

Title:

The institutionalised other: the path from natural law to positivist exclusion

A case study of the Syrian refugee crisis



MA Human Rights Dissertation (Research)

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Submission date: 15 March 2017

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Abstract:

The on-going Syrian migrant crisis has sparked numerous debates in legal-political philosophy. The liberal, European media has applied significant pressure on its governments to accept and care for any Syrian refugees who seek entry. Due to the unique circumstances of the migrant crisis, particularly the unprecedented numbers of refugees, some European governments have taken concrete steps to curb the influx of asylum seekers, often at the expense of United Nations refugee laws and conventions which are based on the principles of natural law.

This thesis aims to investigate whether states are beginning to shift from a natural law perspective to a legal positivist position, in dealing with refugees. While refugee and human rights law is based on natural law tenets, which guarantee that people have unalienable rights, there is now a shift towards a more legal positivist position that requires asylum seekers to define themselves according to ever-changing laws which govern migration and in some cases, circumvent natural rights.

This thesis will show that the United Kingdom has undertaken a process to distance itself from international conventions, legislature and ethics that afford refugees their natural rights, and instead pursue a programme that strengthens domestic institutions such as the Home Office in order to reduce immigration through narrowly conceived legal and bureaucratic interventions. Germany on the other hand has taken extreme steps to guarantee the safety and prosperity of Syrian refugees. While recognising potential to further refugee protection still, Germany has made a commitment to both international and domestic legislature that ensures refugees' rights are safeguarded.

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I. INTRODUCTION

This thesis aims to analyse how select European states, namely the United Kingdom and Germany, are moving away from a natural law perspective of refugee legislature towards a legal positivist position. The Syrian refugee crisis, which began in 2011 and is still on-going, will be used as the case study in order to evaluate whether this theoretical shift is taking place.

The humanitarian crisis that has followed the Syrian conflict, which quickly ignited a fully-fledged civil war, is in many respects unrivalled in modern times. As a direct result of the civil war, 5 million refugees have fled to various parts of the world, but in particular to Europe and neighbouring states in the Middle East. The refugee crisis within Europe has raised questions surrounding the duties and responsibilities of the ‘West’¹ - particularly Western European states - at such a critical impasse.

The first task for the thesis will be to examine the current international legislation which binds states to providing care for refugees. This primarily involves the 1952 United Nations Convention (and subsequent amendments in the form of the 1967 Protocol) on the rights of refugees, which clearly outline what is expected of accepting member states. After considering the international legislation, it will also be of value to consider what types of domestic policy Germany and the United Kingdom have with regards to refugees in order to fully understand how they have positioned themselves to deal with a refugee crisis.

Secondly, in order to understand how European states justify suspending care or entry for refugees, it will be documented how the states have reacted to previous relevant events in order to examine their historic level of commitment to the aforementioned national and international legislation. This analysis will involve investigating state policy in the form of submissions to the European Union (EU) or UN, as well as national law and official statements given at press conferences or state events. By documenting the various responses from the selected states, it will provide a position to compare with historical efforts and therefore to understand if there has been a change at all in the policies and positions of these states.

¹ The term “The West” is used in the political sense, encompassing the countries that share the same ideology of liberal democracy, rule of law and equality. In this thesis, these countries are considered to be: the USA, Canada, Australia, New Zealand, the member states of the EU, Iceland, Norway and Switzerland.

The final aspect will be to consider why certain states have reacted the way they have. This paper will discuss how States have justified their reactions and not whether these reactions are politically or morally justifiable.

It is in looking at the states' justifications for their actions that the theoretical component of this paper begins to interact with the case study of Syria. The aforementioned international legislation that deals with refugees is materially influenced by the legal theory of natural law. Put simply, natural law states that law is only legitimate if it is morally good and that good law is knowable through human reason. The tradition of natural law has sought to develop inalienable human rights for all people and was the theoretical tradition that inspired both the American and French revolutions against tyrannical leadership. This thesis aims to show how certain states are beginning to reject the fundamental principles of these UN documents on refugees and are thereby rejecting the core ideas of natural law. States, such as the ones selected for this analysis, are instead moving more towards the normative legal framework characterized by legal positivism; a system whereby law need only be legitimised by legal institutions, thus allowing for refugees to be rejected and for the purported well-being of the state to triumph.

II. CONTEXT

A. Political backdrop: Syria

This paper will look to the Syrian Civil War (2011 to present) in order to illuminate the attitudes of European governments and their attitudes towards refugees. The Syrian case study illustrates certain European states' capacities and desires to fulfil their commitments to international charters that they themselves have signed.

While the origins of the Syrian civil war (See Figures H and I which are particularly helpful in illustrating both the war and refugee crisis) are largely due to the dissatisfaction with government in the late 2000s, it is important to briefly discuss the potential causes that long pre-date the Syrian Spring in 2011.

Syria has an extensive history of occupation that dates back further than the First World War. Yet, it is after the War that we begin to see catastrophic international decisions that led to the complete destabilisation of Syria and surrounding areas. Baltes (2016: 4-7) argues that after being handed over to the French (under the French mandate in 1923) resentment grew within Syria towards the French, as was the case in many Arab countries at that time (Baltes, 2016: 17-18). Baltes (2016: 18-19) argues that resentment to the West was particularly aggravated by the division of the former Ottoman Empire in order to prevent any possibility of its reformation.

This French "occupation" coupled with the transfer of the Golan Heights to Israel, as well as subsequent conflict with a Western backed Israel, culminated in a persistent feeling within Syria that the country was constantly at odds with foreign powers – specifically those in the West (Baltes, 2016: 4-6).

This constant involvement of Western powers in Syrian affairs has created a mistrust of the West that has remained until the present day. While the aforementioned historical events did play their part in creating a fractious Syria, it was the Arab Spring of 2010 that effectively sparked this country into a civil war that would result in thousands of deaths and millions of refugees.

The Arab Spring was a democratic revolution that began in Tunisia and spread amongst a vast number of Middle Eastern and North African countries. Among varying reasons, the Arab

Spring was largely a result of the frustration of Arabs with the corrupt systems of governance they experienced (Simpson, 2014).

According to Peter Jones (2012: 447–463) the Arab Spring stemmed from a “broad set of ideas and grievances that are motivating” change within societies’ various discourses. Jones (2012: 447–463) argues that because the Arab world generally performs worse than all other regions of the world in social, economic and political indices, this perceived failure formed as the basis for the revolt across multiple Arab states beginning in 2010. The failure of Arab states in the aforementioned categories of living standards led to poverty, a general lack of job/economic opportunity and a mistrust and dislike of supposedly repressive regimes which then in turn led to a simmering pot of tension that would lead to the destabilization of the Arab world, especially in Syria.

International media outlets all list March 2011 as the start date of the civil unrest that directly led to the Syrian civil war. Peaceful protests began after 15 boys were detained and reportedly tortured for publicly spraying graffiti in support of the Arab Spring. One of the detained boys, Hamza al-Khateeb, was killed after having been brutally tortured (Reuters, 2017). The death of Hamza and the general violence of the regime crackdown galvanized further protests and unrest in the cities of Homs, Banyas, and Damascus (Reuters, 2017). President Bashar Hafez al-Assad, who was at the time entering his 11th year as President of Syria, reportedly made little effort in negotiating a truce between protestors and the state itself. Violence escalated when protestors felt there was no hope of peacefully enacted reforms within the country’s governance structures. By July 2011, an armed opposition to President Assad had formed, calling itself the Free Syrian Army – the military wing was backed by former Syrian army colonels and generals who wanted to force Assad from power (Reuters, 2017).

Between the end of 2011 and the start of 2012, both the Arab League and the United Nations failed in implementing ceasefires across Syria due to a lack of trust between the Syrian rebels and the Assad government (Russia Today, 2012). In the middle of 2012, former UN General Secretary Kofi Annan chaired a meeting of key international figures in Geneva to facilitate a plan of action in order to resolve the crisis. The meeting resulted in the “Geneva Communiqué,” a document that outlined the future of Syria’s potential peace negotiations. The Geneva Communiqué presented a ceasefire agreement, details on how to ensure full humanitarian access, and political steps for a political transition to replace the Assad government (Reasoned

Comments, 2014). The Geneva Communiqué ultimately failed due to the Syrian government's rejection of the proposal that President Assad should step down.

By late 2012, the United States, France, Turkey, Britain and a coalition of Arab states announced that the opposition to Assad are the "legitimate representatives" of the Syrian people. As the internal conflict began to intensify, the UK and US governments refused any sort of military intervention and instead promised to increase humanitarian aid to affected civilians and non-military aid to Syrian rebel groups who continued to fight the Assad regime.

In late 2013, the situation in Syria was complicated further. The rise of the Islamic State (IS) within Syria meant that there were four actors in the conflict: the Syrian government/army, the Free Syrian rebel movement, a minor but significant faction of Kurds in the North fighting for independence, and the aforementioned IS (BBC, 2017). The four actors complicated any potential peace deals due to varying demands from each faction. The situation also grew increasingly difficult for the West, who despite supporting a change of government, were weary to supply militant groups with arms and money.

Early 2014 resulted in another Geneva based peace deal failure (BBC, 2017). While the Syrian government maintained their view of being the legitimate power of Syria, rebel groups refused to accept any potential peace deal that did not involve Assad stepping down as President. Fighting continued into 2014 with various small victories for the Kurdish army against IS and heavy losses for Syrian rebels in Yabroud and Homs. In September, the US and an Arab coalition announced the start of a prolonged series of aerial attacks on IS targets in Syria. In the middle of 2015 Russia agreed to support the Assad government by conducting their own aerial attacks against IS and US backed rebel groups throughout Syria (BBC, 2017). After the Paris attacks towards the end of 2015, both France and the UK agreed to join the US in conducting bombings of IS targets. In 2016 the Syrian government experienced more success in fighting against rebel groups and by the end of the year the rebels lost their last major city of Aleppo (BBC, 2017), a city in which at least 500 000 people have fled from since the civil war began, according to the Director for Middle East Operations of Medecins Sans Frontieres (Reuters, 2017).

The war is still on-going, as of January 2017, but the Syrian government's forces have begun to slowly increase their presence across villages and small settlements that surround the Damascus and Aleppo metropolitan areas. The strategy has now been to broker minor peace deals with rebels in these villages, with the government offering them the opportunity either to

surrender or the opportunity to safely migrate to the North West District of Idlib (Reuters, 2017).

There is also optimism now that with the election of Donald Trump to the Presidency of the United States, that he and Russian counter-part Vladimir Putin could begin to work together to return safety and security to Syria, instead of both propping up directly conflicting groups, as was the case between 2011 and 2016 under the Obama administration. (Osborn & Winning, 2017).

The Syrian civil war's origins and inflammations have resulted quite considerably from the West's interaction in the region as a whole. The West has a stronger obligation than ever before to help in the resultant humanitarian crisis by resettling more Syrian refugees than it already has. The background to the civil war is important to consider for this thesis as it sets the stage on which European actors have an opportunity to respond. The legislation concerning refugees is manifest in both international and domestic policy and therefore the case study of Syria provides the Western powers an opportunity to fully apply these policies.

B. The humanitarian crisis that followed

In order to determine the degree to which the states concerned in this crisis have acted, it is important to understand the magnitude of the problem that has been created due to the Syrian civil war.

As of January 2017, Syrians constituted the largest population of refugees in the world, with almost five million displaced (UNHCR, 2017). The United Nations has refused to give a firm estimate of the death toll in Syria but the figure is believed to be around 250,000, with a further one million people injured in the conflict (McGuinness, 2017: 4-5). In February 2016 the Syrian Centre for Policy Research (Black, 2016), based in Damascus, estimated that the death toll figure was as high as 470,000.

According to the UN Office for the Coordination of Humanitarian Affairs (OCHA, 2017) there are currently 13.5 million people in need of humanitarian assistance in Syria. The UNCHR released a report in January 2017 which stated that there are at least 6.3 million people who are internally displaced within Syria, while there are over 4.5 million people of concern who are not officially accounted for (UNHCR, 2017).

According to data from the UNHCR's Syrian Regional Refugee Response report (2017), refugee dispersion has largely been between two areas: Europe and neighbouring states in the Middle East. The UNHCR (2017) notes that between April 2011 and October 2016 a total of 884,461 refugees made asylum applications to enter the EU. The UNHCR (2017) admits that this figure could have a slight margin for error as some of those applications may have been submitted for the second or third time and therefore not perfectly reflective of the total number of refugees seeking asylum in the EU. The UNHCR (2017) also highlights that in 2014 alone, the EU received 137,798 applications, while in 2015, the highest number of new applications for a single month was recorded when in September 64,266 applications were received.

With regards to the analysis of this research report, the responses of the United Kingdom and Germany could not be more disparate. Between April 2011 and October 2016, the UK received 10,113 asylum applications whilst in the same period, Germany received 456,023. In fact, Germany and Sweden collectively received 565,993 applications, in the aforementioned period, which amounted to 64% of all the applications the EU received (UNHCR, 2017).

While Europe has received a record number of asylum application during this crisis, the Middle East has so far accepted the highest number of refugees. The region has collectively accepted over 4.9 million refugees, with Turkey taking in close to 3 million (UNCR, 2017). Jordan has accepted just over 650,000 Syrian refugees while Egypt and Libya (as well as other North African states) have together taken in almost 150,000. Iraq has seen over 200,000 refugees enter but almost all of these are expected to be spill over refugees who are fleeing conflict in areas that are close to the Syria-Iraq border (UNHCR, 2017). It's unlikely many refugees have purposefully moved into Iraq especially considering its high level of instability over the past decade, now further complicated by the rise of the Islamic State.

Despite being one of the smallest yet most dense countries in the world (CIA, 2017) Lebanon has taken in over 1 million refugees between 2011 and 2016 - more refugees than the entire European Union has accepted (UNHCR, 2017). The Arab state has a long history of accepting refugees, with a large portion of its current population made up of Palestinians who fled over the course of the last 60 years due to clashes with Israel. When the civil war in Syria began, Lebanon's population stood at 4.4 million but is expected to reach well over 6 million by the end of 2017 (See Graphs B and C).

The aforementioned data highlights the scale of the Syrian refugee crisis. According to the United Nations High Commissioner for Refugees, Filippo Grandi "Syria is the biggest

humanitarian and refugee crisis of our time, a continuing cause of suffering for millions which should be garnering a groundswell of support around the world” (UNHCR, 2016). Grandi added that only a political solution could prevent the further loss of life and that other countries needed to do more to resettle refugees.

As of 2016, Syria’s conflict has created 4.8 million refugees in neighbouring countries alone, with hundreds of thousands fleeing to Europe. At the same time, there are a reported 6.6 million internally displaced people who need assistance (UNHCR, 2017).

C. Relevant international legislation

In order to analyse the potential shift in attitudes of European states with regards to refugee care, it is of course important to present the international conventions that constrain these states in their actions. It is also important to understand that the formation of this international legislature was in response to the humanitarian crises of the two World Wars. The international refugee legislature that emerged from the result of the two wars is still so important today to refugee law and asylum procedures.

The critical aspect of the analysis will be in reviewing the binding international legislature and highlighting which parts are significantly inspired by natural law theory or ideas of that kind. It must be clearly shown whether or not these international documents are based on the ideas of natural law theory as this will have consequences for the analysis of Germany and the United Kingdom’s actions. If either state is found to be distancing itself from the international legislature, it will show that these states are ultimately rejecting and moving away from the tenets of natural law. The ramifications of that are significant as a rejection of natural law theory is a rejection of the idea that morality gives law its legitimacy – a notion that should be maintained, particularly in the field of refugee law where vulnerable persons need legal protection.

Concerning the history of international refugee law, there was little to no concern to stop the flows of migration in the four centuries that preceded 1920. During this period there was almost no debate or intent shown to define the status of a refugee. This was largely due to the fact that

refugee groups tended to be much smaller (in relative terms) to the numbers we experience in modern times, for example the current Syrian crisis or even the Yugoslavian refugee crisis. The other factor was that most of the migration was to newly discovered lands such as the Americas, where population numbers were still small and the arrival of further migrants was beneficial to the young economies of these lands (Hathaway, 1984: 348-349). Furthermore, the dominant political outlook at the time was that of liberalism which focused on the importance of the individual (and self-determination) and so most European states were not concerned with keeping a strict control on migration numbers (Hathaway, 1984: 348-349). All these factors contributed to not only no migration policy but a rather pro-migrant attitude within Europe and the colonies.

The end of this era of uncontrolled immigration policy took place after the First World War due to the unprecedented number of refugees who had been displaced across Europe (and to a smaller degree the Middle East and Africa) from the conflict. This, factored with the rise of nationalism and fascism throughout Europe meant that governments reacted swiftly with stricter and more protectionist immigration policies (Hathaway, 1984: 348-350).

This ultimately meant that for the future definition of refugees, the previous outlook of liberalism would need to be merged with a system that ultimately favoured the survival and success of domestic policies and the nation itself.

According to Hathaway (1984: 348-350) there were three key periods for the term “refugee” between 1920 and 1950.

From 1920 until 1935, refugees were defined in largely what Hathaway calls the “juridical terms” (1984: 348-350). The juridical approach treats refugee groups as people who have now found themselves out of their State of origin and who have effectively been deprived of the formal protection of their government. Hathaway (1984: 348-350) writes that the purpose of a juridical refugee status is to facilitate the international movement of persons who find themselves placed outside of the boundaries of their original state and are unable to migrate because “no nation is prepared to assume responsibility for them”.

Around 1935 the approach to refugees takes a small change and stays with this alteration up until the beginning of the Second World War in 1939. Refugees begin to be defined from a social perspective. A social perspective involves refugees being seen as helpless victims of socio-political circumstances that were out of their control and ultimately have rendered them as outside their home state. The substantial difference between this period and the juridical one

is that now refugees are provided with assistance, not to correct an “anomaly in the international legal system” as Hathaway (1984: 348-350) terms it, but rather in the interest of providing the refugees safety and relief.

In the final period, between 1939 and 1950, refugees were defined in primarily individualist terms, which marked a return to a more liberalist line of thinking. In an individualist sense, a refugee is seen as person who is escaping potential injustice or persecution found within his home state. The perceived fear he now harbours makes it impossible for him/her to continue to live in his home state and so he leaves in pursuance of personal freedom (Hathaway, 1984: 349-351).

This individualist perspective is what goes on to define the future rights of refugees, which will be discussed in the following paragraphs. However, it is important to understand that up until this point there is no unified or cohesive refugee policy found through Europe, or the global community at large.

The first and most prominent piece of international legislature on the rights of refugees is the United Nations 1951 Convention on relating to the Status of Refugees. The modern, online edition of the Convention is introduced by the following foreword:

“Grounded in Article 14 of the Universal Declaration of human rights 1948, which recognizes the right of persons to seek asylum from persecution in other countries, the United Nations Convention relating to the Status of Refugees, adopted in 1951, is the centrepiece of international refugee protection today. The Convention entered into force on 22 April 1954, and it has been subject to only one amendment in the form of a 1967 Protocol, which removed the geographic and temporal limits of the 1951 Convention. The 1951 Convention, as a post-Second World War instrument, was originally limited in scope to persons fleeing events occurring before 1 January 1951 and within Europe. The 1967 Protocol removed these limitations and thus gave the Convention universal coverage. It has since been supplemented by refugee and subsidiary protection regimes in several regions, as well as via the progressive development of international human rights law” (UNHCR, 2011).

The 1951 Convention’s real success is the instrument it provided in order to comprehensively codify the rights of refugees at a global level. While previous refugee instruments always made reference to particular groups, the 1951 Convention made sure to provide a universal definition for the term “refugee”. In Article 1 of the Convention, a refugee is defined 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” (UNHCR, 2011).

Another important achievement of the Convention was the legislature concerning the legal protection of refugees outside of their original country. The Convention states that refugees cannot be subject to discrimination, penalisation and most importantly, refoulment (UNHCR, 2011: 2-3)

On the note of penalisation, the Convention recognises that refugees may break conventional national laws concerning immigration or movement but these refugees under the Convention cannot be penalised for any sort of laws dealing with illegal entry or stay (UNHCR, 2011: 3). This clause helps to prevent the formation of the abject other by removing the borders that are so often used to define them as “outside” or foreign.

The principle of non-refoulment guarantees that refugees cannot be deported or expelled to any territory where that refugee fears for their life or freedom (UNHCR, 2011). The clause of non-refoulment does not necessarily guarantee permanent stay within the accepting country. The clause stipulates that the refugee cannot be deported to a territory where they fear for their life but this creates two potential options for states who are not interested in keeping the asylum seeker: return the refugee to another area (where the safety could be guaranteed), or engage in stabilising the home state/territory so that it could be conceivable to deport the migrant. According to Sandro Mezzadra, the process of sending refugees to other areas, where their safety is not in doubt, is a modern power technique on behalf of the state to exclude (Nyers, 2003: 1070). Mezzadra argues that “safe third country” agreements are systems of transnational exclusion. Safe third country agreements involve sending refugees back to countries which they passed through previously (NRC, 2016). For example, if a refugee should pass through countries C and B to reach country A, then country A could return the refugee to country B, assuming countries A and B had signed a safe third country agreement. The refugee could then be sent from country B to country C if those countries also had a similar agreement (See graph F). These agreements have the potential to completely reverse the natural paths that migrants take and turn them into “corridors of expulsion” (Nyers, 2003, 1070-1071). States are effectively exporting their border control techniques to other neighbouring countries in order to gain further control over who is let in and who is excluded. In the early 2000s, Germany had a safe third country agreement with Poland, who in turn had the same sort of agreement with

Ukraine. The corridor of expulsion therefore stretched from Germany to Ukraine, which in some cases was the exact opposite of natural routes taken by refugees to reach Germany (Nyers, 2003: 1070-1071).

