance notice when someone in the country illegally is about to be released from prison. But a federal judge blocked the punishment from being enforced. In April 2019, the White House proposed to send all migrants apprehended at the border to sanctuary jurisdictions and simply release them. The threat went unrealized. But in 2020, the White House is rapidly increasing the pressure. Shortly after the State of the Union address, the Trump administration announced that it would bar New Yorkers from Global Entry and other Trusted Traveler Programs because of New York's sanctuary policies. A week later, the Justice Department sued New Jersey and a Washington county because they limited cooperation with Immigration and Customs Enforcement (ICE). It has announced that it will deploy 100 elite units from the southern border in order to bolster local ICE agents as part of a federal arrest operation in sanctuary cities across the country.<sup>1</sup>

The American concept of "sanctuary cities" for asylum seekers is foreign—and somewhat incomprehensible—to Germans. In the United States, "sanctuary jurisdictions" are relatively few, and they are established to protect immigrants from what they see as inhumane immigration policies of the federal government. It has long been a crime to enter the U.S. between ports of entry without a visa or other documentation, but enforcement waxed and waned and penalties for a first apprehension were relatively mild. Being in the United States without documentation is considered a civil violation, not a crime, and those who were undocumented were generally not deported. The Trump administration, however, used the law on the books to separate families at the border and began to round up those undocumented people throughout the country. As immigration rulings became harsher, even before the Trump administration,

sanctuary jurisdictions sprang up to assert their right to protect those without documents from federal agents who would apprehend, jail, and deport them.<sup>2</sup> In stark contrast, it is not a crime to enter Germany between ports of entry, and every city is an asylum seeker's sanctuary, mandated and aided by the government to provide refuge.

The current German position is to offer sanctuary to all those seeking asylum, regardless of how they enter the country. Offering sanctuary to those who must flee because their lives and livelihoods are threatened reaches back to antiquity. In ancient Greece, temples were considered inviolable spaces, under protection of the gods. They were deemed places of asylum (*asylia*), within which anyone outside the jurisdiction of his or her city could find refuge from violence, death, torture, and abuse. In the Judeo-Christian tradition religious sites were off-limits to government authorities and protecting those seeking refuge was considered a sacred duty. The Law of Moses in the Bible created "sanctuary cities" where those who had committed involuntary manslaughter could find refuge from those who would kill them for revenge. In the early medieval period Christian churches throughout Europe were believed to be holy ground, where asylum seekers could find sanctuary. The most sacred part of churches and temples are still called sanctuaries, a word that stems from the Latin *sanctuarium*, a container for the safe keeping of holy things or people.

The gap between the German and American positions is wide, but it may be narrowing with the rise of the anti-immigrant far right in Germany. There are very few "undocumented" immigrants in Germany, and detention of those ordered to be deported is rare. Indeed, the German asylum process provides for documentation, aid, and freedom of movement at every stage, even for rejected asylum seekers slated for deportation. In some ways, Germany

has the luxury to develop a more humanitarian approach to asylum; unlike in the United States, whose border with Mexico has made millions of illegal crossings possible, Germany is not a frontline state for

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immigrants to enter. Rather, the EU provides border protection on its perimeters, and asylum seekers must apply for asylum in the first member state they enter. It is therefore difficult—but not impossible—to cross the border and live in Germany illegally.<sup>3</sup> There, even rejected asylum seekers are documented: they generally appeal this decision and often receive a status of "*Duldung*" or "toleration"<sup>4</sup> during their appeal process. Although their stay is considered "unlawful," they are not punished for continuing to live in Germany. If they do not cooperate with federal authorities,

their welfare benefits are reduced, but they are rarely detained.<sup>5</sup> Threatened with immediate deportation, they can seek church sanctuary. I return to this possibility below.

### Germany: Legal, Economic, and Social Rights and Protecting Human Dignity as a Duty

This humane approach is not only due to relatively protected borders. The first article of the German *Grundgesetz* or Basic Law reads: "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority." It went on to promise that Germany would guarantee human rights and would freely grant asylum to refugees. The new German government took this constitutional duty seriously. Germany's post-World War II history of migration, based on a keen and conscious recognition of universal human rights and the inviolability of human dignity is, for the most part, a successful one. Asylum seekers and other foreigners have been part of the German social landscape since the end of World War II, beginning with the arrival of 12-15 million *Vertriebene*, and those fleeing communism in the

1950s. Following them were millions of "guest workers" and asylum seekers from Iran, Afghanistan, the Soviet Union, Africa, and the former Yugoslavia,<sup>6</sup> fleeing war and persecution. Although discrimination was always present and at times turned deadly and destructive, the integration of these immigrants was largely successful. In 2015 Merkel echoed the deep humanitarianism of the Basic Law's intent when she proclaimed: "If Europe fails on the refugee issue, we would lose one of the key reasons for founding a united Europe, namely universal human rights."<sup>7</sup> Guided by these norms, German immigration law treats all cities and villages throughout the country as sanctuary jurisdictions, guaranteeing human rights for immigrants fleeing violence and persecution.

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### The United States: Narrowing Legal Rights, Few Social and Economic Rights, and "America First"

Like Germany, the United States signed the 1951 Geneva Convention on the Status of Refugees, which obligates its government to protect all those fleeing persecution and death in their home countries covered by the Convention and to respect their human rights. The Convention also states that asylum seekers have a legal claim to apply for asylum no matter how they enter an asylum granting country.<sup>8</sup> To be sure, the United States continues to honor

the right to asylum for those who meet the Convention's asylum criteria and are able to plant their feet on U.S. soil and request it. The U.S. has historically taken in more refugees than any other country in the world.