While permanent residence is not guaranteed by the principle of non-refoulment, it is also not prescribed in any other part of the 1951 Convention. The UNHCR understands that this can sometimes cause problems for the refugees themselves, especially in the case where they cease being refugees. For example, if a refugee's home state should stabilise, their new host state is legally permitted to repatriate these refugees back to their original state. This is permitted in international law as it does not conflict with the principle of non-refoulment which does not permit repatriating refugees to locations where their safety is at risk. While this process is discouraged by the UNHCR, who prefer willing repatriation models, it is not prohibited by the Convention itself.

III. Theoretical Perspectives

A) Legal Theories

i) The history of natural rights theory

The nature of our understanding of modern human rights has a long-standing basis in philosophy and political philosophy.

The 1951 UN Convention on the Status of Refugees was undoubtedly born from the destruction of World War 2 and the atrocities that took place during it. However, the concept of free movement across borders is one that can be traced back much further. Although there may have been discussions and writings on the topic prior to the 18th century, the most prominent, first writings were arguably from the likes of Immanuel Kant, Thomas Paine, Georg Hegel and Thomas Jefferson in the late 1700s and early 1800s. The importance of considering their writings is to be able to understand the modern theoretical debates surrounding the actions of states. These writers were ones that shaped society's thinking about migrants and refugees and ultimately resulted in the formation of the international organisations we analyse today such as the European Union or the United Nations.

In 1795, Immanuel Kant penned the essay "Toward Perpetual Peace". In this essay Kant seeks to lay down many principles on which states should be built upon. Some of these principles or laws involve banning temporary peace treaties while still planning for future wars, prohibiting

any sort of annexation of one state by another, the abolition of standing armies, not interfering in the internal affairs of other states, and a set of limits on the conduct of war that disallows acts that would make peace impossible (Gregor, 1999: 317-320). Kant postulated that if every state were to follow these principles, there would be perpetual peace (Gregor, 1999: 317-320).

Kant also postulated that there needed to be a law that dealt with the interaction between people and foreign states, a law he termed “cosmopolitan law”. He wrote that International law was insufficient as it dealt with the relationship between states and did not consider the perspectives of the agents who may move between states. In cosmopolitan law ‘individuals and states, who stand in an external relationship of mutual influence, are regarded as citizens of a universal state of humankind’ (Kleingeld, 2012: 73-74). In Kant’s famous *Metaphysics of Morals*, he mentions nations and ‘citizens of the earth’ as the custodians of cosmopolitan rights.’ Kant then is terming individuals as ‘citizens of the earth’ instead of belonging to any particular state (Kleingeld, 2012: 73-74). While the idea that all humans, irrespective of their place of birth or nationality, are world citizens seems to be a very intuitive thought now, it was an incredibly modern idea if we consider that the essay was written in 1795, 125 years before the formation of the League of Nations (the historic pre-cursor to the United Nations).

Cosmopolitan law is therefore concerned with interaction across borders, and specifically the interaction between a person and the states the person may move between. Kant postulates that cosmopolitan law covers any kind of communication, interaction, trade, or business. The law extends itself to encompass travel or migration and intellectual exchange (which includes any sort of commercial endeavours).

The content of cosmopolitan law is fundamentally based on the right to hospitality. Cosmopolitan law is limited and constrained by the degree to which universal hospitality extends (Kleingeld, 2012: 73-75). For Kant, the concept of hospitality must be deployed in a negative sense, which is to say that a foreign person who wishes to enter a new state should not be met with any sort of violence or hostility. We can immediately see then that Kant is not advocating for the right to stay in the new land but merely that he/she should not be met with violence (Kleingeld, 2012: 73-75). In fact, Kant is not even advocating for foreign entry and so not even for the right to treated as a guest.

Kant even includes the option for a state to deny the visit/stay to a foreigner but as long as, as aforementioned, there is no hostility or aggression. Furthermore, Kant argues that visitors do not have a general right to be supported, to be taken in, or to be tolerated by a foreign state. It

is up to the State and its sovereignty to decide upon and set the terms for which the visitors should follow. (Kleingeld, 2012: 73-77). Kant concludes on the nature of the cosmopolitan right by arguing that although there is no formal right to settlement for a foreigner, such a right could be created through a treaty that would involve the host and sending state.

Kleingeld (2012:73-77) argues that Kant's goals with this cosmopolitan right are straightforward. Kant's formulation of the cosmopolitan right is a firm critique of the process of colonialism. It is understood that Kant's clause of not being allowed a right to settlement is a countering device that could potentially prevent a colonialist situation (Gregor, 1999: 317-320). If a land is already occupied and inhabited, the accepting nation or state would have to agree with the visitors a condition for their stay. The obvious criticism at the time would have been to suggest that almost all colonised scenarios happened where the "accepting state" was actually not a state in any formal regard and therefore could not have made any treaties. In short, Kant would respond by citing his writing on property rights which would guarantee the right of property to nomadic people or "savages" as they were commonly referred to in those times.

Kant may have had what would now be judged as protectionist and conservative ideas about the notion of cross-border movement but these ideas were the first to really spark the general notions of refugee rights to movement and settlement. His views in truth were not conservative and his denial of a right of entry and settlement was merely a way in which to prevent further episodes of colonialism coming in true. Kant's guidelines and rules found in *Towards Perpetual Peace* were designed in order to foster peaceful relations between states and his writings on the rights of migrants helped to inspire other writers of his time to also ponder the same legal questions he had.

Another prominent author on the topic of rights and cosmopolitanism is Thomas Paine. According to Gary Kates (1989: 569-570) Thomas Paine's *Rights of Man*, is one of the most fundamental texts of modern democracy. The pamphlet was written by Paine in 1791, during the French Revolution, and went on to become a major success, selling 200,000 copies across the Western World in the space of just two years. The success of the *Rights of Man* made Paine the era's best known revolutionary writer. John Adams (the second President of the United States of America and one of the original founding fathers of its constitution) once said "I know not whether any man in the world has had more influence on its inhabitants or affairs for the last thirty years than Tom Paine" (Kates, 1989: 569).

The importance of Paine, and his writing in the *Rights of Man*, is that he develops his theories on rights by building them upon the notion of natural rights. The fundamental starting point to this theory of natural rights is the conception of man's "natural state" as a state characterised by the absence of a right to rule others.

In his critique of theories based on the prescriptive authority of tradition, Paine claims man "has no property in man, neither has any generation a property in the generations which are to follow" (Kates, 1989: 569-571). By having no property in others and others having no property in him, every man is therefore naturally free to do as he pleases without being constrained by the will of others. The only constraint a man then has, is the constraint of every other person's natural right to do the same.

It is from this core point that Paine then goes on to justify the other various natural rights such as freedom of religion, to create and dissolve governments, to property, etc. Perhaps the bigger assumptions that follow from Paine's fundamental point concern the implications for political authority. Paine postulates that the end of any political society must be to pursue the protection of natural rights: "Man did not enter into society to become worse than he was before, nor to have fewer rights than he had before, but to have those rights better secured" (Kates, 1989: 569-572).

The second implication is that the legitimacy of political authority can only originate from the consent of the people of which it governs. This follows because if people are naturally free to govern themselves, then they can only be governed by others when it is from their own consent. Therefore, it is only through an agreement between sovereign individuals that a government may ever arise and the only way in which the government maintains its right to continue governing (Kates, 1989: 569-572).

Paine also maintains that if a government should ever fail to secure this agreement, then the governed are justified in overthrowing the regime. It is through these writings that many of the debates during the French Revolution were formed.

The importance of briefly considering the writings and role of Thomas Paine is to allow us to frame the modern issues that are still fundamentally located within the tension of his ideas. The debate that is at the heart of this paper concerns natural rights and the theories of natural law. There is undoubtedly evidence of the natural rights way of thinking in the 1951 Convention on the Status of Refugees. However, it seems that governments are beginning to distance

themselves from this concept and further towards ideas of state power and sovereignty over the rights of minorities or refugees.

ii) Natural Law

Paine's position is that of the natural law perspective. According to Denise Meyerson (2013:33) natural law theory dates back around 2500 years to the times of the historic Greek philosophers. The fundamental idea is that there is a rational order found within nature that is discoverable by human reason. This rational order is ultimately the source of objective moral standards. These moral standards form a law, which is natural law. This natural law could be contrasted by human law which is, as the name suggests, constructed by humans and therefore its authority does not stem from a natural order. Since natural law receives its authority from a natural order, it is not relevant if it is accepted or recognised by human legal structures or frameworks.

Meyerson (2013: 33-34) argues that there are different degrees to which natural law theory had been applied. At its most extreme, natural law theory posits that any law must be moral in order for it to have any legal validity. In a somewhat looser application of the theory, natural law may reject those laws that blatantly break moral codes. This would mean that the laws do not have to first meet the criteria of being moral but rather the criteria that they aren't immoral (Meyerson, 2013: 33-34). Meyerson continues by citing the works of Sophocles and Cicero to highlight the fundamental theory of natural law and the influence the stoic philosophers had on it.

"True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions... It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligations by senate or people, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and all times, and there will be one master and ruler, that is, God, over us all, for he is the author of this law, its promulgator, and its enforcing judge. Whoever is disobedient is fleeing from himself and denying his human nature, and by reason of this very fact he will suffer the worst punishment."

Cicero (Meyerson, 2013: 36-37)

The above quote involves the fundamental elements of natural law. Human beings are not the source of true law and this true law is universal and not subject to different human legal constructs (such as in Rome or Athens). True law is also discoverable by human reason and human actions must conform with these moral codes in order to qualify as legal.

An immediate and obvious tension to natural law is how it interacts practically with immoral law that has the justification of legal authorities. Meyerson (2013:36-37) recites a story of such a conflict, where an immoral law was followed and yet the person who complied with it was still punished due to the severity of the law's immorality.

After the Second World War, German courts were tasked with multiple cases referred to as "grudge" cases. These cases involved potentially prosecuting people who "exploited" some of the oppressive laws of Nazi Germany to settle a grudge (Meyerson, 2013: 36-37). The particular story deals with a woman who had grown tired of her husband and decided to fabricate a story of him being a Nazi critic. During the Nazi rule of Germany, it was illegal to make any sort of negative comments about the regime or its leader Adolf Hitler. The man was sentenced to the death penalty and was executed soon after. The man's wife was prosecuted after the war for illegally depriving her husband of his natural freedom. Her defence was that she merely acted in accordance with the law at the time and therefore could not be guilty of breaking the law. Meyerson (2013: 37) writes that the German court found the wife to have violated natural law. The court argued that the German law that provided for a death penalty in instances of government criticism was so grotesquely evil that it could not be considered a genuine law. The wife was found to be guilty as she acted contrary to "the sound conscience and sense of justice of all decent human beings" (Meyerson, 2013: 37).

A more contemporary example of this tension between human constructed law and natural law can be found in the handling of an asylum case in the United Kingdom. The recent case of R (Anufrijeva) vs Home Secretary in 2004, came to attention due to the manner in which the House of Lords (the upper room of the British Parliament) overruled the decision by the Home Secretary to cut benefits to the asylum seeker. The income benefits the refugee was receiving were terminated on the day that the Home Secretary recorded that the asylum application had been officially rejected (Meyerson, 2013: 37-38). The House of Lords found this to be unfair and argued that the asylum seeker should receive benefits until being informed of the decision involving his asylum application. Lord Steyn argued that individuals deserve to know about a decision that could potentially adversely affect their rights. Lord Steyn continued by arguing

that not communicating administrative decisions to individuals was “astonishingly unjust” (Meyerson, 2013: 38). While the initial decision by the Home Secretary was not necessarily against any current law found within UK law, it was found to have failed a moral test that the asylum seeker deserved to have his status communicated to him before benefits could stop being paid.

The importance of natural law to this thesis is that it frames the reaction of Germany and the United Kingdom to the refugee crisis. It does that because, as will be illustrated, the United Nations 1951 Convention contains many ideals that have their theoretical basis in the field of natural law. This then allows us to consider the 1951 Convention as a starting point for analysis of how the aforementioned states have reacted to the Syrian migrant crisis. If Germany and/or the United Kingdom have failed with regards to their duties to refugees (as outlined in the 1951 Convention and subsequent Protocols) then it is possible to say that these states are starting to distance themselves from a natural law inspired approach to refugees and instead are adopting models where the preservation of the state is considered to be the most important value.

iii) Legal Positivism

The theory of legal positivism can in some important instances provide friction between itself and the theory of natural law, in terms of the basis for deciding what is law.

Legal positivism is the theory that the existence and content of law depends on social facts and not on its (moral) merits. The English jurist John Austin (1790-1859) articulated its thesis and content in the following manner: “The existence of law is one thing; its merit and demerit another. Whether it be or be not is one enquiry; whether it be or be not conformable to an assumed standard, is a different enquiry.” (Green, 2009). The thesis therefore posits that the existence of a law is not in any way connected to its moral content or whether or not it has moral failings. However, it is also important to keep in mind that the positivist theory does not make the claim that law’s merits are unimportant to the philosophy of law.

Rather, the positivist legal theory simply states that the merits do not determine the existence of law. Whether a society has a legal system depends on the presence of certain conditions such as structures of governance and not on the degree to which these government structures promote ideals of justice, democracy, or the rule of law. According to Leslie Green (2009), what laws are in force in any given system depends on the social standards that its officials

recognise as authoritative. Legislative enactments, judicial decisions, or social customs would all count as social standards according to Green (2009). For a policy to be just, wise, efficient, or prudent does not guarantee it as a law. The opposite is also true, for a policy to be unjust, unwise, inefficient or imprudent does not give reason for the policy or law to be doubted in its legitimacy (Green, 2009). Therefore, according to legal positivism, the law is a matter of what has been decided or instructed, and therefore positivism views law as a social construct and not an objective, superseding natural commandment.

Austin posited that law is a natural phenomenon of large societies where a sovereign is present (Green, 2009). A Sovereign is described as a determinate person or group who has supreme and absolute power – the sovereign is obeyed by all or most others but do not themselves similarly obey anyone else (therefore the highest power in the society/community). The laws in the society are effectively a subset of the sovereign's commands. The sovereign's commands include any general orders that apply to classes of actions and people and that are backed up by the potential threat of force or “sanction” (Green, 2009). Green (2009) writes that this imperativist theory is therefore positivist since it identifies the existence of legal systems with patterns of command and obedience. These patterns of command can be ascertained without considering whether the sovereign has a moral right to rule or whether his commands have merits to them. The theory has two other distinctive points. It is monistic, since it presents all laws as having a single form whereby obligations are imposed upon subjects but not on the sovereign itself. The legal positivist acknowledges that ultimate legislative power can be both self-limiting and limited externally by what public opinion will tolerate (Green, 2009). The legal positivist also understands that the legislative power is limited by the fact that legal systems are constrained by the likes of provisions that are not imperative commands (for example permissions or definitions). However, the positivist argues in turn that these are a part of the non-legal material that allows for and forms part of every conceivable legal system. The other distinct point of the theory is that it is reductivist. The theory is also reductivist, for it maintains that the normative language used in describing and stating the law – discussions of authority, rights, obligations, etc. - can all be analysed without remainder in non-normative terms, ultimately as a series of interconnected statements about power and obedience (Green, 2009).

The straightforward difference between natural law theory and legal positivism is therefore where the two theories believe the legitimacy for law stems from. Natural law believes that law is only legitimate law when it is moral or when it does not contain immoral content. Legal

positivism believes that morality is not a requirement for law to be legitimate and rather that what makes law is whether or not it is legitimised by the society through various institutions. Of course, there are countless examples of laws that do not have the tension between these two theories. In cases where there are morally good laws that are also prescribed by an overriding social institution (like a parliament or court) there is no tension between the two theories and therefore the two are not necessarily contrasting or opposite.

The distinction between the two theories is important to keep in mind because it plays a role in the debate of how Germany and the United Kingdom have justified their approach to the Syrian migrant crisis. In some cases states have decided to honour the natural law principles found within the 1951 Convention, while other states have shown a lack of commitment to a morally worthy cause and instead decided to enforce or strengthen the law of the country in a manner which seeks to keep refugees out.

iv) Natural Law and the UN

According to McDougal and Bebr (1964: 604), the goals of the UN program are all heirs of the great movements for man's freedom. Whether it be the English, American or French revolutions, the ideals found within all of them echo the position of natural law. It is the natural law tradition that inspired the fundamental points of the 1951 UN Convention of the Status of Refugees.

Isaac Kfir (2014: 14) writes that natural law theory considers that the rights identified above, natural rights, are found in human nature and in moral behaviour that distinguishes between right and wrong. These rights are not contingent on legal power and therefore, these rights become universal and inalienable (insofar as legal systems in different states are concerned).

It then follows that natural law is based on two principal assumptions which help to frame the UN documentation on refugees. Firstly, natural law states that there exists an objective moral standard and this places normative limits on social practices. Secondly, that human beings are able to identify a set of basic or human goods through the faculty of reason (Kfir, 2014: 13-15).

These goods, according to Kfir (2014: 14-15) include life, knowledge, friendship, practical reason and religion that any person would want because these are moral principles that all humans have and desire.

The fundamental question therefore is: What are these rights? Kfir (2014: 14-15) argues that the impact of natural law theory on refugee law is significant because it promotes three key elements. The first key element is that natural law states that all individuals possess basic rights, which are referred to as natural, since they stem from one's existence as a person. These natural rights refer to the rights that one has simply by virtue of belonging to the class of humans. It also therefore follows that these rights are afforded to all humans and therefore these rights are equal rights.

In the more classic sense of natural law, rights were often defined and legitimised by the Church or religious texts. The legitimacy that these institutions gave to natural rights was so strong that they were never challenged or expanded upon. However, as Kfir (2014: 14-16) points out, the modern setting we now find ourselves in has legitimised these same rights through various "human rights legal mechanisms" such as treaties, conventions and declarations instead of canonical law. The key premise in international refugee law is the recognition that the global community must act when there are blatant violations of these rights. This action is justified by the acknowledgement that all humans have the same fundamental rights. These rights and the need to protect them mean that in some cases the sovereignty of a state may have to be challenged in order to uphold its commitment to natural rights.

Kfir (2014: 14-16) argues that when considering the role of refugee law, one must first understand that basic rights exist and that these are often threatened by the state. The manner in which these rights are threatened by the state can often come about through violent means. The violence that states can enact upon refugees can be direct and physical (such as the deployment of troops or police for purposes of intimidation and dispersion) or through an overarching behaviour maintained towards refugee treatment which can be exclusionary or oppressive. The UN 1951 Convention was the first international document that sought to protect vulnerable people from the power of the state. This document was strongly inspired by natural law theory. Kfir (2014: 14-16) argues that the clearest indication of these principles of natural law within the 1951 Convention is the principle of non-refoulment. The principle of non-refoulment was addressed under Article 33 of the Convention and states:

Article 33

Prohibition of expulsion or return ("refoulement")

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

on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.”

(UNHCR, 2011)

The reason why Kfir (2014) argues that this is clearest indication of natural law within the refugee regime is because it rests upon the norms of human rights. These are the rights of a person to not face persecution, threats, torture or cruel treatment. These very rights are agreed upon between members of the international community and the community itself has pledged to not send these vulnerable people back to the area that they are fleeing.

Natural law also inherently recognises that people have a desire for basic security. Basic security is split into two types of freedoms, namely “freedom from fear” and “freedom from want.” Freedom from fear refers to civil and political rights that guarantee personal safety. Freedom from want is understood in terms of social and economic rights such as a right to employment.

The idea of basic security was further promoted by the United Nations Development Program (UNDP) which, in 1994, released a report which argued for the pursuance of basic security for all human beings. Included were commitments to health security, personal security, environmental security and economic security – all of which are important for the betterment of the human condition. The UNDP (1994) promoted human security because it argued that security is more than just the security of the state from neighbouring territorial aggression or the protection of national interests from foreign powers. The UNDP (1994) argued that security was a much broader concept that included safety from hunger, disease, repression and pain. Kfir (2014: 15-16) writes that in considering refugeeship and basic security together, it becomes clear that it is difficult to deter someone from seeking basic security. This is because every single person is entitled to seek and receive security, as per the UNDP (1994). When a refugee is created by fleeing an area of persecution, it is their search for basic security that drives them to move into foreign states. The search for basic security has resulted in refugees being protected and empowered, because by doing both, the refugee is able to acquire both personal and economic security.

Kfir (2014: 16-17) writes that this approach (focusing on protection and empowerment) was the particular goal of the global refugee movement between the 1920s and 1960s. States appeared committed to support the right to basic security as they either agreed to voluntary repatriation or the resettlement refugees. For example, in the aftermath of the Hungarian crisis of 1956, over 180,000 Hungarian refugees were resettled in 37 different countries in a very short time frame. In 2007, Assistant High Commissioner at the UNHCR, Judy Cheng-Hopkins noted that the resettlement of the Hungarian refugees was highly successful due to the legal protection and resettlement given by Western states and the commitment to the values of security (Cheng-Hopkins, 2007).

A fundamental point about natural law and its role in refugee legislature concerns the aspect of morality within the law. As previously discussed, natural law posits that legislation and other legal directives are not just legal mechanisms that oversee society's operation, but rather, they are guiding towards a common, moral good. Furthermore, if the law is to be moral then states are under an obligation to adopt legislation that promotes and protects basic rights. An issue arises when the laws that states put forward ultimately end up undermining or challenging these basic rights. The natural law perspective would posit that these laws are illegitimate and one is obligated to oppose them at every opportunity. The importance of morality in refugee law is that it ensures a commitment to preserve, protect and promote these basic rights, especially in the case where people are forced to flee persecution by a government that undermines these rights. Kfir (2014: 16-17) argues that it is because of these obligations (that stem from moral duties under natural law) that there is a potential clash with the idea of legal positivism in refugee law. The clash would conceivably be present in a situation where what one is morally obligated to do, is against the current laws of the state.

An essential distinction between natural law and legal positivism is how the theories suggest laws receive their legitimacy. In the case of natural law, legitimacy is grounded in morality, therefore law is only law when it is morally good. On the other hand, legal positivism states that law is law as long as it is legitimised by legal structures and institutions. Legal positivism does not exclude the possibility of law and morality coinciding, but rather states that this link between law and morality is not a necessary one, as it is in natural law.

B. The Abject Other

Although it would be incorrect to simplify an entire community's sentiment towards refugees, the focus of this paper is on the rejection of care for refugees and therefore draws on the negative discourse in both government and society, where necessary or applicable, in order to contextualise the paper's investigation.

In rejecting refugees, states pursue their own national interests instead of their obligations to refugees under international law. Furthermore, these states create the image of refugees as "others" which allows the state the domestic political capital to reject the vast majority of asylum seekers.

This paper will use the idea of the "abject other" in order to frame the positioning of the refugee in the society which he or she enters. The word "abject" itself comes from the Latin root "abjectus", meaning throw-away or cast-off. This word suggests the idea of a casting out, someone who is discarded and jettisoned from society.

Once the Other is created as a threat to the national well-being, the general public begins to demand for their exclusion from the national community. When refugees are excluded from any national community, the loss of consideration for refugee rights tends to follow. In excluding refugees, the deployment of fear tactics is very important. Zembylas (2010: 31-33) writes that fear is not always controlled by the state or politicians alone. Fear often comes from individuals themselves who then direct their fear on to others and therefore the dominant mode of relating to one another becomes fear. It follows that people then group together based on their shared fear. This is further entrenched by topical public discourses, often expressed through the media, that aid the circulation of the notion that immigrants or refugees are groups that pose a threat to the well-being or security of the state and/or society

Fear produces fearful subjects in relation to fearsome Others which secures the division between "us" and "them" (Zembylas, 2010: 32-33). The same fear goes on to create the division between "what I am" and "that which I am not" according to Zembylas (2010: 32-33). This ultimately has the effect of turning away from an object that threatens self-identity (in others words, "that which I am").

The crucial point that Zembylas (2010: 32-33) makes is that fear operates by enabling some bodies to enable and inhabit public space and by restricting the movement of other bodies. We

see this at the national level when states create policies or systems that block the movement of “illegal” immigrants to enter into the state.

The mechanics of this relationship can be better understood by considering the work of Julia Kristeva. One of Kristeva’s most famous works is on the notion of the “abject”. According to Zembylas (2010: 38-40), Kristeva’s abject is an object that is both excluded but at the same time in the process of challenging. Kristeva (1982, 1-2) describes the abject as being “outside, beyond the set” and from its position “of banishment, the abject does not cease challenging its master”. The abject challenges with regards to the way it disturbs the borders between “us” and “them” (an idea mentioned before). The abject does not stand directly in contrast with the subject but rather they interact with the same border, the subject on the inside and the abject on the outside (Zembylas, 2010: 38-40). A significant characteristic of the abject is how it disturbs borders and norms. These borders and norms entail the notions of rights to movement and citizenship. The immigrant/refugee is the “abject Other” who has found himself outside of a border (Zembylas, 2010: 38-40). The border confers the rights of citizenship to those who are born on the *right* side of it. This positioning explains how the refugee or immigrant is faced with so much hostility in the country that he or she enters, whether it be on an institutional, formal level, or at a social, informal level. The effect of the subjects perceiving the Other as a stranger or foreigner who is situated outside of the borders allows for the ideas of nationalism and right wing patriotism to fester. The relationship between the local subjects and the foreign Other allow for the classic binary of “us” versus “them” (Zembylas, 2010: 38-40). The symbolic nature of a border is to reinforce the idea that there are some who are legal and belong on one side and those who are illegal and belong on the other side. The borders and boundaries between states helps to foster the mental structure of “us versus them”, which is then further stimulated and entrenched at various levels of societal functions. These instruments are even more accessible to the state in modern times. According to Zembylas (2010: 32-33) there is an increasing number of technologies that are focused on control and exclusion of immigrants and refugees (such as detention facilities and prevention of access to work, education, health care and housing).

The defence mechanisms used against the abject Other both trivialize and exaggerate the figure of the Other, whilst maintaining the right to exert violence on the Other.

Once the Other has been constructed as something that the receiving public should fear, they are then excluded from different aspects of public life. The Other is denied certain civic rights

and human values, which furthers the purpose of presenting the Other as someone who is different to a national or citizen (Zembylas, p38-39). According to Rabinowitz (2010: 509-510) the act of rejection ultimately confers power. The power to remove or reject is a necessary step towards the holistic conception of empowerment (Rabinowitz, 2010: 509-510). Kristeva believes the power in rejection can be seen in our own lives from a young age (Rabinowitz, 2010:509-510). Kristeva writes that the most archaic and elementary form of abjection is the loathing of food. For example, when most children are young they find the skim on the surface of milk to be disgusting, while their parents believe it is highly nutritional (Kristeva, 1982: 2-3). When this food is forced upon the child to drink, the child finds it physically revolting and reacts through crying or even vomit and indigestion. These reactions are the first instances of children exerting power, and this power comes through the act of rejection. The potential opposite reaction would be to accept the milk and swallow it, this, according to Kristeva (1982:2-3) shows resignation and servitude to the orders of the parents. For Kristeva, this example, and other similar ones, show how the abject is discarded and rejected. The rejection of the abject is a flex of power and not rejecting results in display of resignation and servitude. With regards to how this relates to the practical instances of states refusing entry to refugees, it seems that the idea of rejection leading to power is one that is often experienced by refugees when being refused entry by states. The state's rejection of refugees is an act that results in the further empowerment of the borders it is defined by. Like the rejection of the skim on the milk is a show of power on behalf of the child, the rejection of the refugees by the state is one way in which the state is able to enforce its own powers. The act of rejecting refugees is therefore one that enforces the physical and legal barriers against the refugees, which ultimately seeks to preserve the state-of-being within the country at the expense of the natural rights of refugees.

Refugees and immigrants are also often the subjects of campaigns or processes undertaken to make these groups of people seem different and estranged to and from nationals and that these refugees/immigrants could cause potential harm within the accepting country.

As Liisa H. Malkki (1996: 386) writes, the figure of the refugee is moulded by journalism and all of media into a standardised representational form; a consequence of which is the silencing of the refugee. A large proponent of this image of speechlessness is the media's preferred use of photographs of refugees as a "blur of humanity" or a "vast and throbbing mass", which negate the realization that these frantic crowds of people are composed of individuals with their own opinions and histories that are forced to flee a terrifying persecution (Malkki 387).

Feldman's essay on "On cultural anesthesia" (Feldman, 1994: 407) explores the effects of these kinds of mass images:

Generalities of bodies-dead, wounded, starving, diseased, and homeless are pressed against the television screen as mass articles. In their pervasive depersonalization, this anonymous corporeality functions as an allegory of the elephantine, "archaic," and violent histories of external and internal subalterns.

The speechlessness of the refugee, delivered to society through various forms of journalism, allows the state to impose its own narrative over the "refugee problem" and further alienates that state's citizens from recognising the idiosyncratic humanity of each and every fleeing person. Instead, the denial of the individuality of refugees, their becoming "anonymous bodies", and the secondary-type universalism of sympathy that attaches to this kind of distanced suffering, maintains refugees' locality on the *outside* of society.

The social formulation of the Other as a threat lends to the notion that it is important to keep these people "out" in order to preserve the condition of society. In turn, by painting these Others as potentially damaging and violent, the state is then able to justify either refusing the refugees' entry, or extreme measures such as their removal and expulsion to their origin state (which may include violence from that state).

As Engin Isin (Nyers, 2003: 174) writes, the Others, as the living manifestation of exclusion, are susceptible to:

[H]idden, frightful, or menacing' subjectivities to define their condition. Understood politically, they stand in contrast to the purity of citizenship, ie the authoritative, articulate, visible and political subjectivity. Instead, the abject suffer from a form of purity that demands them to be speechless victims, invisible and apolitical... Thus there is an easy association with the 'cast-offs', the 'rejected', with a form of bodily wretchedness, muted political agency, criminality and moral disrepute.

Nyers (2003:1069-1070) argues that the creation of other is often a process that is enforced from the state level. While the notion of refugee identity is inherently a political one, it undoubtedly raises questions concerning the legality of movement and the justification of borders. Nyers (2003: 1068-1070), writing in response to the consequences of the New York terrorist attack in 2001, believes that in modern times the Western governments are starting to

frame the question of refugee movement and acceptance through the “prism of security”. The fundamental goal of the government has become to minimise risk and prioritise security which has ultimately led to the West beginning to create further restrictive laws and policies which create an “elaborate array of bureaucratic and physical impediments” to refugees and migrants at large. Most of these tools are focused on securing exclusion of the foreigners who attempt to cross these borders. Nyers (2003: 1068-1070) writes that the effort to securitise migration has grown exponentially in response to the attack on the September 11 2001 attacks.

This has resulted in the formation of a “governmentality of unease” as termed by Didier Bigo (Nyers, 2003: 1068-1070). This governmentality of unease has ultimately transformed global anxieties about refugee or migrant entry into a way in which to rule the population. This speaks to the point that Zembylas (2010: 31-33) makes above when explaining that once fear (or anxiety in this case) is produced it is then directed on to others and the dominant mode of relating to one another becomes through fear. When people exert fear, it groups them together with other people who share the same fears (Zembylas, 2010: 31-33). It then follows that the group of people who share the same fears are then more easily organised and directed by government policy. Bigo warns that there is an emergence of not the “pan-opticon”, where everyone is being watched, but rather the “ban-opticon” where sophisticated systems of profiling determine who is to be placed under surveillance and who is to be removed altogether from the society (Nyers, 2003: 1068-1070).

Nyers (2003: 1068-1070) writes that asylum seekers, refugees and undocumented workers are increasingly becoming a kind of “abject class” of global migrants. Whichever description they fit into beneath the class is irrelevant as these migrants are being cast as the objects of the public’s fears and often framed in a negative light. For example, many states argue that the tightening of refugee policy is done in order to keep out frauds and those who are not entering for the purpose of seeking asylum. This ultimately frames the refugees as a whole, as a group of people that cannot be trusted (Nyers, 2003: 1068-1070).

From the above discussion, it becomes clear how vulnerable the refugee is to the notion of “othering” - particularly at a time in which media, technology and communication is so far-reaching and powerful. Their habitation of the space of the Other becomes a persuasive tool for the state in order to justify violent actions or omissions (i.e. the failure to provide equal rights, the failure to provide care, and so on). The state also uses the process of objectification in order to increase the chances that its society is less accepting of the refugees and more prone

to violence against the refugees (Feldman, 1994: 406). The refugee becomes an object when he/she is constantly subjected to more and more legal procedures and bureaucratic measures. The refugee passes through these legal systems as a mere object, being told what to do and where to go. Therefore, the idea that the refugee is nothing more than an object begins to form in both the minds of the refugee as well as the members of the future host nation.

The idea of the Other, therefore, goes beyond the institutional state-level; it creates a compelling mental framework for the citizens of the state to feel segregated, removed and often - more entitled - from and than the refugee. This social mindset reinforces states' rejection of refugees instead of providing for the promotion of care for refugees, which often comes as a result of organic collaborative effort for social cohesion within a state.

While the modern, global migration patterns are decreasing the level of security around borders, it is certainly also the case that states are attempting to respond to this by formulating new strategies to enable inclusions and enforce exclusions.

C. Other Theoretical Considerations

Having considered the theoretical lens that this thesis looks through it is important to make a few considerations on other literature that was reviewed but not included. Michel Foucault's theory of biopolitics describes a system whereby strategies are undertaken by the government to legitimise and enforce power through the human life processes of the state's citizens. The political elite partake in creating two poles of technology - the first that is concerned with the idea that the body is a machine and the second pole concerned with the species body (Lemm and Vatter, 2014). Foucault predicted that governments would become increasingly focused on disciplining the human body by either enhancing its capabilities or rendering it docile. Governments were also predicted to become obsessed with regulating biological processes such as birth or death rates as this provided more information to use to influence citizens (Lemm and Vatter, 2014).

This theory of power, potentially dispersed through every human's biology, links in too with Giorgio Agamben's "bare life". Agamben based his theory of life on an observation of the Ancient Greeks (Oxford Reference, 2017). The Greeks held two different concepts for life: *bios* (which refers to the manner in which life is lived) and *zoē* (the biological fact of life). Agamben believed that in modern times the distinction vanished and now the definition of life

is simply based on the biological fact (Oxford Reference, 2017). The loss of distinction has distorted the term “life” in a political context and now relates less to the quality of life or how it is lived. Agamben’s “bare life” term then refers to this version of life where the biological fact of life is given preference over the quality of life – which refers to possibilities and potentialities (Oxford Reference, 2017). An example of the bare life and its inclusion into state operations is seen in Scotland Yard’s 2008 suggestion that children have their DNA stored on to a database. According to the Guardian newspaper (2008) Scotland Yard and the Institute for Public Policy Research in Britain suggested in 2008 that children as young as five should be DNA typed and have their details stored in a database if they show behaviour that could flag them as potential criminals in the future. This highlights Agamben’s theory of bare life as it shows childrens’ lives to be reduced to their biological data, instead of prioritising the quality of their experiences and circumstances as indicative.

Both Agamben and Foucault theories of biopower can illuminate many fields within the discourse of human rights and refugee movement. From the way in which governments collect biological data from in-coming refugees to how these politically elite use biological data such as birth/death rates to justify rejecting refugees entry. The field of biopower in relation to refugee movement, particularly in the 21st century, is of significant interest to the pursuit of equal treatment for refugees. However, the ideas were not explored significantly because the theories do not fit in with the exact lens through which this thesis looks. This research is concerned with analysing the top-down attitude of states towards refugees and how these states are beginning to shift their ideological position. The thesis is concerned with how Germany and the United Kingdom have framed their responses to a particular refugee crisis and not the personal experience of refugees on the ground. Perhaps the most important use for theories of biopower would be to explore the relationship between states and refugees from a bottom-up process. The way in which biopower can be used to influence the personal lives of refugees could be an interesting project, especially in considering what avenues refugees can explore in order to avoid the ever-encroaching hand of the state in their lives.

D. Methodology

This research thesis involved using an external desk-based research method. In order to evaluate the thesis statement, a thorough policy analysis was required as well as a reading of critical theoretical works. In order to begin the research, it was first important to understand

the theoretical tenets of natural law and legal positivism. By understanding and detailing the difference between natural law and legal positivism it allows the opportunity to recognise whether or not there has indeed been a shift in the position of European states towards refugees. The second step was to then understand the International legislature that governs refugees and their rights. This understanding of the nature of refugee law allows for a comparison to be made when analysing what current position Germany and the United Kingdom hold. The next steps in research require analysing the historic and modern refugee law positions of Germany and the United Kingdom. With an understanding of how these European states have transitioned, it allows for a conclusion to be drawn as to whether or not there has indeed been a shift towards legal positivism from natural law.

The desk-based research is considered to be external as it did not require any documents from within the University of the Witwatersrand (internal) and instead relied upon the gathering of data and other sources from government institutions and international organisations. The thesis question requires an understanding of the historic and current refugee laws in order to critically assess whether there has been significant change between the two phases. Therefore, it was important to consider the data that governments and organisations have released as this is considered to be both credible and accurate. The theoretical material provided a lens through which to assess the potential shift in refugee policy and the research included the rejection of certain theoretical works that did not fit within the exact scope of the thesis question.

No personal interviews of any kind were conducted as the potential results of such a method would not be particularly relevant to the thesis question at hand.

IV) Responses

A) Global

In order to evaluate the reactions from Germany and the United Kingdom, it is important to briefly consider the responses from other states who were involved in the Syrian migrant crisis. By considering other reactions, albeit briefly, it allows for the responses of Germany and the

UK to be contextualised amongst the responses of other European states and therefore be of more value.

According to a report published by the International Monetary Fund (2016: 7-8) asylum applications in Europe for 2015 surpassed the previous peaks reached after the fall of the Berlin Wall and during the civil war in the former Yugoslavia—until now the largest refugee influx into Europe in modern time (IMF, 2016: 4-8). The previous record of asylum applications in the EU reached its peak of 670,000 in 1992, and remained at high levels for the following three years (IMF, 2016: 8-9). The cumulative number of Yugoslavian refugees in Europe reached 1.4 million in 1996, and decreased quickly thereafter, with many returning to their home countries after the situation in the Balkans stabilised (IMF, 2016: 8-9).

A statistical report released by Eurostat (2016) reveals that Germany accepted 41.6% of all asylum seeking applications in 2014, which resulted in over 40 000 refugees being given residence inside the central European state. At the time, the then German Interior Minister, Thomas de Maizière stated that Germany was prepared for around 800 000 migrants in 2015 and that Germany would be able to accommodate them (Kirschbaum, 2015). However, while Germany may have been happy to receive more refugees, the numbers for other large European countries failed in comparison to the German effort. In 2014, while Sweden and Switzerland accepted over 70% of all the applications for asylum they received, the major European powers of Great Britain and France rejected around 65% of all their applicants, with the United Kingdom receiving less than 15 000 refugees in the same year (Eurostat, 2015).

The disapproval for accepting refugees from certain European states can be seen in how they have taken direct steps to physically reduce the inflow of asylum seekers from the Middle East (IMF, 2016: 5-9). Final destination countries, like Austria, have temporarily reinstituted border checks within the Schengen area because of the security fears synonymous with mass, undocumented migrants (IMF, 2016: 8), while some EU border countries, such as Serbia, have completely closed their external border to asylum seekers in the supposed interest of national security due to reported links between refugees and terrorist organisations such as the Islamic State (Gutteridge, 2016). As of September 2015, 10,000 refugees have entered Croatia with 7000 arriving on the 17th of September that year (Connelly and Stevenson, 2015). Former, but then incumbent, Croatian Prime Minister Zoran Milanovic said of the migrant crisis that Croatia “cannot become a migrant hotspot” and that the Mediterranean state could not “register and accommodate these people any longer” (Connelly and Stevenson, 2015). Former Prime

Minister Milanovic argued that a country as small as Croatia, with such an apparent scarcity of resources could not reasonably be expected to help in the Syrian refugee crisis as it would ultimately put the country's well-being in jeopardy, especially as the country seeks to rebuild after the fall of the Socialist Federal Republic of Yugoslavia (Connelly and Stevenson, 2015). In terms of land mass, Croatia is the 126th largest country in the world, and currently the population is hovering on around 4.25 million people. While Croatia is certainly one of the smallest European countries, it still has more economic resources at its disposal than some of the Middle Eastern states that have accepted refugees during this crisis.

Lebanon, as aforementioned, has granted over 1 million refugees entry and has, relative to size and economic power, taken the biggest socio-economic strain by accepting so many refugees. The Syrian Civil War alone has resulted in Lebanon's population rise of 27.41% between 2011 and 2015 (World Bank Statistics, 2015). The only comparable population spike in Lebanon's history was in the aftermath of the Arab-Israeli war of 1948, where the population rose from around 400,000 to 1.8 million in the space of ten years (between 1950 and 1960) as a result of displaced Palestinians who fled to neighbouring states (World Bank Statistics, 2015). With 427 people per square kilometre, Lebanon is also the world's 24th most densely populated country (World Bank Statistics, 2015). Considering both this and the aforementioned spike in this population, it is clear to see that the country is accepting a disproportionate number of refugees relative to its area and socio-economic capabilities.