But the Trump administration is rapidly changing this. Advancing an ideology of nationalism, President Trump has dehumanized migrants by calling them "aliens," "savages," "sexual predators," and "invaders." He conflates irregular entry into the U.S. with violent crime and rape.<sup>9</sup> The

Trump administration has significantly decreased the number of refugees that it would accept and increasingly narrowed its interpretation of the asylum criteria in order to legally deport more of those requesting refuge.<sup>10</sup> Furthermore, people from Muslim majority countries are banned

from traveling to the United States; children were separated from their parents at the border; the border has been closed to asylum seekers, and many have been waiting in Mexico for their asylum claims to be adjudicated.<sup>11</sup> Five-thousand troops have been deployed to the U.S. southern border to prevent migrants from entering irregularly. If asylum seekers are detained, they can be detained indefinitely. Guaranteeing human rights and human dignity in the treatment of migrants is not a pillar upon which the current administration's policy rests. "America First" was Trump's central campaign slogan; the denigration of immigrants was an essential part of his campaign rhetoric; and building a wall on the southern border of the United States to prevent immigrants—including asylum seekers—from reaching American soil was a central campaign promise. The crackdown on sanctuary cities is simply the latest salvo in his campaign against pro-immigrant forces.

### Comparing Sanctuary Practices: Federal and Local

Trump points to Germany to underline his anti-immigrant arguments. Germany has been undergoing a fierce and divisive immigration debate, with the rise and parliamentary power of the far-right Alternative for Germany (AfD), which espouses the same anti-immigrant rhetoric as the current U.S. administration. The recent cooperation between the AfD with the conservative CDU in Thuringia has left German politics in temporary disarray and brought the AfD closer to national power. President Trump has been watching Germany closely. He recently attempted to stir the pot of Germany's social and political division on the issue of immigration with the false claim that asylum seekers have "strongly and violently changed [German] culture!" He further falsely claimed that the crime rate had spiked after the refugees flooded into Germany,<sup>12</sup> and his

proposal for bussing asylum seekers to America's sanctuary cities could not be further from the German approach. True, the German government mandates the initial distribution of asylum seekers among the federal states. But the similarity to Trump's bussing proposal ends there.

Germany's asylum policy distributes migrants throughout the country according to states' tax revenues and total population. This system is commonly considered to be fair and efficient.<sup>13</sup> Trump, on the other hand, proposed to target the distribution of all apprehended and otherwise detained migrants only to sanctuary jurisdictions. These jurisdictions cannot prevent ICE from entering their cities, counties, and states to arrest undocumented migrants, but they can place roadblocks to that entry as a protest against Trump's immigration agenda and his idea of the nation that the agenda signifies.

The sanctuary city concept in the United States is a narrow legal one; sanctuary for immigrants in Germany not only implies legal obligations to protect basic human rights, it encompasses the idea that migrants have social and economic rights as well. Unlike German cities, who are obligated to carry out federal immigration policies to protect human rights, sanctuary cities in the U.S. rebel against federal immigration policies that they believe will undermine those rights. Whereas local law enforcement in U.S. sanctuary jurisdictions has the authority to protect immigrants from ICE agents, local law enforcement in Germany helps to carry out the federal government's mandate of migrant protection throughout the country. Whereas the German federal government embraces the historical meaning of "sanctuary,"

providing aid and assistance from the moment an asylum seeker arrives in Germany,<sup>14</sup> asylum seekers who manage to step on U.S. soil are either "jailed" in detention centers until their application is approved, detained until they have their day in court, or must fend entirely for themselves once they escape or are released from detention. In contrast, the German government provides states with subsidies to distribute to cities for migrant housing, education, language training, integration opportunities, volunteer coordination, health care, legal advice, and information about employment.

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# “Illegal” Immigrants?

In the twenty-five years from 1990 to 2015, 44 million people left Latin America, Africa, and Asia headed for Europe and the United States.<sup>15</sup> In 2018 there were 68.5 million forcibly displaced people worldwide, and millions more who have left their homes to find a better life. And millions cross international borders without documentation.

Many of these have avoided official guarded ports of entry

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to cross the border into the United States without being detected. Their entry is undocumented, and many arrive without identification.<sup>16</sup> They have come to escape torture, violence, or

poverty, or simply to work and provide for their families back home. Between 11 and 20 million undocumented people have been quietly absorbed into American society—working, establishing families, and building businesses. The U.S. government claims that they are “illegal.” Indeed, according to U.S. domestic law, they have committed a criminal misdemeanor by not crossing through a port of entry.

The incentive to cross illegally into the United States is high, because all immigrants claiming asylum at ports of entry are detained. Often detention is prolonged, lasting months and even years.<sup>17</sup> Although the risk of being apprehended after an illegal crossing is high, those who can escape detection also escape detention. “No Risk, No Life,” is their motto. Until 2019, most illegal immigrants who were apprehended were processed, given a date to

appear before a judge to request asylum, and then taken to bus stations and shelters administered by charities. Only 25 percent do not appear. Now, the Trump administration policy seeks to detain as many asylum seekers as possible, holding them in detention without bond in an attempt to deter them and others from seeking refuge.

In contrast, those fleeing to Europe without documents are not officially considered “illegal” immigrants. No matter how they arrive, unless they escape detection, they quickly receive identification.<sup>18</sup> But they must face a treacherous journey before they can set foot on the soil of an asylum granting country, and when they finally do, they are often placed in detention centers to await their asylum decision in the first country they reach.

Those who make it to Greece face conditions that are no better, and often worse than those in the United States. Since the 2016 EU agreement with Turkey,<sup>19</sup> the Greek government can collect migrants on five Aegean islands in “holding pens” and return them to Turkey, irrespective of their rights to international protection.<sup>20</sup> Those who languish in Greek camps face disease, hunger, sexual abuse, open latrines, exposure to the elements, and more. Because they are not allowed to leave, they are effectively imprisoned, and many have waited for years to be called to an asylum hearing.<sup>21</sup> Often, those who can reach Spanish or Greek shores by boat try not to register as an asylum seeker and must evade authorities in order to attempt the trek north to other, more hospitable, EU countries where they believe that they can apply without being sent back.<sup>22</sup>

## Sanctuary in Germany

By crossing into Germany, asylum seekers can find safety. Most cross through legal checkpoints, request asylum, and, even without documentation or fingerprints,<sup>23</sup> they receive identification, cash, and tickets for transportation. Even those who cross through “green zones,” rural areas where the border is unclear, generally surrender themselves to police, ask for asylum, and begin the asylum process. Initially, they are required to stay in emergency “reception centers,” i.e., converted sports halls, concert venues, and schools, or in group homes. They can come and go from these centers as they please, but they are not yet permitted to move to another residence. Arrival certificates are replaced by more robust but conditional residence permits. After initial processing, immigrants are then transferred to local accommodation centers in cities throughout Germany where they apply for both cash and non-cash benefits, which they will receive during the entire asylum process and beyond.<sup>24</sup> The law requires that this

first local accommodation be assigned to asylum seekers to avoid their concentration in a few areas. All children of parents with asylum status are required to attend school.