The above cases of European countries and Lebanon highlight the contrasting approaches that states have taken during this migrant crisis. The contrast is particularly stark between European efforts and those of Syria's neighbours, with the majority of European states attempting to block or deter refugees from entering their borders. However, even within Europe there has been discord on the appropriate reaction. In 2013, the Swedish government announced that all refugees living in Sweden would be eligible for permanent residence after only three years of temporary residence in the Scandinavian country (AIDA, 2013). Sweden has been one of the more open European states and have some of the lowest waiting times for application decisions according to an Asylum Information Database report (2015).

On the other side, there are the likes of Croatia and France who are not doing all they can to resettle refugees and in some cases, are attempting to divert the foreigners away from their borders.

The importance of these cases is that it frames the situation for analysis into the states of Germany and the United Kingdom. Their reactions need to be understood in the context of Europe's response in order to evaluate the way in which they have dealt with the refugee crisis. Ultimately, Germany and the UK are part of the same political union (the European Union) and so their responses to the Syrian refugees will be of more interest if the reactions of other members of this union are contextualised first.

B) United Kingdom

i) Historic Refugee Position

This thesis seeks to examine how states can throw their legal weight behind their own laws to prevent the natural rights of refugees from being realised. This debate of legal positivism versus natural law is a debate that states themselves grapple with when the two perspectives clash with one another. Before considering the exact modern history of UK refugee policy, it is pertinent to first consider the British history of "rule of law" as it will later show how the British government is currently able to justify the rejection of refugees.

The idea of rule of law was primarily established in Britain through the Magna Carta. The Magna Carta or Great Charter was a document agreed upon, in 1215, by King John and rebel Barons who sought to overthrow him due to his abuse of power (Vincent, 2017). While King John did not uphold the terms of the charter, and reduce his use of political power, his ultimate death the following year resulted in power moving to his nine-year-old son King Henry III (Vincent, 2017). King Henry III's age meant that his advisors largely controlled the affairs of the Crown, and they immediately sought to reintroduce the terms of the Magna Carta. While decades of fighting would still take place due to the charter, it has always remained the unofficial constitution of the United Kingdom. The charter ultimately guaranteed the rule of law by reducing the power of authoritarian style monarchs and instead transferring more power to the early form of a parliament. For example, Clause 12 of the charter states that "No scutage or aid is to be imposed in our kingdom except by the common counsel of our kingdom" (Summerson, 2017) which ensured that the King could no longer impose taxes or levies that were not also approved by the parliament. The charter also secured the rights of freemen and guaranteed that every man was equal before the law and that no one could be above the law (Summerson, 2017). The importance of the Magna Carta remains today for the United

Kingdom as it represents the transfer of power from the system of absolute monarchy to the early format of a constitutional democracy. The establishment of the rule of law is not necessarily anti-natural law, in fact the Magna Carta was established to protect many of man's natural born rights. It must be noted however, that the creation of rule of law over time began to justify various legal institutions such as parliament and the judiciary. This created a culture amongst the British people (since the Magna Carta is seen as the unofficial constitution) that rule of law was of utmost importance and should not be challenged. In fact, Cristina Parau (2016: 1-3) writes that the constitutional project of limiting the power of the monarch and transferring that power to the legal institutions, such as parliament, began with the Magna Carta and was only recently completed in the early 20th century. Parau (2016: 13-15) writes that rule of law was developed in order to constrain power in general, whether it be from a monarch or parliament. The problem is that rule of law protects man from a tyrannical government (in whichever form) so long as he does not break the law (Parau, 2016: 13-15). This is problematic as we will see in the rest of this section, and the thesis at large, that governments can create laws or rules that are immoral. This ultimately results in immoral laws being held up by the concept of the rule of law, even when this goes against the natural rights of human beings.

To summarise, documents like the Magna Carta were perhaps intended to provide safety and security to the rights of man but over the course of time these documents have instilled a culture in both people and the government that has resulted in a legal positivist construction of the rights of man.

By examining the modern period (1900-2011) of immigration into Britain, we will then be in a position to contextualise the historical attitude of the British state and contrast it with the efforts that are now being made to help Syrian refugees.

In the early 1900s, following the slow decline of the British Empire's capitalism and the increasing rate of unemployment, the British public had largely grown tired of the relatively open border policy the country had up until that point (Schuster and Solomos, 1999: 53-55). In 1905 a Conservative led British government responded to the discontent and passed the Aliens Act, to placate the growing xenophobia that had begun to make itself present in public life (Schuster and Solomos, 1999: 54-55).

It is noteworthy that the first piece of British legislation on immigration (the 1905 Alien Act) was introduced in order to prevent migrants from entering the United Kingdom.

The Act's provisions only applied to "lower class ticket holders on "immigrant ships" (Schuster and Solomos, 1999: 53-54), because these were often the type of immigrants who were unable to financially support themselves in their new destination country. Schuster and Solomos (1999: 53-54) write that mentally ill immigrants were also targeted by the Act as they were seen as undesirable. The Act's significance is that it provided, for the first time in modern British history, a structure to exercise control over immigration. At the time, the act faced substantial objections from civilians and politicians as it seemingly attacked the notion of liberty (Schuster & Solomos, 1999: 53-54). The Act was also condemned for its obvious targeting of Russian and Polish migrants who were fleeing their home countries from religious persecution (at the time, Jews faced increasing xenophobia in parts of Eastern Europe).

Although the Liberal Party protested the 1905 Act while they were in opposition to the Conservatives of Arthur Balfour, once they assumed power they decided not to repeal the act. Instead, Liberal Home Secretary Herbert Gladstone decided to soften the Act's impact by allowing immigration officers to use their discretion with each particular case of immigration. Gladstone also asked immigration officers to give those who stated they were fleeing persecution in the home countries, the benefit of the doubt and grant entry (Schuster and Solomos, 1999: 53-55).

Gladstone's decision to allow immigration officers to use their discretion was a decision that would set the tone for the future of the UK's immigration system. The UK has since, always kept the granting of asylum on a discretionary basis to be decided by the Home Office. By transferring the power of migrant entry decisions away from policy and into the hands of Home Office officials, the government is able to serve its own migration agenda more quickly and more easily by not having to follow parliamentary procedures in passing new Acts. This unchecked power has the potential to serve state interests at the cost of immigrant or refugee well-being, should the two ever be in direct conflict.

The important aspect to this model is the incredible flexibility it allows for the British government to choose which asylum seekers to accept and which to reject. At the same time the government is still able to uphold the values of liberty and decency as they allow some of the asylum seekers into the country (Schuster and Solomos, 1999: 55-56). The obvious danger of the model is the way in which it presents refugees or asylum seekers. The model involves presenting asylum as an act of charity and therefore this contributes to refugees as being seen as a special circumstance and burden that the people tolerates in respect of free will and liberty

instead of respecting the refugee as a potential good member of society. This furthers the idea that the abject Other is created in reference to borders or legal structures, with refugees now dependent on the discretion of the Home Office for entry into the United Kingdom. By not being subject to policy, but rather the decisions of officials from the Home Office, the refugees lose further control over their own movement into the UK as they are now subject to the political agenda of the day which can change overnight without allowing refugees the chance to understand the process.,

Despite introducing controversial policies, the Aliens Act of 1905 still allowed the majority of foreigners to enter Britain for a few years following its introduction (Schuster and Solomos, 1999:54). For the rest of the early 1900s immigration and asylum policy were largely dominated by the build ups and effects of the two world wars. The Alien Acts of 1914 and 1919 were particularly harsh towards foreigners, with the former suspending the right to appeal asylum judgements and the latter removing it altogether (Schuster and Solomos, 1999: 54-55). The Alien Act of 1919 also refused refugees the right to land in the United Kingdom, a harsh response in policy to what Schuster and Solomos (1999: 54-55) term the “anti-alien hysteria” produced after the First World War. Towards the end of the First World War passports were fully introduced in an effort to control both entry and exit, as states were concerned about losing skills and/or soldiers. While at the time of introducing passports and other identity documents, the British government was concerned about losing skills and soldiers (Schuster and Solomos, 1999: 54-56), it would later become another exclusionary system whereby refugees cannot pass. Either refugees do not possess any identity documents, thereby making them undocumented and excluded, or they possess the wrong passports that do not confer the right to pass through a particular country’s border. Again, the legal institution of identity documents has the potential to create the abject other by grouping those who have and have not, with regards to the documents. Those who have not, are therefore on the outside of the border and subject to different procedures than those who have identity documents. The institution of identity documents therefore allows for the conferring of rights and more importantly the restriction of rights to those who do not possess the documents. This seems contradictory to the notion of natural born rights, where everyone has unalienable rights by virtue of being a human being. The institution of identity documents is able to supersede these rights since it receives its legitimacy from being a legal institution, since the system is based on legal positivism and not natural law theory.

The build up to the second world war featured small conservative changes to immigration and asylum policy, which in many cases was aimed at limiting the number of Jewish migrants that were allowed to enter (Schuster and Solomos, 1999: 55-56). The government's logic at the time was that a rapid increase in Jewish refugees could spark anti-Semitic violence in the UK as it had done in Germany and therefore the risk of a fascist revolt would be more probable (Schuster and Solomos, 1999: 55-56).

As stated before, the aftermath of the war resulted in the coming together of the international community in order to draft and agree to the Universal Declaration of Human Rights (UDHR) and the Convention Relating to the Status of Refugees. In 1954, the UK government ratified the 1951 Convention. Schuster and Solomos (1999: 57) argue that this had almost no effect on British immigration policy because no legislation was introduced to fully integrate it into national, domestic law. Furthermore, since the 1951 Convention placed no formal obligations on any state this allowed the UK government, and other governments, to largely avoid the agreements they signed to.

Schuster and Solomos (1999: 57) insist that instead of the various international charters mentioned above, British migrant policy was instead affected by: The Cold War, the break-up of the British Empire, the subsequent development of the Welfare State and most importantly, the massive labour shortage which began in 1946.

At the end of the Second World War there were approximately 75,000 displaced persons brought into Britain but not in order to be resettled as refugees (Schuster and Solomos, 1999: 57). Instead the scheme was named the European Volunteer Workers (EVWs) system and allowed temporary stay for European workers in order to fill in the gaps at sectors that had been most devastated by the war. The displaced persons were ideal as they provided cheap labour and came to Britain with sufficient skill levels in order to make an immediate impact on the economy (Schuster and Solomos, 1999: 56-57).

The entry of the displaced workers into the British economy once again had xenophobic effects against the workers (Schuster and Solomos, 1999: 57). Locals feared their jobs were endangered and that the foreigners would work for substantively less money, therefore lowering the general pay to workers across industries.

As the number of foreign workers entering the UK increased, so did xenophobic sentiments among the British population. While the EVW numbers began to thin out, the government then turned towards recruiting migrants from fellow commonwealth countries to work in the British

industries (Schuster and Solomos, 1999: 56-57). By the start of the 1960's the UK began to develop policy which would seek to address the inflow of immigrants that the government was now struggling to control. In 1962 the government implemented the Commonwealth Immigrants Act which is considered to be the first major piece of policy that seeks to limit the entry of immigrants from Commonwealth countries (Schuster and Solomos, 1999: 57-58). The reason that the British government targeted Commonwealth citizens is, as postulated by Schuster and Solomos (1999: 57-58), to be due to racial tensions. Most Commonwealth immigrants were black, from the former colonies in the Caribbean and the various territories in Africa while refugees on the other hand were largely white, fleeing the Communist regimes in the likes of Hungary and Poland. The large number of Kenyans who arrived between 1966 and 1968 ultimately led to the British government introducing the 1968 Commonwealth Immigrants Act which deprived Commonwealth citizens of automatic entry into Great Britain (Schuster and Solomos, 1999: 57-58).

The 1970s saw a significant change in attitude from the British government towards refugees and migrants in general. In 1970 the government issued the Immigration Rules policy document which for the first time in over 50 years re-established the right to appeal for refugees on the basis of fear of persecution (Schuster and Solomos, 1999: 58).

As mentioned before, Immigration Rules are decided by the British Home Secretary and are completely up to his or her discretion when being enforced. The rules do not have to be submitted to Parliament when being altered or even radically changed, instead the Home Secretary has the power to change them and confirm them. This power held by the Home Secretary's office was once again confirmed in the important 1971 Immigration Act.

The Immigration Act of 1971 echoed the UN's 1951 Convention by stating: 'where a person is Stateless or a refugee full account is to be taken of the provisions of the relevant international agreements to which the United Kingdom is a party' and that a person should not be deported if this would mean he or she would find themselves in a country facing persecution (Schuster and Solomos, 1999: 58-59). The 1971 Act was therefore a further flex of political power by the British government as it ended up allowing even greater border control and power to keep out the refugees it did not want to resettle. The immigration controls were not exercised indiscriminately to all Commonwealth citizens and those from the New Commonwealth, who were almost entirely non-white, faced much tougher treatment (Schuster and Solomos: 59).

Schuster and Solomos (1999: 59-60) discuss the way in which refugees were accepted on the basis of skin colour too during the 1970's. In 1973 the 1971 Act came into force and at the same time thousands of refugees were fleeing Chile following the overthrow of the left-wing Salvador Allende government. Britain ensured that three thousand of these refugees would be taken on in the UK and permanently resettled (if the refugees so desired) as quota refugees (Schuster and Solomos, 1999: 59). This was perhaps due to the alliance the British Labour Party, the government at the time, had with the Allende government but more likely due to racial motivations if we consider a concurrent refugee crisis. At the same time as the Chilean migrant crisis, there was the Vietnamese crisis. The British were sceptical to accept the fleeing Vietnamese refugees when they landed on the Crown Colony of Hong Kong. In fact, it was only due to exceptional pressure applied by the United Nations that eventually persuaded the UK government to accept a quota of ten thousand Vietnamese refugees (Schuster and Solomos, 1999: 59-60).

When the Conservatives and Margaret Thatcher assumed power in 1979 they began an even more intense restriction of immigration and citizen policy. In the eleven years that Thatcher served as Prime Minister, her government introduced seven separate acts or bills that contributed to restricting access to Britain for foreigners (Schuster and Solomos, 1999: 59-60). A key introduction to policy of immigration, by the Conservative government, was to require travellers to apply for visas and receive them before embarking on the journey to Britain. This was obviously a big hurdle for refugees who were in some cases even without their passports – a problem not easily solved if those very refugees were fleeing from their oppressive governments. This can be seen as another way in which the British government created further bureaucratic hurdles in order to prevent migrants from entering. The government again moved further towards a legal positivist set up for its structures in order to exercise more power. By implementing the need for visas, the British government were able to further restrict entry to the country based on the power of its own legal institutions, such as the Home Office, and therefore ignore the needs of vulnerable people attempting to enter. To legislate the conditions for entry further, the government creates an extra requirement that the refugee cannot fulfil and therefore it becomes an emphasis of “otherness” for the refugee.

The most significant legislation change was one that involved contravening the spirit of the 1951 UN Convention. Article 31 of the Convention states that refugees are exempt from paying any sort of penalty due to unlawful entry but in 1987 the UK government passed the Carriers Liability Act (Schuster and Solomos, 1999: 60-61) which made carriers of illegal immigrants

liable and subject to a fine (which was initially set at £1000 per illegal passenger). The government had ultimately turned ticket offices for airlines and shipping firms into unofficial immigration offices which had the power to refuse movement to anyone who did not have a valid passport and/or visa for travel. The British government did this to further limit the number of refugees landing on British soil and therefore remove themselves even further from the problems of resettlement. This was perhaps the first blatant move against the 1951 Convention (and subsequent Protocols) but was perhaps more indicative of the Conservative Party's goals rather than the general British nation.

The British government had an unparalleled level of control of asylum applications during the 1980s and 1990s. In graph G (See appendix), Schuster and Solomos (1999: 63) have listed the amount of asylum applications (in thousands) that the United Kingdom and various other European countries received between 1983 and 1993. There are two important remarks to make about these figures. Firstly, it is quite clear that the UK have received far fewer asylum applications than the likes of France, Germany or Sweden. In fact, in 1988 Germany received over 100,000 applications while France received 31,000. In the same year, the United Kingdom only received 5,300 asylum applications (Schuster and Solomos, 1999: 61-63).

This is perhaps down to two factors which are both interlinked. Firstly, the UK already had a reputation of accepting far fewer refugees than the likes of Germany or Sweden and secondly the difficult nature of the asylum-seeking process in the UK also deterred refugees. The two are interlinked quite obviously since the general feeling that the UK is not accepting of refugees is down to the fact that the difficult and lengthy process of applying for asylum means very few are ever successful.

The second remark to make is that the UK's control over refugees and the refugee seeking process is incredibly efficient. If we consider the numbers, we see that in 1990 the United Kingdom received 25,300 asylum applications and the following year this number almost doubled as they received 44,800 applications (Schuster and Solomos, 1999: 63-64). The increased number of applications is almost exclusively down to the uprisings across Eastern Europe, with the fall of communism in the Soviet bloc and the Yugoslavian civil war which displaced millions of people. The interesting development in the numbers is that from 1991 to 1992, the British government managed to almost halve the number of refugee applications and return to a number around 25,000 for the next two years (Schuster and Solomos, 1999: 63-64).

The ability of the British government to control their immigration levels is down to the unique mechanisms in place, as mentioned above, such as the discretionary manner in which the Home Office considers and processes refugee applications.

In the 1990s the two pieces of major immigration legislature were the 1993 and 1996 Acts. The 1993 Act was the culmination of the Conservative government and a right-wing aligned media working to present an image of Britain as being under attack by foreigners according to Schuster and Solomos (1999: 62). The arguments presented in favour of stricter access to the UK were based on the rising rate of unemployment and cracks beginning to emerge in the welfare state (Schuster and Solomos, 1999: 62). The potential threat of mass numbers of Eastern Europeans entering, coupled with the ever-steady rate of Africans and Asians entering the country resulted in a firm focus on race and identity politics like never before in the British political scene.

The 1993 Act failed to address or refer to the potential causes of a refugee's flight from the home country. Instead the Act simply sought to redefine the criteria for eligibility to apply, which thereby reduced the number of refugees who were given asylum. The new criteria laid out by the 1993 Act made it virtually impossible in some cases to qualify for permanent residence (Schuster and Solomos, 1999: 62-63).

The emergence of the Act was surrounded with justifications of its measures which would include tougher measures to prevent "bogus" refugees from entering and receiving benefits (Schuster and Solomos, 1999: 62-63). This then fed into the government stance that the country could not even afford to take in all of the genuine refugee cases as there were simply too many and this would put an enormous strain on the country's resources. The government maintained that its first duty is to its own citizens and that even when selecting which refugees to resettle, this would be done on the basis of which refugees either had ties to the UK already or which ones could benefit the country the most (Schuster and Solomos, 1999: 64).

Along with stricter rules on who qualified as a refugee, the 1993 Act also sought to cut down housing benefits for newly arrived refugees. Prior to the Act, refugees were entitled to local housing from local council authorities who were obliged to help settle all those in immediate need (Bloch, 2002: 49-50). After the Act came into effect, refugees were then subject to more complicated procedures whereby added conditions meant that exclusion or ineligibility were ever more likely outcomes (Bloch, 2002: 49-50). In some cases, the situation became so difficult for refugees seeking somewhere to stay that the burden was passed onto churches and

volunteers who had spare rooms for the refugees to stay (Schuster and Solomos, 1999: 64-65). Despite these tougher conditions exerted on refugees entering the United Kingdom, the government still felt pressure from the public and media to do more to curtail the number of asylum seekers.

The pressure from the media and groups within society led to the Asylum and Immigration Act of 1996. The 1996 Act took further, stricter steps towards the refugees themselves which involved a very restricted access towards child and social security benefits, further restrictions on eligibility to receive housing and the controversial inclusion of “white lists” (Schuster and Solomos, 1999: 64-65). White lists were a list of countries that were deemed to be safe enough to return to. Any refugee whose nationality fell under the white list were fast tracked through the appeal processes in order to be processed and deported to their home country (Bloch, 2002: 48-50). The inclusion of white lists allowed the British government to deal with asylum application in an even quicker manner than they had ever been able to before (Bloch, 2002: 48-50). At the same time the British government was removing itself from any criticism and in fact framing the refugees as illegal immigrants who were economic migrants, looking for a better job and more money rather than vulnerable people fleeing for their safety.

The 1993 and 1996 Acts also looked to close a loop hole that had been exploited to some success in the years prior. Refugees would sometimes book tickets that included a stop through the United Kingdom (Schuster and Solomos, 1999: 68-69). The refugees would then stop in the UK and upon disembarking, file for asylum. While the refugees often still faced many bureaucratic hurdles even after this point, it was another avenue of entry that the British government wanted to close. The introduction of transit visas did just this. Now travellers needed to provide a visa that allowed them to travel through any country that they would be moving through (Schuster and Solomos, 1999: 68-69). This significantly stemmed the tide of entering refugees, particularly due to the fact that Britain is an island and so the only way in which to access the island is by boat or plane, with both options made seemingly impossible by the two acts.