Since 2005, asylum seekers have been required to complete integration and German language courses both before and after their asylum decision; those who refuse face a reduction in benefits.<sup>25</sup> After three months, they are permitted to seek employment, and the law requires that they be offered employment opportunities. Furthermore, the federal government has sponsored thousands of those with refugee status to enroll in vocational schools, many of which offer language classes in addition to vocational training.<sup>26</sup>

In 2016, the federal government enacted its first Immigrant Integration Law.<sup>27</sup> It stipulates that those refugees who find employment may not be deported during the three-

year vocational training period. If the trainee is offered a permanent position after the training period, he or she will be granted a two-year residence permit.<sup>28</sup> The government provides university preparatory courses and funds assessment programs in order to increase refugee university enrollment.<sup>29</sup>

If their application for asylum is rejected,<sup>30</sup> they are ordered to be deported<sup>31</sup>; if they appeal, the process is moved to the courts and can take months and even years to settle.<sup>32</sup> Local authorities have tremendous discretion in permitting rejected asylum seekers to stay in their jurisdictions during the appeal process.<sup>33</sup> “Even if refugee status is revoked or withdrawn, this does not necessarily mean that a foreigner loses his or her right to stay in Germany.” Local authorities can “take into account personal reasons which might argue for a stay in Germany (such as length of stay, degree of integration, employment situation, family ties). Therefore, it is possible that even after loss of protected status, another residence permit is issued.”<sup>34</sup> After immigrants receive asylum, states can require them to stay in their assigned location for three years, and then they are free to move to any city in Germany that they choose. They are entitled to unemployment benefits until they find a job.

The contrast with the United States is striking. Residence permits are not required of asylum seekers; if they are not detained, they are free to go where they please, but they must apply for asylum within one year of their entry into the United States and fend for themselves. All children are required to attend school, but undocumented immigrants

receive no public assistance. Many work on the black market; numerous employers look the other way. Legal immigrants who are “green card” holders, i.e., are lawful permanent residents, refugees, asylees, and victims of human trafficking or domestic violence, must wait five years before they can apply for public assistance.<sup>35</sup> In 2020, new restrictions on green card holders went into effect that would impede immigrants already in the U.S. from obtaining permanent residency or citizenship if they use public benefits such as Medicaid, food stamps, or housing assistance. Although an asylum seeker is eligible to seek employment 150 days after the application is filed, the uncertainty surrounding his or her status hinders job prospects.<sup>36</sup> Those who are detained cannot leave the detention center and are barred from seeking employment. All of this leads to large swaths of poverty among immigrant communities.<sup>37</sup> Detention centers rely on immigrant labor for ALL tasks except security, and detainees are paid \$1 per day for their labor. These centers have been sued for this practice, which accusers call “slavery,” and the cases are winding their way through the courts.

The table on the following page summarizes the contrasts and provides a rough estimate of the basic costs of each system.

While the American system focuses on controlling the border rather than providing asylum, in the broad sense of the word, the German provision of sanctuary for all those who are not deported comes at a price to the German taxpayer. Nonetheless, as the section below indicates, Germans appear to be willing to pay it.

## Germany Did “Manage”: Cities and Towns as Sanctuaries

When Angela Merkel made her now famous statement, “we can manage,” she was referring to the federal processing of asylum claims<sup>38</sup> and to the hundreds of municipalities who would soon be housing, feeding, educating, training, and attempting to integrate the flood of asylum seekers entering the German society and economy. Indeed, despite significant backlash and the “weaponization” of her optimism by both her opponents and allies, most reports conclude that Germany’s asylum system is the best in Europe and those federal, state, and local governments, churches, and NGOs have managed those tasks well.<sup>39</sup> Hate crimes against asylum seekers were down in 2018<sup>40</sup>; the majority of Germans view Germany’s multicultural society positively; a large majority sees migrants as an economic asset, and a majority says that they would accept Muslims as members of their family.<sup>41</sup> Unemployment rates for refugees are falling. Furthermore, around 20 percent of the German population

is active in volunteer migrant integration programs.<sup>42</sup> Nonetheless, most Germans perceive the asylum process to be too weak, and most approve of measures to slow down immigration into the country. A majority also wants faster deportation of failed asylum seekers.

Cities and towns are the heart of Germany’s successful migrant integration strategy. They are responsible for delivering services to migrants throughout the asylum process. Those services include housing, medical care,

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	Germany	United States
Detention of asylum seekers during asylum	Very rarely.	Often, and for varying periods of time. Current administration seeks to expand detention capacity.
Irregular entry	Asylum seeker requests asylum, receives identification, and enters the asylum process. Few illegal or undocumented migrants reside in Germany.	Undocumented migrants are apprehended. Those who escape melt into the social fabric but face detention and deportation. Asylum seekers must appear in court, and non-appearance results in deportation. <sup>1</sup>
Number of border apprehensions, 2018	75,395 (These are rejections at ports of entry after a migrant has presented him/herself; not counted in number of asylum requests.)	279,036 (Rejections at ports of entry.) 404,142 (2017: 310,531) (These are apprehensions between ports of entry.)
Number of asylum requests, 2018	185,853	CPB reported 38,269 claims at ports of entry and another 54,690 claims between the ports, for a total of 92,959. This represents a 67 percent increase in claims in Fiscal Year 2018 compared to FY2017, and a dramatic departure from 2000-2013, when fewer than 1 percent of those encountered by CBP initiated asylum claims.
Aid and services for asylum seekers	Housing, cash and non-cash assistance, education, training, legal advice, employment opportunities.	Means-tested welfare payments after five years. Schooling for children. Some state food aid during waiting period.
Asylum process conducted by	BAMF administrators.	Border Patrol agents, Homeland Security agents, courts.
Mobility of immigrants during asylum process	Limited	Unlimited unless detained in prison-like conditions.
Incentives offered to find employment	Training, residence permits, university prep courses, fellowships to study.	No incentives. Asylum applicants don't qualify for a work permit until their case is won or 180 days have passed with no decision. Under U.S. immigration laws, only certain immigrants are allowed to work, usually after they apply for a work permit called an Employment Authorization Document (EAD).
Residence permits during asylum process	Required.	Not required and not offered.
Annual cost of border protection	€1.6 billion. Cost of German border protection included in annual cost of asylum system.	\$24.2 billion includes ICE and detention (2018). <sup>2</sup> Includes \$3.1 billion for detention (2018). <sup>3</sup>
Annual cost of asylum system	€21.3 billion (2017). <sup>4</sup> Includes border protection and aid to countries sending migrants earmarked for stemming the flow.	\$4.5 billion (citizenship and immigration service 2018). <sup>5</sup>
Annual per capita cost of immigration and border protection	€259.75	\$90.63

<sup>1</sup> Numerous reasons are given for non-appearance. The Trump administration has argued that undocumented immigrants who are released from federal custody will not appear at their mandatory hearings and therefore should be held in detention without bond.

<sup>2</sup> "FY19 Budget in Brief," U.S. Department of Homeland Security.

<sup>3</sup> Laurence Benenson, "The Math of Immigration Detention, 2018 Update: Costs Continue to Multiply," National Immigration Forum, May 9, 2018.

<sup>4</sup> "Asylum and refugee policy: the role of the federal budget," Federal Ministry of Finance, January 27, 2017.

<sup>5</sup> "FY19 Budget in Brief," U.S. Department of Homeland Security.

and a cadre of volunteers to provide guidance, tutoring, legal help, and other tasks, inclusion of immigrants in projects and decision-making, sports, education, language instruction, vocational training, and more. Bernt Tischler, the mayor of Bottrop, a small town with a declining population in the Ruhr Valley, almost immediately saw immigrants as the key to its revitalization. When he found that Bottrop had been assigned 2,500 migrants in 2015, he echoed Markel's initial enthusiasm for Germany's ability to cope, stating in effect, "Wir schaffen das!"<sup>43</sup> The town quickly integrated immigrants' needs into its energy sustainability plans, retrofitting migrant housing to make it energy efficient, and including migrants in sustainability projects, such as de-paving and re-naturalizing urban areas. Two years later, a detailed "Integration Report" demonstrated success on almost every dimension of integration.<sup>44</sup> The town of Altena—which has also experienced a shocking population decline—tells a similar story.<sup>45</sup> Mayor Andreas Hollstein is proud to have won Germany's "integration prize" for Altena's successful volunteerism, pairing migrants with local residents who help them to learn the ropes, for its creation of apprenticeships, for its program of providing job market guidance for school students nearing graduation, and for its innovative housing solutions. Similarly, a Brookings study of Hamburg and Berlin's "management" of the crisis, conducted in September 2016, noted that despite the fact that more than 11 times the number of migrants arrived than expected,

both had "managed" well.<sup>46</sup> Despite differences in the two systems, success in these cases and others suggest that there are lessons that American cities could adopt.

## Replicating the German Model?

Indeed, many American cities, in recognition of a declining rural population, a growing number of immigrant residents, and the positive contribution immigrants can make to their economic and social health, have adopted similar measures. Many have become part of a "welcoming cities" movement and have even moved beyond these "lessons" to create social entrepreneurship programs, citizenship clinics, voter registration drives, and digital media campaigns.<sup>47</sup> Susanne Dieper has written that some American cities may even be embracing parts of the German model and some have found that they are natural allies in the integration effort.<sup>48</sup> Most of these American cities, however, are careful not to define themselves as "sanctuary cities," and some have consciously distanced themselves from the sanctuary movement.<sup>49</sup> Atlanta, however, has incorporated the measures of sanctuary cities into its One Region welcoming plan,<sup>50</sup> even though Georgia law prohibits the creation of sanctuary cities in the state.<sup>51</sup> Other cities identify themselves as both sanctuary cities and members of the Welcome America network.

## Asyl in der Kirche: A Rising Sanctuary Movement in Germany

Since its lofty beginnings when the absolute right to asylum was enshrined in the German constitution, federal immigration policy has become increasingly restrictive. In 1992 Article 16 of the constitution was modified to deny asylum applications from nationals of so-called "safe third countries." Merkel pushed for the deportation of more Afghans, arguing that there were "safe" areas throughout the country. More recently, the deportation process for those whose chances of gaining asylum status are low has been streamlined, detention capacity has been expanded, authorities have been allowed to deport immigrants who commit serious crimes, and transit centers (AnKER centers) have been created, which restrict mobility during the entire process, and which critics call "deportation camps." With an increasingly restrictive federal immigration policy, one-third of those seeking asylum are rejected and slated for deportation. By 2019, the number of asylum claims had declined dramatically.

The subject of deportations—indeed the word "deportation"—is somewhat of a taboo subject in Germany. Lingering memories of the Nazi deportation of millions of

Jews prevent the word from being used; it is almost always used when describing the policies of the Third Reich. The legal term for the deportation of asylum seekers in German is *Abschiebung*. It is also the term used in normal discourse about rejected asylum seekers. German authorities say that *Abschiebung* is "*die letzte Möglichkeit*"—the last resort—and offer the rejected migrants cash incentives to leave willingly. In 2016, police claimed that they only managed to capture about half of those they were ordered to deport.<sup>52</sup>

In recent years, however, changes in the asylum law have narrowed immigrants' rights, and the extreme right has raised questions about the fundamental right to asylum. Public sentiment toward deportation has also changed. Although, as discussed above, attitudes toward migrants are generally positive, recent attacks, and in particular the recent murder of a 14 year old girl by the rejected Iraqi asylum seeker, whose asylum request was denied in 2016 but was allowed to remain in Germany

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pending a judicial review of his case, have led to rising criticism of the current system: 82 percent of Germans would like to see a quicker deportation process, and over 60 percent would prefer that undocumented immigrants are turned away at the border.<sup>53</sup> Police have also begun to take a harder line on implementing deportation orders.