On May 1st 1997, a Labour government was elected as the new British government and with it there were hopes that the asylum policies of the United Kingdom would be repealed or changed in order to protect the vulnerable people entering the country. The early commitments were hardly revolutionary and only included tweaks to the already failing migrant policy. A code of

conduct for immigration officers was introduced, as well as a digitalised system for processing refugees in order to clean up the backlog (Schuster and Solomos, 1999: 69).

At the time of coming into power, the Labour government were drafting their own asylum legislation that would make substantive changes. However, prior to any changes, there was an ever-growing crisis within the refugee community. The housing changes from the 1993 and 1996 Asylum Acts had meant that around 33% of all refugees housed in London were being housed in either bed and breakfast establishments, hostels or hotel annexes (Bloch, 2002: 50). Almost 50% of refugees in London were being housed in privately rented housing (Bloch, 2002: 50). The problem that resulted from the failures of government policy was that refugee social integration was at an all-time low and most refugees at the time felt socially excluded.

With regards to the 1999 Asylum Act there were some needed improvements to its predecessor's policies but also some largely unexpected restrictions. The Act continued to adopt a two-pronged strategy to immigration. Firstly it sought to place further restrictions on those looking to enter the United Kingdom and secondly it made significant cuts to the welfare received by refugees so as to further discourage refugees outside of the UK from applying for asylum (Bloch, 2002: 50-51). In order to reduce the number of refugees entering the United Kingdom, the Government tightened and increased various pre-entry controls (Bloch, 2002: 50-51). The 1999 Act resulted in many more "Airline Liaison Officers" being stationed within the refugee "hotspots" across the world in order to more firmly reduce the amount of refugees who attempted to travel to the UK (Bloch, 2002: 50). The previous success of Airline Liaison Officers meant that the Government believed increasing the number of them and the countries in which they are stationed could potentially reduce immigration further. In addition to this measure, the government also increased their jurisdiction to trucking companies with regard to carrier's liabilities (Bloch, 2002: 50). If trucks were found to be carrying refugees they would also be fined heavily as was already the case with airplane and shipping operators. The Government believed that there was a significantly high increase in the number of refugees using trucks to enter the UK in the years preceding the 1999 Act (Bloch, 2002: 50-51). By doing this, the government had effectively closed down all modes of travel into the UK for refugees seeking to be processed there.

On the other hand, the 1999 Act established a new asylum support system that would focus exclusively on refugee social needs. While this initially sounds very promising, the details of this new asylum structure again did not provide enough care for refugees. The new system

meant that refugees would from that point on be excluded from the social security system that cared for British citizens and instead fall under the new National Asylum Support Service, or NASS. (Bloch, 2002: 50-51).

The NASS would provide asylum seekers with welfare support but this would only amount to 70% of the amount that a British citizen would receive (Bloch, 2002: 50-51). Of this welfare support, only £10 would be given in cash and the rest would be issued in vouchers that could be spent at specific supermarkets. The problem with the vouchers were that they were only usable at specific supermarkets (which were not always proximal to where refugees were staying) and secondly, change was not given to refugees if they spent less than the value of the vouchers (Bloch, 2002: 50-51). This meant that if a refugee spent around £8 on shopping and tried to pay with a £10 voucher, the refugee would sacrifice the £2 change that would ordinarily be due to him or her. It was in fact this system of not allowing change that got the supermarkets interested in the scheme in the first place. This obviously limits the freedom of a refugee and further complicates the process of integrating fully into society.

The Act also, once again as its predecessors had done, enforced new rules regarding housing. The main feature of the Act's housing section introduced the notion of "compulsory dispersal" (Bloch, 2002: 50-52). The system of compulsory dispersal, detailed under article 97 of the Act, meant that refugees now had no choice in where they would be placed and this would still be subject to intense scrutiny by the NASS. Once a refugee is relocated to their new accommodation, they are also tied to many obligations regarding their movement. The strict regulations linked to receiving housing mean that as a refugee you are often not allowed to move away from this area for any extended period of time (Bloch, 2002: 50-52).

Refugees who are dispersed under the following model are supported by housing providers who are contracted by the government to help refugees settle in their new area. The Act stipulates that refugees should only be placed in areas where there are enough housing providers (or caseworkers) who are able to assist the refugees adequately. (Immigration and Asylum Act, Article 97-98, 1999). The problem in practice is that these caseworkers often do not provide the refugees with much support after finding them accommodation and so the refugees are left to ultimately fend for themselves and discover their new surroundings on their own. Caseworkers are also afforded with the power to determine exactly where the refugees will stay within a particular city. When deciding where the refugees will go, the caseworkers are required to factor in the applicants' ethnic group, their religion and their family ties

(Immigration and Asylum Act, Article 97-98, 1999). Under this system it is very easy to imagine how some caseworkers may choose areas on the outskirts of communities for refugees to stay, further isolating the migrants from the economic and social activities of any given town/city.

In the better cases, these housing providers employ refugee support staff who are able to help the refugees successfully integrate into their new culture.

The idea behind the dispersal programme was to help the entire country share the financial burden of the refugee inflow (Bloch, 2002: 51-53). Under previous programmes it had become apparent that London bore the brunt for a high majority of refugees and so the 1999 Act looked to change that by spreading the refugees across the country. However, the 1999 Act seemed to be the final policy push that led to the effective treatment of refugees as separate to citizens.

The United Kingdom's asylum policy history is dominated by restrictions that further limit the access to asylum and the benefits that come with asylum. Although in the first few decades of the twentieth century the policies were geared towards slowly but surely tightening up control on predominantly non-white migrants from commonwealth countries, which have always provided a steady inflow of migrants. The decision to target commonwealth migrants and not refugees was arguably due to racial policies forwarded by the government at the time, since most asylum seekers entering Britain during that period were white Jewish refugees fleeing persecution in Eastern Europe (especially Russia and Poland). The end of the First World War saw the introduction of a passport system across the Western world in a bid to better control the influx of refugees and migrants in general. While the nature of the build up to the Second World War, as well as the war itself, led to the formation of the United Nations and the drafting of 1951 Convention on Refugee Status – this had little to no impact on migrant policy in the UK as it imposed no quota or obligation system backlog (Schuster and Solomos, 1999: 69). The lack of skills after World War 2 meant that the British government started initiatives to employ temporary foreigner workers in order to maximise production opportunities.

With the fall of the British Empire, the British government moved further and further towards restricting access to non-white commonwealth citizens. The 1970's saw some hope as the right to appeal a deportation sentence was reinstated but the control that the UK Home Office retained was still unfiltered. The election of Margaret Thatcher to Prime Minister in 1979 led to a never before seen crackdown on refugees and migrants in general as the increasing unemployment rate was used as justification for refusing entry to asylum seekers backlog

(Schuster and Solomos, 1999: 63-67). A change to a Labour government in the late 1990's did little for refugees entering Britain. While the Labour government did introduce more welfare benefits to refugees these were not at the same level of the benefits given to British citizens, thereby creating further permanent divides between citizens and the refugee communities.

While it can certainly be said that the British government has never really had a strong emphasis on resettling vulnerable refugees, it is also certainly true that they were party to the 1951 Convention on the Status of Refugees which they both signed and ratified. This study involves asserting that the examples of both Germany and the United Kingdom are relevant to the discussion of refugee rights. The United Kingdom's signing and ratification of the 1951 Convention is taken to be an agreement and commitment towards the furthering of the rights that the Convention seeks to guarantee. While it is certainly clear from the history of the UK's policy towards refugees (post 1951) that there have not been any concrete efforts to realise these rights for the refugees- this nonetheless does not invalidate the study as a whole. The previous British governments must be held accountable for their actions and the current administration must be pressed harder to deliver policies that echo the sentiments laid out in the 1951 Convention.

The study does not seek to analyse whether or not Britain is still acting in accordance with its history of refugee policy but rather to understand if it is acting, currently, in line with the values put forward in the Convention. The history of refugee policy should not alter the obligations of the current British administration. The British and German governments are an effective and equivalent comparison, not because of the historical record when dealing with asylum applications but rather due to their similar population, economic power and leading role they play in international politics. The two have been and still are the leading states in the European Union and so their dealing with mass refugee flows allows us to analyse the different ways in which two big European powers handle the media and social pressures through their national policy.

ii) UK's efforts for Syrian refugees

Despite the Syrian civil war beginning in mid-2011, an official UK reaction to the refugee crisis was only issued after January 2014. Up until 29 January 2014, the UK Government's

official response to the crisis in Syria was to send humanitarian aid to the relief effort. The UK government made no specific commitment to resettling Syrian refugees and also failed to include Syrians as a part of existing refugee resettlement schemes.

The UK government declined to form part of the UNHCR resettlement programme to help relocate the victims of the Syrian conflict as they felt their best possible effort would be “tokenistic” at best because of the large amounts of people that Europe would have to resettle in order to be of any help (McGuinness, 2017: 8-9)

However, the UK did assist in late 2012 when the Home Office introduced a temporary concession to Syrians who were already in the UK, which afforded them the opportunity to apply for an extension to their visa or for them to change visa category without leaving the United Kingdom (McGuinness, 2017: 8-9).

In early 2014, the Minister for Immigration, Mark Harper, reiterated the aforementioned position when asked by Yvette Cooper, a Labour Party member and elected representative for Normanton, Pontefract and Castleford, whether or not the UK government was considering helping out in the UN Syrian refugee resettlement programme:

“More than half the Syrian population of 9.3 million is in need of humanitarian assistance, and 2.3 million people have been displaced from Syria to neighbouring countries. This is a crisis of international proportions and needs a commensurate response from the international community. The Government are proud to be playing their part in that response, and share the view of the UN Secretary-General that the priorities must be to “assist the Syrian parties in ending the violence and achieving a comprehensive agreement for a political settlement”, and ending the suffering of the Syrian people. No one should underestimate the difficulties ahead, but we are determined to strive for a peaceful settlement through the Geneva II process, which starts later this week and is working towards the establishment of a transitional governing body for Syria.

The Government continue to believe that the best way to address the suffering of the Syrian people should be to provide humanitarian assistance to displaced people, in partnership with neighbouring countries and the United Nations High Commissioner for Refugees. Before last week, the Government had provided £500 million for the Syrian relief effort, of which more than £480 million had been allocated to partners in Syria and the region. That has helped more than 1 million people. Almost 320,000

people are being provided with food assistance each month in Syria and neighbouring countries, and more than 244,000 people in Syria have been offered medical help. The Government continually press for better access and protection for humanitarian convoys inside Syria so that aid can get to the millions in need inside the country. That represents the UK's largest ever response to a humanitarian crisis.

We are leading the way in helping the Syrians suffering from the humanitarian crisis as the second largest donor, behind the US, helping refugees, and through consideration of Syrian asylum claims under our normal rules. In the year to last September, we had already recognised more than 1,100 Syrian nationals as refugees.

We are very aware that some, including the UNHCR, would like to see a more proactive programme of resettlement of refugees who are currently hosted by countries neighbouring Syria. We have considered those options very carefully and respect the views of those countries who favour a resettlement programme, but we think that our priority should continue to be to provide humanitarian assistance to displaced people in the region, in partnership with neighbouring countries, the UNHCR and other UN and non-governmental partners. Most of those who are displaced want to return home as soon as it is safe to do so, and protection in the region affords them that hope.

Beyond immediate humanitarian assistance, our priority must be to help neighbouring countries to provide sustainable protection in the region. That should be our focus, rather than resettlement or providing humanitarian.” (Harper, UK Parliament, 2014)

On 29 January 2014, following sustained pressure from various organisations including charities, the UNHCR and members across the House of Commons, the then Home Secretary (and current Prime Minister) Theresa May announced that the British Government would initiate a programme to offer resettlement to “some of the most vulnerable Syrian refugees” (McGuinness, 2017: 8-9). May explained that the ‘Syrian Vulnerable Person Resettlement Programme’ (VPRP) would be separate to, but “entirely consistent” with the UNHCR’s own Syrian refugee resettlement initiative (McGuinness, 2017: 8-9). The Government’s reasons for establishing a parallel scheme were set out in an answer to a Parliamentary Question in June 2015 by then Minister for Security and Immigration, James Brokenshire:

“Between the first arrivals in March 2014 and 30 March 2015 (the most recent published data), 187 people were relocated to the UK under the Vulnerable Persons Relocation (VPR) scheme. The scheme is based on need, rather than designed to meet

set arrival projections. However, we will continue to bring groups here on a regular basis. We have said we expect the scheme to help several hundred people over three years, and we remain on track to achieve that. In addition, over 4,200 Syrians have been granted asylum or other forms of leave in the UK under our normal asylum rules since the Syrian crisis began in 2011.

We continue to work closely with the UNHCR to identify the most vulnerable people displaced by the conflict, prioritising women and children at risk, people in severe need of medical care and survivors of torture and violence. The VPR scheme runs in parallel with the UNHCR's own Syrian humanitarian admission programme. This is because the Government believes the UK can add most value through a complementary scheme, focusing on helping the most vulnerable refugees who cannot be supported effectively in the region rather than a quota. With millions of people in need, we strongly believe that the UK can have the greatest impact by continuing to prioritise significant aid; we have donated £800 million, making the UK the second largest bi-lateral donor after the USA and helping to provide vital support to hundreds of thousands of people across the region. The Syrian conflict is a crisis of international proportions and we continue to play our full part in discussions with international partners.” (Brokenshire, UK Parliament, 2015)

As observed in the above statement, the UK government's approach was incredibly modest and rather looked to address the humanitarian crisis in Syria by providing large amounts of aid and resources rather than accepting any significant number of refugees into the country. It should also be noted that the VPRP initially prioritised elderly or disabled refugees and those who were victims of sexual violence and/or torture. The British Government said that it expected several hundred refugees to arrive between 2014 and 2017. The Government refused to commit itself to any quota number because it argued that the VPRP focused on resettling those who were in desperate need and so applications were all unique and dealt with in a case-by-case manner (McGuinness, 2017: 8-9). On March 25 2014, the first group of Syrians processed through the VPRP arrived in Britain but the group was only between 10 and 20 people in size (McGuinness, 2017: 8-9).

Throughout 2014 and the beginning of 2015, the UK government came under a great amount of pressure to expand the number of refugees that the VPRP planned to resettle (McGuinness, 2017: 8-9). Various group- including refugee agencies, faith leaders and celebrities – also

called on the Government to expand their programme to include people seeking asylum from Iraq (Refugee Council. 2015).

In June 2015, then UK Prime Minister David Cameron gave an indication that the UK government intended to expand the VPRP as he gave a speech at the annual Bratislava Global Security Forum (Cameron, 2015):

“We already participate in the UN’s programme to resettle refugees who have fled from their home countries, including those affected by conflict or civil war.

And we also set up our own scheme for particularly vulnerable people fleeing the conflict in Syria, including women and children at risk who couldn’t be protected in the region. And today I can announce that we will work with the United Nations to modestly expand this national scheme so that we provide resettlement to the most vulnerable fleeing Syria – those who cannot be adequately protected in neighbouring countries.” (Cameron, 2015)

Finally, on 7 September 2015, Prime Minister Cameron gave in to pressure groups that were demanding the UK government to do more for Syrian refugees (McGuiness, 2017: 9-10). The Prime Minister acknowledged that both the conditions within Syria - which had dramatically worsened due to the civil war - and also the migrant movement across were in such a drastic state that the Government had to increase its support (McGuiness, 2017: 9-10).

Prime Minister Cameron announced that not only would the UK continue to invest the same amount of aid and infrastructure to Syria and the affected regions, but that it would invest a further £60 million to Syrians still living in Syria (Cameron, 2015). Cameron announced that a further 40 million would be spread across Lebanon, Turkey and Jordan to help these neighbouring states to house the incoming refugees (Cameron, 2015). In terms of resettlement, the Government would agree to resettle up to 20 000 Syrian refugees over four years but that these refugees would only be taken from refugee camps in Turkey, Lebanon and Jordan (Cameron, 2015). The Government also announced that all resettled refugees would receive a five-year vulnerable person Visa and that the criteria used to select refugees would be relaxed in order for more migrants to be accepted (Cameron, 2015).

Although the announcement seemed to subdue to the pressure on the UK government, this did not last long as soon after the announcement various charities argued that not enough was being done for vulnerable Syrian refugees who had already found themselves in Europe, such as

orphaned or disabled children. It was only on 21 April 2016 that the UK Government announced it would agree to work with the UNHCR in order to resettle vulnerable children and adult refugees from the Middle East and North Africa (MENA) region (McGuinness, 2017: 11-12). Then Minister for Immigration, James Brokenshire, explained the exact details of the new programme:

“On the UNHCR’s recommendation the scheme will not target unaccompanied children alone, but will be extended to all ‘Children at Risk’ as defined by the UNHCR. This broad category encompasses unaccompanied children and separated children (those separated from their parents and/or other family members) as well as other vulnerable children such as child carers and those facing the risk of child labour, child marriage or other forms of neglect, abuse or exploitation. Through this category we will resettle the most vulnerable children, accompanied by their families, where the UNHCR deems resettlement is in the best interests of the child. We will commit to resettling several hundred individuals in the first year with a view to resettling up to 3000 individuals over the lifetime of this Parliament, the majority of whom will be children. We will also review the scheme at the two-year mark. This unique initiative will be the largest resettlement effort that focuses on children at risk from the MENA region and will be over and above the commitment to resettle 20,000 refugees under the Syrian Resettlement Scheme. It will be open to all at risk groups and nationalities within the region, with the best interests of the child at the heart of the scheme. The UNHCR are fully supportive of the launch of this new initiative and the UK’s commitment to assist vulnerable refugee children at risk through further resettlement efforts which uphold the principles of child protection.”

(McGuinness, 2017: 11-12)

On 4 May 2016, following pressure from the House of Lords to detail how vulnerable children will be resettled, the Government issued a formal explanation of their plan:

“Unaccompanied asylum-seeking children will be resettled from Greece, Italy and France, in an initiative announced today following discussions between the government and Save the Children. (...) The government has always adopted a twin-track approach to dealing with the migrant crisis: helping the most vulnerable while not encouraging new perilous crossings to Europe. That approach will continue through this initiative, by restricting resettlement to children registered before the EU migration agreement

with Turkey came into force on 20 March. The retrospective nature of the scheme will avoid creating a perverse incentive for families to entrust their children to people traffickers. And it will mean that the UK can focus on the most vulnerable children already in Europe without encouraging more to make the journey. The government will work closely with the United Nations High Commissioner for Refugees (UNHCR) to deliver this scheme, as well as non-governmental organisations (NGOs) like Save the Children. It will be separate to any EU-administered resettlement schemes.

Those at risk of trafficking or exploitation will be prioritised for resettlement. And existing family reunion routes will be accelerated.”

(McGuinness, 2017: 12-13)

At the end of 2016, Minister of State (Home Office) Baroness Williams of Trafford further clarified the status of refugee children under the recently ratified Immigration Act 2016:

“All children transferred here under section 67 of the Immigration Act 2016 will be expected to make an asylum claim in the UK, which will be considered according to normal processes. We aim to decide 98 per cent of straightforward asylum claims within six months. Where a child does not qualify for asylum and it is clear that safe and adequate reception arrangements are not available in their home country, they will be granted leave to remain under the Immigration Rules for 30 months or until they reach the age of 17 and a half, whichever is shorter.”

(Williams, 2016)

It is clear from the aforementioned summary of the UK government’s actions in dealing with Syrian refugees, that they often did so after being pressurised from international or charitable organisations. While the British government did introduce measures that ultimately led to assisting refugees, for the large part the measures increased the bureaucracy surrounding asylum applications. The introduction of bureaucratic measures led to the ultimate exclusion of refugees from the UK, which results in the further creation of the abject other. By subjecting the refugees to further measures, the refugee is further isolated from the society he/she wishes to enter and the difference between himself and this society is further highlighted by the terms and condition he/she finds themselves subject to.

C. GERMANY

i) Historic refugee position

The purpose of considering Germany's history of immigration policy is to allow for an analysis to be made of whether or not the country is moving towards the principles of natural law, or away from them in dealing with refugees.

Although Germany has a long history of immigration that precedes the two World War, the fractured nature of the state coupled with the extreme right-wing policies of Nazi Germany mean that considering the history prior to the Second World War does not provide useful insight into the development of state migration policy. Admittedly the problem with analysing Germany even after the Second World War is that it was divided in two after the fall of the Nazi regime. From the destruction of the Second World War emerged the Federal Republic of Germany (FRG) in the West and the German Democratic Republic (GDR) to the East. These two separate states governed their respective areas between 1949 and 1990, until the collapse of the Berlin wall and the Soviet Controlled Eastern bloc at large.

The second hurdle in using Germany as a reference point is the difficulty in accessing policy documents from either the FRG or the GDR which deal with specific refugee policies. For this reason, most of the analysis will be of the reunified German state, also called the Federal Republic of Germany, from 1990 onwards.