For these reasons, an increasing number of those who face deportation have sought sanctuary from the law in Germany's churches. *Asyl in der Kirche*, or Church Asylum, is "a practice to support, counsel and give shelter to refugees who are threatened with deportation to inhumane living conditions, torture or even death."<sup>54</sup> Church leaders in the movement see their role as one of protecting human rights: they offer sanctuary to asylum seekers who are slated to be deported to Greece or Italy, where they will face inhumane conditions and to "safe" countries where they face patently unsafe conditions.<sup>55</sup> They aim to protect failed asylum seekers from what they consider to be unjust asylum decisions. The Bundesamt für Migration und Flüchtlinge (BAMF) considers church asylum illegal, and

thus it is akin to the sanctuary movement in the United States, which, too, aims to protect asylum seekers from the law. But where sanctuary jurisdictions in the United States primarily (but not exclusively) protect illegal immigrants, sanctuary churches protect failed asylum seekers who have been through the asylum process.

immigrants, sanctuary churches protect failed asylum seekers who have been through the asylum process. And where sanctuary cities in the United States refuse to share information about undocumented people with federal agents without a warrant for their arrest, German churches notify BAMF when they decide to offer sanctuary to a

particular deportee, and they often hire a lawyer to represent him or her.<sup>56</sup> In the U.S., ICE has been aggressive in taking undocumented immigrants from their homes, from courtrooms, from schools, and from churches. In Germany, the police rarely take away those who have sought sanctuary in churches. In Germany, church asylum enjoys broad public support<sup>57</sup>; in the United States, much less so.<sup>58</sup> But in both countries, the sanctuary movements have resulted from glaring failures in national asylum systems.

This church asylum movement in Germany has grown as the right wing of the German political system has waged war on the asylum system and as asylum restrictions have increased. The movement consists of both Protestant and Catholic churches; mosques cannot offer sanctuary because Islam is not a registered state religion in Germany and therefore they do not have negotiating power with the government. In 2005, 39 churches self-identified as members, providing 122 people with refuge; today, the number of churches has grown to more than 550. In the first quarter of 2018, churches prevented about 500 people from being deported, and as of August 2019, 868 people were living in church asylum, including 175 children. Church sanctuary is also offered in other EU states, but Germany's is the largest.

Church sanctuary is now under attack in Germany. The AfD has declared it to be illegal. And in 2018, the state of Bavaria began to charge church leaders and failed asylum seekers who have sought church asylum with breaking the law.

# Conclusion

While the U.S. Congress dithers over immigration reform, and the Trump administration is sowing chaos in the U.S. immigration system, American churches, NGOs, and local governments should follow the German example of “managing,” which, with a few bumps in the road, has been quite the opposite of American immigration “chaos.” I have described the German system as orderly, efficient, effective, and humane. Following the German example will not be easy; there is a glaring absence of federal funding in the United States for immigrant integration, and the undocumented population is large and difficult to detect. American norms enshrining the sanctity of individualism and individual freedom clash with German norms of community that treat the welfare state as a protector of the common good. Government commitment to “America First” clashes with the German commitment to protecting universal human rights, including economic and social rights. Sanctuary cities in the United States who share a commitment to protecting human rights should establish a “grass roots immigration policy;” e.g., practices of integrating immigrants into local communities around the country. The German case and its emphasis on volunteerism and the active role of civil society provides some guidance. These practices can provide an alternative to the harsh policies of both previous U.S. administrations and those even more cruel and inhuman practices initiated by the Trump administration.

To be sure, the immigration crisis in Germany is a political one; it nearly toppled the current German government. Public faith in the asylum system was shaken when it was discovered that the Bremen office of BAMF approved asylum applications for almost 1,000 people, without looking at them.<sup>59</sup> Furthermore, a tightening of the deportation provisions is appropriate, in light of its lax provisions that have allowed known criminals to remain in Germany. Despite the formula or an equitable distribution of asylum seekers throughout Germany, a disproportionate burden falls on large cities. Merkel is faced with the seemingly contradictory tasks of solving Germany’s labor shortage with an influx of immigrants, calming social tensions that have arisen around her deep commitment to protecting human rights of those fleeing countries where their rights are violated, and providing sanctuary for them, while repairing the failures in the immigration system. Nonetheless, her approval rating is 50 percent, higher than any other European leader. And current positive overall public opinion on immigration and immigrant integration strongly suggests that she and her country can surely “manage.”

## Notes

<sup>1</sup> In this essay I use the terms asylum seekers and refugees as follows: I refer to asylum seekers as persons who are currently undergoing the asylum process. The U.N. Convention on the Status of Refugees provides this definition of a refugee: “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, [who] is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” The term “refugee” in the U.S. context is a specific legal one based on this definition: refugees are those immigrants who fit this definition, have been vetted by the UNHCR and U.S. authorities, and have been accepted for resettlement by asylum-granting countries. Time and circumstance have led to a broadening of the definition of those who require protection in U.S. asylum decisions. The term “refugee” in the German context is often used loosely to describe migrants who use public services more generally (regardless of their asylum status). I use the terms migrants and immigrants as umbrella terms referring to asylum seekers, refugees, and all others who have been forced from their home countries or have fled to seek work or a better life more generally.

<sup>2</sup> In the United States, sanctuary jurisdictions reach back to the tension between the federal government and the states as well as local jurisdictions. Sanctuary cities cannot prevent Immigration and Customs Enforcement (ICE) from entering their cities, counties, and states, but they obstruct that entry in numerous ways. They are less likely to turn over to ICE those who have committed minor offenses; they refuse to permit ICE agents into public spaces without a warrant; they resist asking for immigrant documentation.

<sup>3</sup> Germany’s location within the EU and the Schengen Area greatly reduce the ability to cross illegally. However, there is increasing fear in Germany that a growing number of illegal immigrants are living among them. See Martin Klingst, Mariam Lau, Karsten Polke-Majewski, “Die Unsichtbaren,” *Zeit Online*, April 3, 2019; Manuel Bewarder, Christoph B. Schiltz, “Illegal Migration nach Deutschland wird offenbar unterschätzt,” *Welt Online*, October 20, 2018.

<sup>4</sup> Of the nearly 240,000 foreigners who were required to leave the country at the end of January 2018, 182,169 had a “tolerated” status. See *Der Spiegel Staff*, “Why Germany’s Deportation System Is Failing Everyone,” *Spiegel International*, March 12, 2019.

<sup>5</sup> Detention of asylum seekers occurs when the asylum seeker registered in another EU member state and is awaiting transfer back to that state. See Germany country report in the Asylum Information Database: “Informationsverbund Asyl und Migration,” [www.asylumineurope.org](http://www.asylumineurope.org).

<sup>6</sup> While Article 16 of the German constitution guarantees the absolute right of asylum in Germany for those fleeing persecution, it was amended in 1992 due to the influx of a million asylum seekers in the fallout from the Balkan wars. The amendment states that Germany will not accept applicants from countries deemed to be “safe,” and it required asylum seekers to prove they have been persecuted. In 2015, however, Merkel expanded the definition of “persecution” to give the right of asylum to any Syrian fleeing the horrors of war without showing evidence of political, religious, or ethnic persecution. At present, Article 16 and the amendment stands as written.

<sup>7</sup> See Nicole Goebel, “Germany must ‘lead the way’ in refugee crisis,” *Deutsche Welle*, September 9, 2015.

<sup>8</sup> See Article 31 of the Refugee Convention.

<sup>9</sup> See, for example, “Remarks by President Trump in State of the Union Address,” The White House, February 6, 2019.

<sup>10</sup> Nick Miroff, “U.S. asylum screeners to take more confrontational approach as Trump aims to turn more migrants away at the border,” *The Washington Post*, May 7, 2019.

<sup>11</sup> Although a temporary use of this practice has been upheld by the courts, as a tenet of policy, it is of questionable legality.

<sup>12</sup> In fact, overall crime rates in Germany have decreased since 2015. Christopher F. Schuetze and Michael Wolgelenter, "Fact Check: Trump's False and Misleading Claims About Crime and Immigration in Germany," *The New York Times*, June 18, 2018. But in one region at least, the crime rate has increased. According to a study by Christian Pfeiffer, Dirk Baier, and Sören Klem, in Lower Saxony, crime had decreased by 21.9 percent between 2007 and 2014, but it was up again by 10.4 percent by the end of 2016. Some 83 percent of the cases were solved—and 92.1 percent of the increase was attributable to the migrants. "Zur Entwicklung der Gewalt in Deutschland Schwerpunkte: Jugendliche und Flüchtlinge als Täter und Opfer," Zürcher Hochschule für Angewandte Wissenschaften, January 2018. See also Leonid Bershisky, "Germany Must Come to Terms With Refugee Crime," *Bloomberg News*, January 3, 2018.

<sup>13</sup> The Brookings report described below argues that this distribution system imposes unique burdens on large cities, since it does not take into account higher population densities, special housing conditions of these urban communities, or secondary migration patterns. Bruce Katz, Luise Noring, and Nantke Garrelts, "Cities and refugees: The German experience," *The Brookings Institution Report*, September 18, 2016.

<sup>14</sup> See "Asylum Procedure" in the Germany country report in the Asylum Information Database: "Informationsverbund Asyl und Migration," [www.asylumineurope.org](http://www.asylumineurope.org).

<sup>15</sup> Global migration is increasing but in fact, "Most migrants from poor countries never make it to the United States or Western Europe, instead moving to other developing countries nearby. A little over half of emigrants from Africa settle in other African countries, while 60 percent of Asian migrants relocate elsewhere in Asia." Eduardo Porter and Karl Russell, "Migrants Are on the Rise Around the World, and Myths About Them Are Shaping Attitudes," *The New York Times*, June 20, 2018.

<sup>16</sup> "Physical presence in the United States without proper authorization is a civil, rather than criminal, offense. This means that the Department of Homeland Security (DHS) can place a person in removal (deportation) proceedings and can require payment of a fine, but the federal government cannot charge the person with a criminal offense. Likewise, a migrant who enters the United States on a valid visa but who stays longer than permitted may be put in removal proceedings, but cannot face federal criminal charges. Those who enter or reenter the United States without permission, however, can face criminal charges." In years past, the federal government would not have subjected these individuals to prosecution. But since 2005, the government charges first-time entrants for illegal entry, including those with no criminal histories. In April 2017, Attorney General Jeff Sessions instructed federal prosecutors to make these entry-related prosecutions a high priority nationwide.

<sup>17</sup> See "Asylum in the United States Fact Sheet," American Immigration Council, May 14, 2018.

<sup>18</sup> At the height of the crisis in 2015, 60-80 percent of immigrants are estimated to have arrived in Europe without a passport.

<sup>19</sup> "EU-Turkey Statement: Questions and Answers," European Commission Press Corner, March 19, 2016.

<sup>20</sup> To implement the EU agreement with Turkey, Greece converted reception centers on five Aegean Islands into closed (or "secure") facilities and adopted a policy of "geographical restriction." Pursuant to this measure, migrants and asylum seekers are today no longer transferred to the Greek mainland. Rather, they are obliged to remain on the island on which they are initially registered and undergo a fast-track border procedure to determine whether Turkey is a "safe country" for them. However, due to administrative delays, many migrants and asylum seekers find themselves stranded on the Aegean islands for months. Numerous reports have denounced appalling conditions in the centers, including severe overcrowding, insufficient food supply and medical care, and a lack of protection from violence. See the Global Detention Project website.