Although there is little policy data for the two German states between 1949 and 1990, there is enough select data from the FRG to paint a picture of the conditions and attitudes present in West Germany during the Cold War and in the build up to reunification in 1990. Mark E. Spicka (2013: 348-350) argues that Germany's first experiences of migration were from the early 1950s until the late 1960s. Spicka (2013: 348-350) writes specifically about the South Western city of Stuttgart, located in the FRG, that was subject of a large influx of workers (predominantly from Italy and Eastern Germany) towards the end of the 1950s. The Federal Government's strategy at that time was to allow more powers to the different regions of the FRG in dealing with the influx of migrants. The Stuttgart Labour office were initially hesitant to allow so many foreigners to settle in the city as they were aware that most of them were single, males looking for work (Spicka, 2013: 347-349). The local authorities were concerned about the level of disorder that could be created by a large influx of single, males into the city both socially and in terms of housing requirements. On the other hand, the authorities also

understood that Stuttgart's factories and production industry at large required significantly more man power (Spicka, 2013: 348).

Understanding the importance of labour to the local economy, the Stuttgart Labour Office set out to incorporate as many of the guest workers as possible – but only sought to integrate the workers into the city's economic life and not the larger social and cultural life (Spicka, 2013: 348-349). The evidence of this is found in the construction of the guest-worker cultural centres. These centres aimed to remove the guest workers out of public life and instead place them into their own culture zones where they were effectively isolated from West German life (Spicka, 2013: 348-350). The authorities provided these foreigner workers with just enough assistance so as to ensure that the workers could still successfully take part in the local labour system.

Just before the building of the Berlin wall in 1961, the West German authorities began to change their approach in dealing with the settlement of new immigrants. In January 1960, a meeting took place at the Baden-Württemberg (the German state/province of which Stuttgart is the capital) Labour Office where the Stuttgart Social Affairs Organisation met with representatives of the local workers' unions, employer organizations, relief organisations and the Italian Consulate (Spicka, 2013: 348-350). The parties were tasked with creating and coordinating various support tasks for Italians working in Baden Württemberg. The relief organisations played a particularly important role by providing aid and treatment to ill workers and also assisting with any work or bureaucratic related difficulties, particularly due to the language barrier that Italian workers faced (Spicka, 2013: 348-350). The relief organisations also began to provide workers with free-time activities. Meanwhile the State Labour Office also urged various firms to provide adequate housing, which had to include a separate kitchen facility and a lounge for workers to spend their free time. Spicka (2013: 349-350) argues that the efforts from the State Labour Office were conducted in order to increase economic efficiency. While these early efforts were not quite focused at fully integrating foreign workers (particularly Italians) into West German communities, they were the first examples in Germany of government authorities providing care and aid towards migrants. The West German government were showing the understanding that in order to build effective working communities, the refugees could not be stranded on the periphery of the community and required some sort of integration and/or support.

During the early 1960s local governments across West Germany, but particularly those in the industrial hubs, began to realise that a large amount of guest workers intended to stay for an

indefinite amount of time within West Germany. This, of course, increased the pressure on social service delivery, such as housing, and the local authorities realised that a more permanent solution would need to be adopted in order to deal with migrants (Spicka, 2013: 355-357). It was at this time that the local Labour Offices began to support policies of integration. The local Social Affairs Department began to call for appropriate measures in order to fully integrate the migrants, with the primary measure being that of family reunification. The Social Affairs Department also began to implement more sustainable housing programmes and, with the arrival of migrant families, education systems for children (Spicka, 2013: 355-357).

At this point it seemed that in Stuttgart, and other smaller cities, the local authorities' intention was to move more towards policies around integrating immigrants but at the Federal level there was no clear, coherent policy (Spicka, 2013: 355-357). In 1962, the Federal Government and Ministries of Labour and Housing, supported by various churches and relief organisations, began debating plans to implement guest-worker family reunification across West Germany. Spicka (2013: 355-356) argues that because this policy would encourage the majority of workers to become permanent residents in West Germany, the idea was met with a lot of criticism and resistance, especially from the Ministries of the Interior who were looking to implement policies that discouraged permanent residence. The Ministry of the Interior argued for stricter adherence to rotation policies which entailed workers being rotated so that one group of labourers only stayed within West Germany for a period of two years at a time.

Eventually the Ministry of Economics and Foreign Ministry blocked the Ministry of the Interior's attempts and characterised them as excessively severe and inconsistent with the Federal Republic's original recruitment agreements laid down by the European Economic Community, with regard to Italian workers (Spicka, 2013: 355-356). However, debates continued to unfold with a large focus put on the potential costs of so many foreign workers becoming permanent residents. The Federal government was split, with some groups arguing that the infrastructure costs (such as expanded family housing) would be too great for the country to bear (Spicka, 2013: 353-356).

In 1965 a report by the Stuttgart Social Affairs department framed the issue of family reunification in the context of it ultimately having social and economic benefits for the city but the document did also express a more humanitarian sentiment towards the guest workers (Spicka, 2013: 356-357).

It finally seemed that the city administration was developing a much clearer sense of the guest worker's needs outside of mere cultural centres and free time activities (Spicka, 2013: 356-357). The policies of granting family reunifications and providing appropriate housing were intended to be humane, to lower social costs and to anchor a valuable labour force for an unspecified period of time (Spicka, 2013: 356-357). The long-term residency of the migrant workers was still undecided as the report did not make the case for total assimilation into German society.

The report actually argued that the migrant workers had many cultural aspects that were not compatible with the West German culture, but there were certainly signs that the local authorities were giving consideration to the migrants' long term futures (Spicka, 2013: 356-358). While these authorities had not come to treat the migrants as permanent residents of Stuttgart, there were indications that the local German government was beginning to consider the question of integration. Importantly, the alteration in policy to allow for family reunification showed that the local government understood that community security was important to ensure for all the migrant workers.

The justification of providing more and more social services to the refugees relied on the idea that these services would produce better workers and therefore more production (Spicka, 2013: 356-358). While this justification was not linked in any way to the natural rights of foreign workers, it did ultimately lead to better conditions for the migrants in the late 1960s.

In the mid-1970s the National Federal Government largely adopted all the policies that had been in place in Stuttgart since the late 1960s (Spicka, 2013: 357-359). It was from the 1970s onwards that immigration formed a part of the national political agenda. In being able to develop social policy for foreigners, West Germans slowly but surely became more accepting of migrants in general as they began to form permanent parts of the West German society.

According to Timothy Hatton (2004: 7-8), due to the lack of a cohesive, holistic and unified EU policy strategy to deal with refugee numbers, most EU states in the early 1990's began to develop their own national policy towards refugees that often involved increasing restrictive asylum legislation. The EU member states implemented four differing projects: those designed to tighten access to the country's borders by potential asylum seekers, those designed to toughen asylum procedure, to the treatment of asylum seekers during processing, those relating to the outcome of asylum claims (Hatton, 2004: 7-8).

Hatton (2004: 20-21) argues that the most important reforms to the processing of asylum applications came in the form of implementation of procedures for manifestly unfounded claims and the establishment of safe third country lists. Germany were the first to include the Dublin treaty into their national law and further conditions that made an asylum application more difficult than they had ever been. In 1993, Germany amended their Right to Asylum legislature to reflect entail the following:

Article 16a [Right of asylum]

(1) Persons persecuted on political grounds shall have the right of asylum.

(2) Paragraph (1) of this Article may not be invoked by a person who enters the federal territory from a member state of the European Communities or from another third state in which application of the Convention Relating to the Status of Refugees and of the Convention for the Protection of Human Rights and Fundamental Freedoms is assured. The states outside the European Communities to which the criteria of the first sentence of this paragraph apply shall be specified by a law requiring the consent of the Bundesrat. In the cases specified in the first sentence of this paragraph, measures to terminate an applicant's stay may be implemented without regard to any legal challenge that may have been instituted against them.

(3) By a law requiring the consent of the Bundesrat, states may be specified in which, on the basis of their laws, enforcement practices and general political conditions, it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists. It shall be presumed that a foreigner from such a state is not persecuted, unless he presents evidence justifying the conclusion that, contrary to this presumption, he is persecuted on political grounds. I. Basic Rights 23

(4) In the cases specified by paragraph (3) of this Article and in other cases that are plainly unfounded or considered to be plainly unfounded, the implementation of measures to terminate an applicant's stay may be suspended by a court only if serious doubts exist as to their legality; the scope of review may be limited, and tardy objections may be disregarded. Details shall be determined by a law.

(5) Paragraphs (1) to (4) of this Article shall not preclude the conclusion of international agreements of member states of the European Communities with each other or with those third states which, with due regard for the obligations arising from the Convention Relating to the Status of Refugees and the Convention for the Protection of Human Rights and Fundamental Freedoms, whose enforcement must be assured in the contracting states, adopt rules conferring jurisdiction to decide on applications for asylum, including the reciprocal recognition of asylum decisions. ”

(Deutscher Bundestag, 2012: 23-24)

Clause (2) echoes the agreements from the Dublin conference, which stipulate that a refugee's asylum application must be processed in the first European state that he/she first applies in. Clause (3) provides the state with the power to make determinations on which countries are considered safe or not, and the onus is on the refugee to show otherwise. Both these clauses provided Germany with considerable protection from mass refugee movements and provided the first, real, modern obstacles for refugees with regards to asylum seeking policy. These two measures certainly would have allowed Germany to have a tight control of their borders and migration flow in general. By introducing the Dublin regulation, Germany was now able to define the refugees by their movement and failed to consider the refugees in their own right – as vulnerable people fleeing persecution.

Having analysed data from asylum seeking policy Hatton (2004: 22-24) formulated a table that shows the way in which asylum policy has become harder on those seeking asylum (See Graph A). While access to accepting countries undoubtedly rose between 1980-1999, the difficulty and length of the procedure increased at an even bigger and quicker rate.

Hatton (2004: 22-24) argues that all the dimensions of policy point towards a steep increase in restrictive entry towards asylum seekers, particularly in the early 1990s. This then coincides with the time when European states followed Germany's lead and introduced safe country policies and the exercise of the Dublin convention legislature. While these domestic policy changes may not have barred access to incoming refugees, it was the first step in governments across Europe starting to isolate themselves from the world outside of Europe and becoming more protectionist. By creating further legal barriers to entry, the states are able to transform the refugee into the abject other, as it becomes more and more defined as being excluded and on the outside of society.

While German policy towards refugees may have shown instances of adopting more protectionist policies, in general the strategy that began to be adopted in the 1970's was one based on providing foreigners with social support. While the initial influx of migrants into Germany after the Second World War was predominantly to fill gaps in the industrial economy, it can be said that eventually the local and national governments found ways in which to integrate the foreigners into the local societies permanently.

As recently as 2012, the German Federal government attempted to redesign their resettlement programme. This included vastly modifying their pre-departure refugee orientation. Since 2012, refugees now undertake a cultural orientation class which runs for four or five days (Resettlement-EU, 2013). The courses are run for refugees waiting in Turkey to be moved into Germany. The course content includes general information about German life, the way in which the federal government operates, the legal status of resettled refugees in Germany, housing, naturalisation and some introductory language lessons (Resettlement-EU, 2013). In the past, the Federal Ministry of the Interior has also conducted these cultural orientation courses in Tunisia. In other cases, the German government contracts out this work to organisations capable of helping in countries where refugees may be waiting to move to Germany.

Included in the pre-departure orientation is a pre-travel medical examination (Resettlement-EU, 2013). The examination is carried out for all refugees by staff employed by the Interior Ministry after selection interviews have been completed and prior to final resettlement decisions being made. The medical examination is intended to screen for communicable diseases and also provides information on the individual health conditions that would not prevent a refugee from gaining acceptance into Germany but that would require some sort of treatment on arrival (Resettlement-EU, 2013).

Along with providing medical examinations and cultural orientation, the Interior Ministry also organises all forms of travel for the refugees which usually takes place in the form of scheduled or chartered flights (Resettlement-EU, 2013).

As part of the changes made to Germany's resettlement programme, refugees are now taken to a reception centre, as organised by the Federal Office for Migration and Refugees (BAMF). This centre has recently been placed in Friedland, near the city of Hanover. The refugees stay in this centre for the first two weeks of their stay in Germany and are again placed into cultural orientation programmes and more intense language classes (Resettlement-EU, 2013). Charities

and Non-Governmental Organisations provide refugees with counselling if they should request, as well as organising recreational activities. Once underage refugees arrive in Germany, they are provided with educational courses to ensure that children are quickly brought up to speed and therefore able to integrate into the German education system more easily (Resettlement-EU, 2013).

In 2012, the system was altered so that almost every refugee had to first go through the process in Friedland before being directed as to which municipality in Germany would then accept them for housing (Resettlement-EU, 2013). Only the region Länder of Hessen and Hamburg accepted refugees directly, post 2012.

With regards to the assignment of refugees to a municipality or region, changes were made during the turn of the century in 2000. Refugees are assigned to the accepting municipality prior to arriving in Germany, based on factors pertaining to the municipality rather than the refugee (Resettlement-EU, 2013). For example, when deciding where to place a refugee the BAMF considers the potential accepting municipality's budget conditions and general population statistics. Although the priority is to consider whether or not the municipality can afford the new refugees, consideration is given to try settle refugees with any family members who may already be living in Germany. During the early 2000s it was also common for the German Federal Government to try place refugees in areas with other members of their nationality, however this has recently fallen away in Germany and other European countries due to poor integration statistics with these sorts of approaches (Resettlement-EU, 2013).

Historically, Germany would apply this general formula individually to each and every refugee group that arrived into the country. So, if a group of 200 refugees arrived, they would then be spread across the German region equally and in a manner, that would not put strain on any single town or region (Resettlement-EU, 2013). For example, during the 2009-2010 Iraqi resettlement programme large groups would arrive frequently into Germany and the formula was applied to each individual group separately.

With the new changes to the programme, made in 2012, the formula is now applied to the annual quota of refugees who are accepted. This prevents families from being split up and very small numbers of refugees being placed within a single municipality or region (Resettlement-EU, 2013). The use of this formula however has resulted in even less freedom for refugees who want to choose the German city they want to live in. Instead the Federal Government decides on where and when the refugees will be placed.

Once the refugees are assigned to a particular state, that state then has the prerogative to distribute the refugees how it sees fit within its province. Most states decide to use the same formula system that is used by the Federal government (Resettlement-EU, 2013). If the States do not use the Federal formula, then they simply place the refugees in the biggest cities so that refugees may be closer to economic opportunities and other fellow refugees. The States are given between one and four weeks' notice as to when they will be receiving more refugees.

Up until modern times, Germany has given resettled refugees social welfare payments. These payments are designed to cover the housing and subsistence needs of the refugees (Resettlement-EU, 2013). However, refugees are only entitled to receiving this social welfare from the municipality in which they were first sent (Resettlement-EU, 2013). If a refugee wishes to move from this municipality, he or she must be willing to sacrifice their welfare benefits and provide their own housing. This therefore means that a refugee must first find employment in another city if he/she wants to live there. This gives the German government an effective and fair way in which to control the movement of refugees within the country in order to prevent overcrowding and unemployment in major economic hubs.

Housing placement is controlled by the various States within Germany and is arranged by the municipalities that fall under these States. The municipalities are obliged to provide refugees with some sort of accommodation (Resettlement-EU, 2013). In some cases the municipalities provide accommodation from the housing infrastructure they own, while other times they agree to rent property from private companies or landlords in order to house the refugees. Some municipalities have even housed refugees in large communal accommodation once they arrive and there is no obligation to provide anything more than this sort of accommodation – even if some do (Resettlement-EU, 2013). It is not uncommon for NGOs and volunteers to assist in resettling refugees although it is more often the case that refugees spend many of their first months in Germany in communal houses.

Prior to the Syrian migrant crisis there was no national standard integration programme created specifically for refugees living in Germany. Although not compulsory, refugees are allowed to attend the national German Integration Course which is available to all migrants who have residence permits (Resettlement-EU, 2013). When refugees apply for their residence permit the local immigration office conducts a test to see whether or not the refugee's language skills are up to standard. If the refugee fails the language test, he or she is then obliged to attend the

German Integration Course. It is obviously difficult for authorities to monitor whether or not the refugees do attend this course. However refugees are subject to the language test every time they apply for a new residence permit (a residence permit is often only valid for 12 months for refugees).

The BAMF oversees the creation of content for the German Integration Course and also employs the help of various organisations to help design the courses and deliver them. The refugees are allowed to choose which course provider they want to use within their designated areas (Resettlement-EU, 2013). However, refugees are expected to pay for the course which during the period of 2009-2012 cost around €120 (Resettlement-EU, 2013), a fee which was payable upfront at the beginning of the course. While theoretically refugees are expected to pay, they are permitted to apply to the BAMF to be exempt from payment (ERN, 2013). Refugees almost always have their applications accepted and are allowed to attend for free.

The German Integration Course generally consisted of 600 hours of German language lessons and a 60-hour component that covered cultural orientation information (Resettlement-EU, 2013). The language course focused on equipping refugees to be competent in the German social life as well as in the workplace (Resettlement-EU, 2013). The orientation course included lessons on German history and culture but more importantly lessons in the German legal system and what rights are available to refugees and eventually German citizens. The cultural course also included lessons involving social values such as freedom of religion and civil rights.

The language and cultural courses were only ever available on a full-time basis and would take two years to complete (Resettlement-EU, 2013). The only exceptions for those who have already found employment or who are caring for new-born children and in these cases part-time classes were arranged.

At the end of the first year of classes, refugees are obliged to take a language test and at the end of the second year they have to take a full integration test. Should a refugee complete the full course and still fail to obtain the B1 level of language skills (considered to be an intermediate level of language proficiency) then the refugee is eligible to undergo a further 300 hours of language tuition that is free of charge and aimed at helping the candidate pass the exam (Resettlement-EU, 2013).

Up until 2014, the role of NGOs, charities and civil society in helping refugees settle varied across the different States in Germany and even between the different municipalities. Many municipalities are supported by grassroots level campaigns that help in building awareness amongst Germans about the refugees' conditions (Resettlement-EU, 2013). These campaigns also look to support the local governments in housing and integrating the refugees into the communities they find themselves in. Some of the highest level of support took place in Munich during the 2008-2012 period where the local government funded positions within the Munich Refugee Council, which ultimately helped to coordinate the arrival of big groups of refugees and ease their settlement (Resettlement-EU, 2013).

In many municipalities, NGOs provided advice and support for refugees who had recently moved to their new towns (Resettlement-EU, 2013). Many NGOs and charities provided counselling for refugees who had experienced traumatic events in their journey to Germany.

A study conducted of the 2009-2010 resettlement of Iraqi refugees (Resettlement-EU, 2013) brought to light some of the strengths and weaknesses of the German approach to refugee resettlement. A total of 86 refugees were resettled in the northern State of Schleswig-Holstein, of which Kiel is the capital. The results showed that many of these refugees moved from the smaller municipalities in which they had been placed towards the bigger cities of the same region and in some cases even cities in neighbouring states (Resettlement-EU, 2013). The refugees either moved due to a desire to reunite with family members, or to be in areas that had better economic opportunities and medical care. The startling discovery of the study was that only one refugee of the 86 that entered, managed to find employment within the first two years of arrival. This was suggested to be because most of the Iraqi refugees who entered failed to get a good enough grasp on the language to fully integrate into the German economy (Resettlement-EU, 2013). There were positive results found amongst the younger refugees who were able to speak a high level of German within the first year of formal school. It was reported that the children also managed to form significant bonds with German peers (Resettlement-EU, 2013).

Despite the modern system having positive effects such as a more streamlined process for the identification and selection of refugees from third countries, which therefore allowed for a quicker process between selection and departure, the system as a whole still had many negative effects. The system still evidenced poor integration results and large migrations towards major cities which could become dangerous if a larger refugee crisis were to happen.

Ultimately the modern refugee approach (between 2004 until 2012) adopted by Germany had achieved some small successes for both the State and the refugee, but changes were required if Germany was to properly deal with the large influx of numbers it continued to see post-2012. Despite the best attempts by the government to incentivise staying in the allocated areas, refugees were still too prone to moving towards the bigger urban cities which began to cause a strain on those municipalities. The goal moving forward therefore for Germany was to develop a comprehensive plan that focused on rapid integration in order to allow for refugees to be absorbed by their local municipality's economy. (Resettlement-EU, 2013)

ii) German efforts for Syrian Refugees

When the Syrian civil war broke out in 2011, Germany was receiving around 50,000 asylum applications per year (Eurostat, 2016). In 2015, Germany received 476,649, almost ten times the number they received just four years prior (Eurostat, 2016).

While Germany's asylum applications were increasing at never before seen numbers, it was the total population of people they received in 2015 that was truly astonishing. While almost half a million asylum applications were filed, Germany accepted close to 1.1 million refugees across its borders (Mayer, 2016: 1-4). The discrepancy between refugees and asylum applications received is largely down to the fact that the German authorities were not prepared for the number of people they were faced with processing. The Federal Office for Migration and Refugees (BAMF) repeatedly issued statements stating that the department was having problems processing the applications and the backlog that the surge in 2015 created was only resolved the following year where numbers dipped slightly (See Graph D).