<sup>21</sup> Steffen Lüdke, Giorgos Christides, and Socrates Baltagiannis, "Abysmal Conditions for Refugees in the Greek Islands," *Spiegel International*, April 24, 2019.

<sup>22</sup> Niki Kitsantonis, "Rumors of Open Border Prompt Migrant Protests in Greece," *The New York Times*, April 5, 2019.

<sup>23</sup> See "Asylum Procedure: Dublin" in the Germany country report in the Asylum Information Database: "Informationsverbund Asyl und Migration," [www.asylumineurope.org](http://www.asylumineurope.org). See also Graeme Wood, "The Refugee Detectives," *The Atlantic*, April 2018.

<sup>24</sup> The right to benefits is tied to registration in municipal reception centers in order to deter asylum seekers from traveling to cities other than those to which they are assigned. The asylum process takes seven months, on average. See Federal Government, "Response to parliamentary question by The Left," 19/7552, February 6, 2019, p. 12. The amount and kind of benefit they receive is dependent upon their accommodation. Currently, those staying in reception centers receive €135 per month in addition to food and housing. If they manage to find private housing, they receive €354 per month in addition to their rent.

<sup>25</sup> "Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz - AufenthG), § 44a Verpflichtung zur Teilnahme an einem Integrationskurs," Bundesministerium für Justiz und für Verbraucherschutz. See also Vanessa Steinmetz, "Integration Bill: This Is What Refugees Are Required in the Future," *Spiegel Online*, May 24, 2016.

<sup>26</sup> And although refugee unemployment is 40.5 percent and far higher than that of other foreign nationals, it fell ten points in 2018, and one in four refugees is working. Tobias Buck, "Refugee unemployment in Germany drops sharply," *Financial Times*, May 31, 2018.

<sup>27</sup> Verordnung zum Integrationsgesetz [Regulation on the Integration Act] (July 31, 2016), BGBl. I at 1950.

<sup>28</sup> Lily Hindy, "Germany's Syrian Refugee Integration Experiment," *The Century Foundation Report*, September 6, 2018.

<sup>29</sup> Ibid.

<sup>30</sup> Some applications are subject to an "accelerated procedure" if it is clear to the BAMF authorities that the applicant is not eligible for asylum. These applicants are required to stay in "special reception centers." These are not closed facilities, but asylum seekers may leave the premises and are free to move around in the local area (town or district). If BAMF does not decide on whether to reject the application within a week, the applicant is allowed to leave the special reception center and go to a regular hostel. Almost 50 percent of those who go through the German asylum process are rejected; the rate of rejection is highest when the applicant arrives from a "safe" third country. But only half of the deportation orders for those rejected are carried out. In the U.S., numbers vary, but one can safely say that 40-60 percent of the cases who go through the asylum process are rejected. Of those cases in deportation, 33 percent are allowed to remain in the country. Denise Lu and Derek Watkins, "Court Backlog May Prove Bigger Barrier for Migrants Than Any Wall," *The New York Times*, January 24, 2019.

<sup>31</sup> In practice, deportations are often thwarted for a number of reasons. Absence of a valid passport, rejection of the deportee from his/her country of origin, and local opposition to deportation, to name a few.

<sup>32</sup> In Bavaria they are often placed in AnKER centers (Ankunft, Entscheidung, Rückführung—arrival, decision, return), "one-stop" centers within which the whole asylum process is supposed to take place. They are supposed to implement returns of rejected asylum seekers more efficiently by obliging rejected asylum seekers to stay in these facilities for a period of up to 24 months. Critics argue that the linkage between asylum requests and return that these centers create results in mainstreaming punitive measures and in a dangerous expansion of detention. They have been called "deportation camps" by immigrants' rights groups. See "Country Report: Germany, 2018 Update" from the Asylum Information Database. They were created as a compromise between Chancellor Merkel and interior minister Horst Seehofer, who simply wanted to turn all migrants away at the border. Because responsibility to implement asylum policy lies with Germany's individual states, Bavaria, where Seehofer is from, took the initiative. But other states have delayed the establishment of these controversial centers or refused to take part in the policy, simply renaming their original "reception centers."

<sup>33</sup> German states have the power to impose deportation bans to certain countries based on their own humanitarian or political reasons.

<sup>34</sup> See "Asylum Procedure" in the Germany country report in the Asylum Information Database: "Informationsverbund Asyl und Migration," [www.asylumineurope.org](http://www.asylumineurope.org).

<sup>35</sup> Undocumented immigrants may be eligible for a handful of benefits that are deemed necessary to protect life or guarantee safety in dire situations, such as emergency Medicaid, access to treatment in hospital emergency rooms, or access to healthcare and nutrition programs under the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Twenty-six states make immigrants eligible for state-funded benefit programs. Most of these states either offer assistance to families or provide access to healthcare to otherwise uninsured immigrants. The costs of these programs vary and are not contained in the table below. See "Fact Sheet: Immigrants and Public Benefits," National Immigration Forum, August 21, 2018.

<sup>36</sup> In March 2018 there were about 318,000 asylum cases and 700,000 open deportation cases in the U.S. On average, these the deportation cases had been pending for 718 days and remained unresolved. Those who had been granted asylum by that time had waited more than two years for that decision. See "Asylum in the United States Fact Sheet," American Immigration Council, May 14, 2018.

<sup>37</sup> Reihan Salam, *Melting Pot or Civil War? A Son of Immigrants Makes the Case Against Open Borders* (New York: Sentinel, 2018).

<sup>38</sup> In 2015, with the influx of over one million migrants, the BAMF was caught unprepared. It took months for migrants to schedule an interview. BAMF hired thousands of new staff and initiated new and detailed training techniques, including that of “professional empathy” in order to separate those who were truly seeking refuge from those simply seeking employment. Officials had no choice but to build a new infrastructure for the asylum process in weeks, a task that would normally have taken years. They developed sophisticated face and voice recognition technology; massive databases, which include detailed facts and data from migrants’ phones; SWAT teams ready to nab a suspected terrorist; and interview techniques to detect serious discrepancies in stories (lies don’t necessarily mean that the interviewee is not escaping persecution or violence) or recycled stories from other immigrants. See Graeme Wood, “The Refugee Detectives,” *The Atlantic*, April 2018.

<sup>39</sup> A recurring argument of her liberal allies is that the migration issue sparked the rise of the far right, white supremacist movements, and neo-Nazis, and this rise has endangered democracy. Many argue that because this political upheaval has endangered democracy, immigration should be minimized or even curtailed. This is like blaming the presence of Jews in Germany for the rise of Hitler. Right-wing demagogues and extremist parties have arisen and undermined democracy across the globe in countries which have experienced little or no immigration: Brazil, Hungary, Russia, the Philippines, Poland, to name just a few.

<sup>40</sup> “Germany: Fewer attacks on migrants,” Deutsche Welle, August 12, 2018.

<sup>41</sup> “Stabiles Klima in der Integrationsrepublik Deutschland,” SVR-Integrationsbarometer 2018, SVR Jahresgutachten 2019. See also “Germans upbeat about immigration, study finds,” Deutsche Welle, September 17, 2018.

<sup>42</sup> Jan Plamper, *Das neue Wir: Warum Migration dazugehört: Eine andere Geschichte der Deutschen* (Fischer Verlag, 2019).

<sup>43</sup> Interview with Dale Medearis, Senior Environmental Planner, Northern Virginia Regional Commission, May 9, 2019.

<sup>44</sup> “Integrationsbericht. Zuwanderung in Bottrop 2017,” Kommunales Integrationszentrum Bottrop.

<sup>45</sup> It is commonplace to note that the German population is declining, and small towns are rapidly losing population. As former GDR plants closed in 1990, many East German villages became ghost towns. The Energiewende, combined with growing globalization of heavy industry, has pushed many workers out of small industrial and coal-producing regions into larger cities. While those workers compete with immigrants for housing in large cities, a shrinking population in rural areas leaves a large empty housing stock that could be made available to them.

<sup>46</sup> Bruce Katz, Luise Noring, and Nantke Garrels, “Cities and refugees: The German experience,” The Brookings Institution Report, September 18, 2016.

<sup>47</sup> See <https://www.welcomingamerica.org/>. Eighty-nine cities and towns in the United States are part of a non-profit network of cities in Welcoming America, whose aim is to “foster a culture and policy environment that makes it possible for newcomers of all backgrounds to feel valued and to fully participate alongside their neighbors in the social, civic, and economic fabric of their adopted hometowns,” reduce the barriers that immigrants face to fully participate in social and economic life, and to build bridges between newcomers and long-time residents.

<sup>48</sup> Susanne Dieper, “Welcoming Communities, Embracing Diversity – A Transatlantic Motto,” AICGS, April 30, 2019.

<sup>49</sup> Doug Thompson, “‘Welcome’ is not sanctuary, cities say,” Northwest Arkansas Democrat Gazette, June 18, 2017.

<sup>50</sup> “One Region Initiative: Creating a Welcoming Metro Atlanta,” WelcomingAmerica.org.

<sup>51</sup> Jeremy Redmon, “AJC IN-DEPTH | Sanctuary cities in Georgia: Are they legal?” The Atlanta Journal-Constitution, April 12, 2019.

<sup>52</sup> Daniel Estrin, “In Germany, mass deportation is a touchy subject,” PRI The World, June 22, 2016.

<sup>53</sup> “Stabiles Klima in der Integrationsrepublik Deutschland,” SVR-Integrationsbarometer 2018; Frieder Schmid, “Einwanderungspolitik in Europa: Besonders Briten sehen ihr Land in der Verantwortung,” YouGov.de, July 10, 2018.

<sup>54</sup> Birgit Neufert, “Church Asylum,” Forced Migration Review, no. 48 (2014).

<sup>55</sup> On July 4, Germany sent 69 Afghan asylum seekers to Kabul. Interior minister Seehofer joked publicly that the deportation was a present for his 69th birthday. Six days later, one of the Afghan men, a 23-year-old who had entered Germany as a teenager, killed himself in a hotel room in Kabul. See Caitlin L. Chandler, “Germany’s Faith-Based Sanctuary Activists Have Created a National Movement,” The Nation, September 19, 2018.

<sup>56</sup> Randy Sibert, “Contemporary Sanctuary in Germany: Bavaria and the Intricacies of Church Asylum,” MA thesis submitted to the University of Washington, 2017.

<sup>57</sup> Caitlin L. Chandler, “Germany’s Faith-Based Sanctuary Activists Have Created a National Movement,” The Nation, September 19, 2018.

<sup>58</sup> Public opinion data shows strong public support for pro-immigration policies such as DACA, and opposition to widespread deportation. However, public opinion data also reveals that low-income Americans are less likely to want to reside in sanctuary jurisdictions than their higher income counterparts. “Redefining Sanctuary Part IV: Recommendations,” opportunityagenda.org.

<sup>59</sup> Jefferson Chase, “German asylum scandal: Interior Minister strips Bremen office of authority,” Deutsche Welle, May 23, 2018.

Migration and integration have dominated public and political discourse in the United States and Germany for some time. Germany has officially been declared a country of immigrants and has looked to the United States for best practices in successfully welcoming and integrating a large and diverse number of newcomers. Germany has also begun to acknowledge past mistakes and neglect on the integration front. For several years, AICGS has looked at migration and integration-related developments in Germany and the U.S. and has developed a variety of programs. These efforts have combined academic scholarship and policy analysis and strive to develop and give voice to a new transatlantic network of integration experts and practitioners as well as young minority populations in both countries. Prof. Beverly Crawford has brought her outstanding expertise and insights to these endeavors since her tenure as a DAAD/AICGS Research Fellow in 2019.

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# Lost in Translation: The Meaning of Sanctuary for Immigrants in the U.S. and Germany