It is important to remember that this paper seeks to use the Syrian migrant crisis as a case study for the behaviour of selected European states in their handling of asylum seekers. Therefore, it is important to note that not all of the 476,649 asylum applications received in 2015 were from Syrians. Although, it is of value to consider the general acceptance rate of refugees by the German Federal Government. If we consider Figure E (See Appendix), we can see that the

German government has prioritised refugees from Syria and Iraq. In 2015, 88.6% of asylum applications from Iraqi refugees were accepted, the second highest rate of any refugee nationality. Only 47.6% of refugee applications from Afghanistan were accepted, while only 9.8% of Pakistani asylum applications were approved. The reason for the relatively low number of accepted applications from Afghanistan and Pakistan are due to the German government's prioritisation of the crisis in Syria and Iraq, but also because the German government argues that asylum applicants from those countries could find protection in safer regions close to their nation (Mayer, 2016: 2-5)

Perhaps the first indications that Germany was set to welcome the refugees with open arms was when Chancellor Angela Merkel decided to suspend the Dublin Regulation (which as discussed before, requires a refugee to be deported back to the first EU member state in which they were processed) in order to speed up the processing of refugees and to allow more to enter (Mayer, 2016: 4-6)

The second pivotal and symbolic gesture was when both Germany and Austria decided to open their borders on the 4th of September to the thousands of refugees who were fleeing hostile environments in Hungary and Serbia.

While the refugees faced increased xenophobia and aggression in the aforementioned Serbia and Hungary, the German population was more than happy to accept the refugees. According to a poll conducted by Bertelsmann Stiftung (and presented in a report by Matthias Mayer) Germans are increasingly more at ease with the idea that Germany is progressively becoming a country of immigrants, particularly in regions that formerly belonged to West Germany (Mayer, 2016: 6). The sentiments of the German people were so positive that in the middle of the Syrian migrant crisis in July 2015, 93% of Germans still supported welcoming the refugees, who were escaping war or conflict, into Germany. Germans also believed that other factors should entitle refugees to entry, as 80% stated that the country should accept those seeking refuge from political or religious persecution or discrimination.

The Federal Government adopted the Integration Act on 25 May 2016 at its special Cabinet meeting in Meseberg. The act aims to set out conditions that look to improve integration and working conditions for refugees in Germany.

On August 6, 2016, the Integration Act and the Regulation on the Integration Act entered into force in Germany. The purpose of these acts is to amend multiple laws in order to ease the rate and success with which refugees integrate into the German society and culture.

The act explains that refugees who have good prospects of being granted permanent residence, will now be able to take part in integration courses and skills training much quicker than was previously allowed. The act also states that the refugees who make little to no effort in integrating will ultimately have their benefits reduced.

The act includes increasing the amount of German language classes available and making them of a quicker pace to integrate the refugees into local communities as quickly as possible. Any refugee who has had their potential deportation suspended will be allowed to remain as long as they are undergoing skills or language courses, with the intention of creating much more legal certainty for refugees while in Germany. The act also seeks to deal with the problems refugees face when moving to big urban centres. Typically, when too many refugees move to urban areas it not only causes overcrowding and a lack of adequate housing but it also tends to slow down integration. The act now seeks to transfer more power to the federal states to allow them to assign residences to refugees where overcrowding is less of an issue. The refugees will be allowed a residence for at least the first three years of their stay in Germany.

The Integration act is particularly focused on labour and making the refugees economically independent but of course, also valuable to the German economy. German Federal Labour Minister Andrea Nahles argues that the first aspect of integration that refugees are concerned about is work. She states that 70% of refugees are under the age of 30 and therefore are in their prime for skills training and labour integration (German Federal Government, 2016). Minister Nahles stated that that integration can only be successful when these refugees go from receiving social aid to giving back to the German society and economy (German Federal Government, 2016).

A part of the labour section of the Integration Act includes now requiring refugees to partake in “meaningful employment” such as working within the refugee shelters serving meals or gardening their surrounding green areas (German Federal Government, 2016). A few days prior to the official Integration Act coming into force, the Federal Government announced the “Refugee Integration Measures” programme would be rolled out to 100,000 refugees to trial how effective it is.

Federal Minister of the Interior Thomas de Maizière believes that there are two starkly different realities at the moment in Germany. Up until now the incoming refugees have largely taken the opportunities they have been presented. De Maizière argued: “They have done vocational training or learned a trade. They are studying for a degree or have set up a business that employs people. They are helping Germany to grow. They are an enrichment to our country” (German Federal Government, 2016).

There is, however, also another reality. The Minister admits that large amounts of people who entered as refugees were still able to live in Germany without any integration (German Federal Government, 2016). Some of these people could not speak a word of German and showed almost no interest in trying to learn. De Maizière continued: “...and they don’t have a proper job. A few young men are responsible for a remarkable number of criminal offences. These insights into the two realities that exist in our country are painful.” The German Federal Government believe that the crimes committed by refugees over the past two years have almost always come from those that refuse integration and hence why these integration models are so important to the government for their view of German society (German Federal Government, 2016).

De Maizière (German Federal Government, 2016) did concede that the majority of refugees who entered were willing to integrate and that their willingness was rewarded with safety and protection as residents of Germany. “We want to foster that willingness. That is why we need integration measures. But we also need people to be able to trust in the fact that the rule of law will ensure that existing legislation is implemented.”

The biggest highlight of German interest in the incoming refugees found within the Integration Act is perhaps the new regulations surrounding labour market checks.

Prior to the Act, the Federal Employment Agency would typically conduct a labour market priority check before any foreigner, including refugees, could be hired (German Federal Government, 2016). A labour market priority check involves considering what effects the hiring of a foreigner will have to the German economy. This includes researching whether there are no German nationals, foreigners with the same legal status as German workers, or other foreigners entitled to preferential access to the labour market and whether the foreigner that would be employed, would be employed on terms less favourable than the ones that apply to an equivalent German worker.

With the new Integration Act, the labour market priority check will be suspended for three years in the favour of refugees who have a suspended deportation or those who have been provided with a temporary residence certificate on the grounds of asylum seeking (German Federal Government, 2016). The Federal Government also announced that this waiver will apply to temporary work which will undoubtedly free up another sector for refugees to potentially take part in (German Federal Government, 2016). The only potential clause is that this suspension of the labour market priority check will only take place in certain areas within the country, to be determined by the local authorities.

The Integration Act in its entirety is an encouraging sign from a European power, that has again tried to accommodate the rights of the individual refugees, as well as the interests of the country and its population. The Act focuses on employment and integration and understands that the only way to integrate the refugees fully is to give them the opportunity of financial independence and the skill of the native language.

A potential theory that could be lodged against the German government is one concerning the motives behind Germany's acceptance of over a million refugees. Some media institutions have claimed that Germany's acceptance of refugees is almost completely due to its ageing population and current labour shortages. A Reuters article in 2015 suggested that Germany was planning to replace its ageing population in the workplace with younger and more physically capable refugees (Business Insider UK, 2015).

Mayer (2016: 7) admits that it is true that Germany's population is both shrinking and ageing and that if labour force participation rates were to remain constant, without immigrants or refugees, the number of people of working age would decrease from approximately 45 million to less than 29 million in 2050. Of course, the strength of the German economy and its remarkably low unemployment number did help the country to be more positive towards immigration, the argument that these factors alone affected the policies does not hold up to scrutiny.

Few refugees who entered the country between 2011 and 2016 spoke German or English and the majority lacked any sort of professional qualifications to work without understanding the language. In fact, Germany, according to Mayer (2016: 7-8) is a notoriously difficult country to find work in due to the unwillingness to accept foreign acquired degrees or qualifications. In terms of manual labourers the problems that face refugees are all related to the amount of

time it takes to retrain these people to be effective in the German market. Mayer (2016: 7-8) argues that only around 20% of refugees in Germany hold a vocational qualification or university degree while as little as 30% have work experience that is particularly relevant to the German labour market.

It is therefore the case that the project, such as the one implemented by the Integration Act, that Chancellor Merkel wants to conduct would require financial investments from both the government and private sectors in order to achieve success. It is also important to remember that a large proportion of refugees return to their home countries once the conflict ends and therefore Germany would be spending a lot of money on potentially non-permanent residents and workers.

It therefore seems much more likely that the project Germany has is largely, if not entirely, one that is based on humanitarian care for those who are fleeing for their lives.

V. ANALYSIS

A) United Kingdom

The initial and sustained position of the United Kingdom was to refuse to resettle any refugees whatsoever. Between the start of the civil war in mid-2011 up until January 2014, the United Kingdom did not accept a single refugee. In fact, during the three-year period, the only formal policy on dealing with the crisis was for the British government to spend unprecedented levels of aid. The fundamental problem with an aid-only approach is that it continues to manifest the notion that refugees are a separate, removed entity to the citizens of a country. The refugees, again, are the Others, who benefit from any assistance provided by the state - and this kind of hierarchical, distancing relationship is promulgated through news channels, bulletins or factsheets and delivered to the public. The British public see that their country is spending a large amount of aid on trying to stabilise a war zone - and this seems to satisfy the general public's concerns. The process of donating aid to Syria is focused on preventing Syrians from seeking refuge in the UK as much as it is trying to keep the very same people safe. The giving of aid also validates the aid-giver's subsequent inaction towards the recipient state's citizens. Thus, refugees are vulnerable to being framed as a group that is underserving of being resettled if a state (the UK) is spending an incredible amount of money to stabilise the situation in their home country.

Even if the fact that previous levels of aid being spent does not mean the refugees will all be rejected, it does help the government's argument for only accepting a very limited number. A government, having spent hundreds of millions of dollars in the refugees' countries of origin, could justify not accepting many refugees by arguing that it had already tried to stabilise the situation by donating aid and that the country could not afford to accept thousands of refugees in addition to their significant financial efforts.

This was effectively the position laid out by the British government in the build up to late January 2014. In fact, Minister Harper justified the state position only days before eventually caving in to public pressure and establishing a resettlement programme:

“...we think that our priority should continue to be to provide humanitarian assistance to displaced people in the region, in partnership with neighbouring countries, the UNHCR and other UN and non-governmental partners. Most of those who are displaced want to return home as soon as it is safe to do so, and protection in the region affords them that hope.”

(Mark Harper, UK Parliament, 2014)

The refusal to establish a programme which resettled Syrians into the UK was maintained, quite vehemently, just days until such a programme was ultimately established. The sudden change of policy was most likely due to the efforts that other European states were making to resettle the Syrian migrants. Britain's economic strength made it difficult for its government to justify its inaction in light of other European powers' efforts. Thus, the UK was forced into doing more than it had envisaged, because it quite clearly had the resources to do so.

On January 29 2014, Home Minister Theresa May announced that the British government would help to resettle some of the millions of displaced Syrian civilians. The scheme that would be set up to resettle the refugees would look to help “several hundred people over three years” (McGuinness, 2017: 8-9). In the same statement, which detailed the plans of the VPR, May also mentioned the level of aid that British government had contributed to Syria up until that point, which stood around £800 million. May also pointed out that this level of aid meant that the UK was therefore the second largest bi-lateral donor (after the USA) to the Syrian crisis (McGuinness, 2017: 8-9).

This was an example of how the British government was justifying their notably low number of targeted resettlements through the high level of aid that had already been committed to the

Syrian people. The fact that the government committed to so few refugee resettlements over a relatively long period (three years), indicated a conservative commitment in the case that the situation in Syria stabilised. The British government's commitment to several hundred refugees over a three-year period illustrates the hesitancy of the state to not allow too many foreigners into the country if a potential peaceful climate in Syria is possible. The state recognised that if many refugees were accepted into the United Kingdom, it could take years to reverse the migration process and for these families to return back to Syria.

Together, the high investment in aid to Syria along with the low commitment of Syrian refugee resettlement shows how the UK's policy was geared to *fixing* the situation in Syria so that there would be less refugees to resettle domestically. Again, this emphasises the "us" and "them" boundary through which intervention hoped to remain localised where the conflict arose, instead of the problem of the Others permeating home boundaries.

The VPR programme saw an incredibly low number of refugees filter into the country, with a group of only 20 arriving in the first entry. The low number of refugees led to increased pressure from the international community on the British government to expand the programme. Eventually, after 16 months of the VPR, Prime Minister Cameron caved in to concerns over the UK's diminished role and announced that the programme would be expanded. The Prime Minister admitted that the programme would only be expanded "modestly" and that the VPR would now seek to work more closely with the United Nations in resettling those Syrian refugees who could not be aided by Syria's neighbours (Cameron, 2015).

A few months later, Prime Minister Cameron agreed to accept an increased number of Syrian refugees totalling at least 20,000 over the course of his government's term. Cameron, however, stressed that these refugees would only be taken from refugee camps situated in Turkey, Lebanon and Jordan. The British government also announced that the conditions to be accepted as a refugee would be relaxed for those fleeing Syria in order to expedite the process.

The fundamental problem with the manner in which the British government agreed to accept these refugees is the fact that it still framed refugees as outsiders. Their outsider status in the UK was further accentuated because they were subject to extra criteria (in comparison to other European states) in order to receive access to the UK. Refugees that were to be resettled by the VPR now had to be processed in either Turkey, Lebanon or Jordan. While providing

an obvious obstacle to those who had already travelled into Eastern Europe to eventually reach Britain, the new programme also sought to create the barrier between “us” and “them” by requiring more of vulnerable people in order to receive safety. The added rules and directives given to the refugees (such as where they can and cannot be taken from) seek to further emphasise the distinction between themselves and the citizens of the country they wish to enter. Moreover, it made it seem that not just any refugee was entitled to the UK’s security, that this entitlement had been delineated and circumscribed in ways that the UK government saw fit. Increasingly, the state assumes the role that defines the refugees, even undermining their cause depending on their country of origin. This is a clear manifestation of the silencing that refugees experience, and their speechlessness is filled instead with accepting-government narrative. The British government in setting up their VPR exerted an incredible scale of control over asylum seekers who wanted to seek safety in Britain. The British government - in setting up camps in Turkey, Lebanon and Jordan – were effectively able to control their own borders from thousands of kilometres away, thereby increasing the strength of their borders both physically and psychologically from refugees.

The problem that then faced refugees at this time, who already found themselves in Europe, was acknowledged in the British parliament and Prime Minister Cameron again found himself under increased pressure to make alterations to the VPR in order to provide guarantees to vulnerable refugees already in Europe. Both liberal media outlets and community groups argued that not nearly enough was being done for child refugees who had already travelled passed Turkey and Jordan and were not able to turn back now.

It was only seven months later that the British government decided to act and joined the UNHCR in attempting to resettle vulnerable children from North Africa, and the Middle East (Simpson, 2014). While the success of the programme was that the UK would agree to resettle children who the UNHCR decided were at risk (leaving the British government little room to manoeuvre out of the commitments it had now made) it was, at the same time, unsatisfactory as only several hundred would be received in the first year and only 3000 by the time the Conservatives’ term in office had ended (McGuinness, 2017: 11-12). While the sentiments of such a proposal seemed honourable, the problem is that it still included the clause that only accepted refugee children who had passed through Turkey up until March 20th 2016 were eligible. This meant that any refugee children who found themselves in Europe after this date, would not be eligible for entry into the United Kingdom under this resettlement scheme. Again, this imposed restrictions and conditions to refugees wanting to

enter Britain and resulted in further highlighting the difference between “us” and “them”. The state was once again defining the status of refugees rather than the refugee being an active actor in the scenario.

It becomes clearer as we consider these policy decisions by the British government as to how the refugee is made to be the “abject Other”. The refugees find themselves outside of the borders and outside of the legal process of asylum seeking (by perhaps having moved through Turkey at too late a date to be resettled) and so the rights of citizenship and asylum are restricted further and further. These rights are legitimised by the physical borders separating the refugee from the UK; and the harder the British government makes it to cross these borders, the more these rights are restricted from the refugees.

It is here that I turn to the natural law versus legal positivism debate and how it fits within this discussion. While it is certainly clear that the British government is under no legal obligation to commit to a quota of refugees being repatriated into the country, they are signatories to the 1951 Convention of the Status of Refugees. Their signing of the Convention must be taken as a commitment to the ideals put forward by the document, which fundamentally rest on the principles of natural law and natural rights. By construing different ways in which to limit and avoid refugees, the British government has effectively ignored their obligation to the document they ratified, agreeing to protect and assist refugees. Instead, the British government has put its weight behind the British legal system and process.

While the British refugee resettlement process cannot be compared to the earlier examples of immoral Nazi law, it can be argued under a natural law perspective that the legal procedures are unjust and unfair to vulnerable people in need. The particular focus is on the intricate rules that pertain to underage refugees and how the British government has organised them legally. Under section 67 of the British Immigration Act, the conditions for asylum for refugee children are discussed. In section 67 it is explained that all asylum seeking children will be processed under the normal procedure (which is to say that no special, fast process will be applied in their situation) and that the children will be expected to make the asylum claim within the United Kingdom. A subsection of this provision details the procedures for a child who is not given asylum and is unable to be sent back home (due to the principle of non-refoulment). The British government will issue the child with a 30 month temporary residence or allow the child to stay until the age of 17 and a half – whichever option comes first (Brokenshire, UK Parliament, 2015). The child will then be expected to return to their

country or to reapply for another temporary residence document. The problem with this procedure is that it does not give certainty or predictability to vulnerable children. The child is given two and a half years to stay in Britain and after that could be sent back to their home country if the political situation has been placated.

Instead of granting a longer period of temporary residence, or even permanent residence, the British government committed to the short period of 30 months as listed above.

In order to show that these policy amendments and introductions favour moving away from a natural law approach, it must be shown that what the British government is denying relies on the principles of natural law. As discussed above, the principles of natural law inherently recognise that people have a desire for basic security. Security consists of freedom from fear and freedom from want, as set out by the UNDP (1994). Freedom from fear refers to civil and political rights while freedom from want is more aligned with the socio-economic needs of a person. In 1994 the UNDP argued that security had become a term that encompassed much more than just security from the state or foreign aggressive powers and that commitments to health and economic (as well as other categories) security had become vital for the global community. Kfir, as noted before, has suggested that these modern definitions of security have meant that the term is inherent in the natural law theory (2014: 15). Kfir (2014: 15-16) argues that this is because when refugees flee their home country they are effectively fleeing in the pursuit of some sort of security (although it is almost always primarily due to personal security). Ordinarily, the state approach in dealing with refugees should be to both protect and empower them (such as in the example of Hungarian refugees during the 1950s) in order to satisfy two securities for the refugees: personal security and economic security. However, the approach of the British government has not been to provide security to refugees. The government has not provided stability to the asylum seekers (and particularly towards minors) and in failing to do so has also been unable to provide security. For example, a sixteen-year-old female refugee from Syria would only be granted an 18 month stay in the United Kingdom (until she is seventeen and a half) according to the new laws laid out in the Immigration Act. This provides no sense of security beyond the very basic degree of personal safety. At no point, would the child have any real sense of stability, and therefore the time that is spent attempting to assimilate (by learning the language or culture) would be wasted if she was still to be sent back to Syria when her temporary residence expired. The inability of the British government to provide Syrian refugees with guarantees relating to their stay in the

UK means that the government is turning away from the ideals set out in international documents that rely on the principles of natural law theory.

It must also be explained how it was that the British government were able to reject so many refugees and also subject those they did accept, to stringent rules and terms. It seems the two conditions that allowed for the government's actions are the history of respect for rule of law, as well as the general sentiment amongst the public that immigration needed to be limited.

As discussed above, documents such as the Magna Carta established a general respect for the powers of parliament and laws themselves. The idea behind the rule of law is that all men are equal before the law and that no law shall be formulated arbitrarily or without good reason. The general culture then within British politics and British people reflects a recognition for the laws passed by parliament and a discouragement to challenge these institutions directly. While this attitude towards the government and parliament has certainly made the British more complacent than other nations' citizens, the more telling reason that the UK government succeeded in keeping refugees out is due to general support from the public.

Figures from a 2013 British Social Attitudes Survey showed that just over 55% of British people felt that immigration should be "reduced a lot" (Migration Observatory, 2016). This also meant that at least 77% of the people polled believed that immigration in take should be reduced at least slightly.

In 2014, an Ipsos Mori poll found that only 25% of the population found that the British government was performing well on the issue of immigration (Nardelli & Oltermann, 2014). The same poll revealed that voters believed that a change in government from Conservatives to Labour would result in any significant change in immigrant numbers. By the middle of 2015 Ipsos Mori also found that immigration had replaced the economy and the National Health Service (NHS) as the biggest issue for the general public (Barret, 2017). While it is true that this was in part due to chaos in the French town of Calais (Barret, 2017), where migrants overwhelmed immigration authorities due to their numbers, the topic of immigration remained one of high importance for the subsequent months following the story.

However, it must be noted that public sentiment polling shows that the animosity or negative feeling towards refugees in the UK has steadily been on the decline (Migration Observatory, 2016). According to various polls conducted between 1964 and 2014, the amount of people who believe there are too many immigrants has dropped from 85% of the population to around 54% (Migration Observatory, 2014).

The issue of anti-immigrant public opinion is discussed in further detail later in the short sector dealing with the UK's decision to leave the European Union, however it is quite clear to state here that the general negative feeling towards refugees from UK citizens has played a significant role in allowing the government to introduce stricter and stricter policy that results in substantially less asylum seekers entering than in other European countries.

While in Germany the general population were happy to accept refugees (more of this in the following sections), in the UK most people supported cuts to the number of refugees being taken in – even if these numbers were incredibly low. This perhaps also indicates that a potential right wing bias to the mainstream media houses allowed the people to be misinformed on the UK government's position on refugees and just how many were entering.

B) Germany

Germany received many more asylum applications than the United Kingdom during the Syrian refugee crisis. This is likely due to Germany being closer to Syria than Britain but also because of Germany's historical record of refugee/migrant acceptance. In 2015, Germany received over 500,000 asylum applications but let over one million refugees enter across its borders. German authorities were not prepared for such a large influx of people and so many refugees (more than half in 2015) were accepted without having first completed an asylum application prior to entering. So far, Germany has accepted almost all Syrian refugee applications with a protection rate of 96% for the calendar year of 2015 (See Graph E). The numbers are also particularly high for refugees from Iraq and Eritrea who both enjoy protection rates of over 85% in Germany (See Graph E). These figures show that Germany has a high acceptance rate of refugees from countries that it deems to be dangerous. For example, the United Kingdom received 32,733 asylum applications in 2015, and rejected a total of 17,201 – around 60% (Refugee Council, 2015). Of the 2,081 Syrian refugees that the United Kingdom made decisions on, just over 84% were accepted. While an 84% acceptance rate of Syrian refugees may seem like a high figure, in comparison to the efforts made by the German government, this figure is not reflective of the commitment to resettlement. Acceptance rates are misleading; while the UK accepted 84% of Syrian asylum applications in 2015, this only amounted to 1756 refugees entering the country. In Germany's case, the 96% of asylum applications accepted resulted in just over 155,000 refugees entering the

country (through the official bureaucratic avenue) whereas in reality close to one million Syrians entered the country (Refugee Council, 2015).

Germany and the United Kingdom are the leading economies within the European Union and so the comparison between these two states is a relevant one; their financial and human resources are relatively on par when in terms of dealing with a humanitarian crisis. The reason that the UK received a much smaller number of asylum applications to Germany is firstly due to the history the UK has with asylum seekers as described above in section. While Germany's history of refugee acceptance has not always been positive, there have been progressive steps taken by the Federal and local government to provide more and more support towards migrant workers or refugees. In the case of the UK, the support was either not present or at a very low level. The UK also has a history of changing policy to suit the nationalistic sentiments felt within the local communities, resulting in a gradual reduction in workers entering from commonwealth countries and ultimately a strict system of asylum acceptance.

As mentioned before, Germany's biggest commitment towards refugees and their rights was the suspension of the Dublin Regulation, which stipulates that refugees must be processed in the first European country at which they arrive. The Dublin Regulation has regularly been met with resistance from the UN and other refugee protection groups as it fails to defend all the legal rights that a refugee possesses. In March 2009 the United Nations High Commissioner for Refugees released the following statement in a report on the Dublin Regulation:

The Office of the United Nations High Commissioner for Refugees has closely observed the operation of the Dublin II Regulation and associated instruments (together referred to as the "Dublin system") since their entry into force. While supporting mechanisms to ensure an efficient examination of asylum claims, UNHCR has voiced significant concerns regarding the system's outcomes for persons seeking international protection in the EU and other participating States. These concerns include the system's impact in many cases on the legal rights and personal welfare of asylum-seekers, including their rights to a fair claim examination and, where recognized, to effective protection, as well as the uneven distribution of asylum claims among Member States. (UNHCR, 2009)

The report argued that, in some cases, the quality of the services provided for refugees who had been returned under the Dublin Regulation were so poor that it would not be advised that states who receive refugees down the line return them to these states.

Germany suspended the Dublin Regulation in 2015 so as to allow even more refugees to make their way into Germany and be registered. This suspension of the Dublin Regulation follows in line with the acknowledgement of the natural rights of the refugees and the desire to guarantee them as many of their ordinary rights as possible. The UK, on the other hand, were setting refugee programmes that echoed the objectives of the Dublin Regulation by only accepting refugees who had been processed in Turkey. The UK expanded this criteria later on by allowing entry for refugees who had been processed in Italy and Greece as well (McGuinness, 2017: 12-13). The suspension of the Dublin Regulation meant that many refugees could move to Germany knowing that they would not be turned back or deported to the first EU country that they entered. This gave many refugees security in the knowledge that they would receive care and assistance by making it to Germany. The problem, however, is that this incentivised the dangerous trip to Germany from Syria or its neighbours.

Notwithstanding the obstacles of incentivising dangerous travels and causing administrative blockages, the suspension of the Dublin Regulation was intended to make it easier for refugees to be processed as quickly as possible. Being “processed” means receiving support and documents which help to restore the refugee’s condition to as close to normal (in terms of citizenship) as possible. The gesture was one that resulted in refugees having more predictability for their immediate plans and how to rebuild their lives. It also provided the refugees with economic security knowing that the German government was working to resettle them in Germany, and as a result, the refugees were able to begin the process of integration more quickly and without the apprehension that they would be sent back at a given point in time.

By eliminating the Dublin Regulation, Germany committed to restoring the natural rights of all refugees who entered the country, regardless of their legal status determined by the regulation. Although the Dublin Regulation was never able to place particular obligations on states who signed the agreement, it is nonetheless a strong commitment from Germany to suspend the regulation and instead process all refugees regardless of where they had previously entered.

With regards to the discussion around states and how they attempt to shape refugees into the “abject Other”, there are a number of remarks to make about Germany. There are two aspects to consider, how Germany reacts to refugees when the refugees are outside of German borders and how Germany reacts when the refugees are on the inside of these borders, mixing into German society and culture. On the 4th of September 2015, Germany (and Austria) decided to open their borders completely to the thousands of refugees who were attempting to reach them from Hungary and Serbia. The opening of the border showed how the German state did not intend on moulding the Syrian refugees to be Others and different to their own. The border had effectively been dissolved for the refugees and so their definition in German society was not framed in reference to this physical and legal boundary. Rather, the German government welcomed refugees as potential members of German society. The idea of a border is to reinforce the difference between two parts of lands, along with concomitant social and political differences attached to those lands. Borders confer the rights of citizenship or nationality. As mentioned above by Zembylas (2010: 38-40), the borders between states encourage the mental binary of “us” and “them”. States often use borders as a way in which to exaggerate the figure of the Other, to highlight the Other as something that is on the outside trying to get in. Angel Merkel’s announcement that the German border would be opened to all refugees effectively dissolved the German borders for the incoming masses of Syrian refugees. This action had both a lego-political as well as a social consequence for both the Syrians and the German people; the German government sought to prevent the mental binary of “us” versus “them” from forming in the minds of both peoples. It attempts to remove the stigma around refugees and their potential propensity to violence and crime by welcoming the refugees without (publicly) suspicious caution. In removing the borders and allowing refugees to enter, it also makes it increasingly difficult for different institutions or organisations to enact violence upon the refugees. In hosting nations, violence is seemingly justified against refugees when these refugees have been made to seem like dangerous entities, with a propensity for violence themselves.

In terms of how the refugees are treated once having arrived and undergone the integration process, Germany also performs remarkably. The German Integration Act of May 2016 aimed to improve the handling of refugee influxes, so as to avoid the many backlogs experienced at a provincial level during 2015. The Act also cut the waiting time for refugees to receive language and culture classes while cutting benefits for those who did not make a reasonable attempt to integrate. While the penalisation of those who failed to integrate

sufficiently may seem harsh and capricious, this was ultimately implemented due to the German government's research into the integration process and how it was too slow under the previous German system (Resettlement-EU, 2013). The new Act also looked to create more legal certainty for the refugees by granting a suspension on deportation for all refugees who were currently enrolled in German language classes and involved in the integration process. By committing to giving refugees more legal certainty, the German government has committed to the stability and security of refugees in knowing what their options are. The Act also guarantees housing for three years to any refugee who is ultimately granted refugee status (of which almost all of them are). This is another show of commitment by the German government to the refugees' personal and economic security, which is therefore a commitment to their natural born rights (according to natural law). The revised Integration Act ultimately tries to integrate refugees as quickly as possible into German society while also trying to afford the refugees as many rights as possible so that they may be viewed as equal members of society and not as outcasts or abject Others.

The largest commitment in line with security, put forward by the UNDP, was the suspension of labour market priority checks. As described before in section C (ii), the labour priority checks ultimately resulted in providing Syrian refugees with equal opportunities to those afforded to German and EU nationals. The suspension of the labour market checks meant that Syrian refugees would not be disadvantaged when looking for a job and that no discrimination could be enacted upon them in this way (German Federal Government, 2016). Germany sought to secure refugees' economic security by implementing this suspension and in doing so, have even neutralized the benefits of having German citizenship whilst looking for work. This gesture further enhanced the integration potential for incoming refugees.

In summarising Germany's commitment to refugees during the Syrian migrant crisis, it is important to highlight three focal points that have made a substantial difference to the condition of the Syrian refugee.

First, Germany's opening of their borders on the 4th of September 2015 was a particularly big statement towards Europeans, Germans and the refugees themselves. The opening of the border meant Germany did not wish to treat the Syrian refugees as "others" but rather as future members of their society. As Zembylas and Kristeva have written, borders can function as "othering" sculpting devices. The border is a physical entity that confers the rights and benefits of citizenship and its physical presence enables the state to mould the

stateless into feared agents that should remain on the outside. Germany instead removed these legally defining borders in preference of an egalitarian approach to the refugees, which promoted a quick integration into a society that was welcoming of them.

The other two acts evidence Germany's commitment to the principles that natural law was built upon. The suspension of the Dublin Regulation and the introduction of the newly amended Integration Act both show Germany's commitment to the inalienable rights of the Syrian refugees. In the case of the Dublin Regulation being suspended, Germany decided to protect and process the Syrian refugees ahead of honouring their legal commitments to the Dublin Regulation. By deciding that all refugees could be processed in Germany (and not within the first EU country they entered), the German government effectively rejected certain legal restraints in favour of "doing the morally good thing" – helping vulnerable refugees as quickly as possible.

By introducing the Integration Act of 2016 the German government attempted to make the asylum-seeking process a much quicker and smoother one for all refugees. The Act sought to incentivise the integration process by affording benefits to those who partook in language and culture classes. While this may seem restrictive of care on the part of the German government, the decision was only taken after a study conducted by the government revealed poor levels of integration by the Syrian refugees. Although this alludes to the ultimate self-interest of the German government, it would be impractical to expect a state to act contrary to a basic facet of its sovereignty - the pursuit of self-interest. The important note about this condition is that it was not made prematurely or as an emotive response to the Other, but after research undertaken for the promotion of a cohesive society.

The German government also provided security to the refugees through this Act, thus recognising the importance of the provision of this right for a person's basic humanity. In particular, economic security was prioritised by providing refugees the same status as German and EU nationals in the job market. By suspending the labour market priority checks, the German government hoped that refugees would stand a greater chance of finding employment and the subsequent levels of integration that it brings with it. The commitment to the ideals of security, as put forward by the UNDP, show a commitment to the principles that ground natural law.

The final comment to make regarding Germany's effort during the Syrian migrant crisis revolves around the 2016 Integration Act. It is important to note that the German government

investigated the effectiveness of their previous integration programmes and after doing so decided that they needed to make changes. These changes ultimately made positive changes to the conditions experienced by the Syrian refugees and also showed an acknowledgement of the critical issues surrounding modern day refugee protection. No longer is the obligation on the state just to provide physical and personal safety from violence and persecution. It is, now more than ever, important to provide for community and economic safety in order to ensure that refugees are holistically provided for in order to settle them successfully.

While the response from the German government has been impressive and commendable, there are small considerations to be made regarding the nature of their refugee acceptance. The German government has initiated a refugee programme that is fundamentally focused with high and quick levels of integration. The German state has placed requirements on the refugees to accept integration and succeed at it in order to stay.

The chairman of the German Central Council of Muslims, Aiman Mazyek, said in 2015 that the problem with the large influx of refugees from the Middle East was that either refugees struggle to learn the language or never learn it (Die Welt, 2015). This according to Mazyek is a problem that then manifests itself in the society and the refugees fail to integrate successfully. Mazyek went as far as to say that the expansion of more German language courses was needed in order to prevent violence between German nationals and refugees in the future (Die Welt, 2015). The basic idea that Mazyek is expressing is that language is crucial to the success of integration into German society. A high level of integration, as mentioned before, is important to the German state, however the concern could be that integration is of too high importance. If refugee integration programmes are conducted too quickly and without consideration to the cultures of the incoming refugees, then the refugees themselves could remove themselves from this process and retract inwards towards their own culture and compatriots. The problem that then follows is the German government's potential plans to punish those who do not assimilate by removing social benefits and fast-tracking the deportation of the uncooperative.

In late 2015, the Dutch government produced a response that matches the above potential problem. Social Affairs Minister Lodewijk Asscher announced that the Dutch government was set to implement plans to penalise foreigners who do not uphold Dutch values (Boztas, 2015). A fine for not upholding Dutch values was set at a maximum of €1250 and formed a part of a much larger plan by the Dutch government to curb refugee immigration. In a letter

that Asscher penned to fellow Dutch members of parliament, he stated that there was a need to cut down on the number of refugees allowed into the EU and the Netherlands but he also, importantly, noted that the country should be wary of the type of culture that the refugees are bringing into Holland (Boztas, 2015).

The larger move by the Dutch state has been to shift from an integration approach to refugees, towards an approach that favours assimilation instead. In the late 1970s and early 1980s, the Dutch approach was that of “Minority Policy” (Michalowski, 2005: 1-2). This approach put a large focus on integrating refugees who came from countries that had a different established culture to the Dutch one. The policies even contained legislature that allowed for the most significant minorities to establish advisory bodies that could represent the minorities on various political issues. The legislature also explained that the opinions of these advisory bodies had to be taken into consideration by all affected Dutch state organisations and departments (Michalowski, 2005: 1-2). With regards to the actual social integration process the Dutch state also created radio and television content in minority languages and also allowed the creation of minority religion schools (Michalowski, 2005: 1-2). The Dutch state even went as far as to offer classes on empowerment in the immigrants’ mothertongue and used their own cultural perspective to convey these messages. This integration model focused on accepting that refugees and immigrants were fundamentally different to Dutch nationals, but that these differences should not be washed out of the migrants through an assimilation programme but rather a system of integration should be implemented to help make the immigrants’ culture align as closely as possible with that of the Dutch citizens. According to Michalowski (2005: 1-4), the Dutch approach to integration changed towards the end of the 1990s where more assimilationist features were added to the refugee and migrant policy documents. In 1998, the Dutch government introduced an obligatory integration programme which included almost 600 hours of Dutch language classes and courses that focused on the history of Holland and its society (Michalowski, 2005: 1-4). The programme was met with lots of criticism but managed to withstand it and further develop the assimilationist focus of the government’s plans. A formal Dutch language test was introduced for immigrants who sought to apply for permanent residence and/or citizenship. This added the extra stress of having to learn an additional language for refugees arriving in Holland and completely changes the nature of the integration process.

The fundamental difference between integration and assimilation programmes is on whose terms the interaction is being conducted. The integration process is primarily concerned with

providing immigrants/refugees with enough support to become members of the new society while at the same time allowing them to retain aspects of their native culture/identity. The Dutch government's transition from integration focused projects to a post-multicultural approach resulted in difficulty for refugees to fully assimilate. The difficulties experienced are evidenced in Minister Asscher's plans to now penalise those who do not assimilate quickly enough or reflect Dutch values. The assimilation project focuses on the government's terms and trying to get incoming refugees/migrants to adopt the new language and culture at the expense of their previous identity. While this process can be successful in creating migrants who are ready for the local job market, it can ultimately sow seeds of apprehension and rejection amongst minority cultures who feel their native identities are being targeted and removed.

This example of Holland has many relevant considerations for the new integration programmes conducted by the German government. The Federal government has undertaken a project to integrate refugees as quickly as possible with German language and culture lessons in order to reduce the risk of failed integration and ethnic violence. This revised project is certainly conducted on the German government's terms which is somewhat fair as refugees need language and German culture knowledge in order to find jobs and integrate successfully. However, the cutting of benefits of those who do not toe the line rings potential alarm bells to a similar situation to Holland. It is important that the German government consider that the incoming refugees need to be able to retain important aspects of their cultures in order to become members of German society since assimilation projects have failed to produce harmonious, homogenous societies.

On a positive note regarding integration/assimilation, in 2016 various public figures (particularly from Christian social groups) called on the Federal government to provide classes on Islam and its teachings to German nationals in order to build a society of understanding and prevent Islamic radicalisation (RT International, 2017). The German government has agreed to begin implementing these classes so as to improve the chances that German nationals continue to be accepting and understanding hosts who do not expect the new refugees to dissolve their own culture in favour of the German one.

VI. Looking forward: A note on Brexit

A. The referendum

In June 2012, UK Prime Minister David Cameron rejected calls for a referendum on the UK's EU membership. Prime Minister Cameron did however suggest that there could be the possibility of a referendum in the future to gauge public support for the idea (Watt, 2012). In July of the same year, the Prime Minister wrote a column in the Sunday Telegraph acknowledging that the UK's position in the EU should be supported by the British people but that it was perhaps too early for any sort of referendum as the people needed to show some "tactical and strategic patience" (Cameron, 2012).

A mere six months later, David Cameron had radically modified his stance on the matter. The Prime Minister announced that the Conservative government would hold a referendum on the UK's EU membership before the end of 2017 if his government were elected during the 2015 national elections (BBC, 2013). The decision was largely seen as having been a result of the pressure applied by opposition right wing parties and ultra-conservative members of his own party.

The Conservative Party won the 2015 UK General Elections and even secured a surprising majority. Shortly after this victory, the European Union Referendum Act 2015 was introduced into Parliament so as to enable the potential referendum. As part of the agreement Cameron made to the British public, he offered to renegotiate the UK's terms with the European Union and then present the referendum based on the renegotiated terms with the EU. Cameron argued that the four key areas of negotiation between the UK and EU would be: protection of the single market for non-eurozone countries, reduction of "red tape" concerning businesses, exempting Britain from "ever-closer union", and most importantly with regards to this thesis, restricting EU immigration (Cameron, 2015).

Under the demands regarding immigration, Prime Minister Cameron argued that the United Kingdom was unable to cope from the demands of excessive immigration. Cameron further argued that while other member states may have populations that are actually shrinking, the UK's population is growing and would be the most populous country in the EU by 2050 (Cameron, 2015). With a net migration of 300,000 people entering the UK every year, Cameron argued that the UK needed stronger control of its borders. Cameron's stance on immigration controls is very similar to what the UK and other European states have shown during the Syrian

migrant crisis. Often the argument concerning lack of resources is used in order to defend the notion that a country cannot cope with anymore refugees entering.

The Prime Minister also insisted that the UK wanted it to be clear that new EU member states cannot be afforded free travel rights into the UK until the economies of these states are more similar to those of the larger EU members (Cameron, 2015). This potential request would have been impossible for new member states to succeed in meeting and therefore, the UK would be able to prevent the citizens of these new member states – who would mostly be from Eastern Europe. Finally Cameron also argued for European citizens to not be afforded the same social welfare benefits as those enjoyed by British citizens (Cameron, 2015). In a letter to the EU President Donald Tusk, Cameron outlined his plan to cut benefits to EU citizens:

“As I have said previously, we can reduce the flow of people coming from within the EU by reducing the draw that our welfare system can exert across Europe. So we have proposed that people coming to Britain from the EU must live here and contribute for four years before they qualify for in-work benefits or social housing. And that we should end the practice of sending child benefit overseas” (Cameron, 2015).

After tough negotiations for new terms of membership, the UK announced the resultant changes. The European Union refused the UK’s demand to limit free movement of European citizens to the UK as this is a fundamental and founding principle of the EU. Instead, the UK and EU agreed that there would be some cuts to benefits that European citizens receive in the UK. The deal allows for any member state of the EU to limit access to in-work benefits for any new EU immigrants (Spaventa, 2016). This clause was referred to as the “emergency brake” and would be available for triggering if any EU member state experienced a large inflow of migrants over a sustained period of time (Spaventa, 2016).

With the terms of a new deal with the EU made public, David Cameron announced in February of 2016 that the EU referendum would take place on the 23rd of June of the same year. The referendum would basically involve asking the public whether or not they accept the new terms of the UK’s membership with the EU or whether they prefer to leave the EU altogether. Cameron announced that if the UK did vote to leave the EU then Article 50 should be triggered immediately after the vote and that the process to leave the EU should take a maximum of two years to negotiate (British Government, 2016).

On the 23rd of June 2016, The United Kingdom voted to leave the European Union by 51.89%.

The results were interesting in terms of which areas voted to leave and which to remain. For example, both Northern Ireland and Scotland voted overwhelmingly to remain. 62% of Scottish voters opted to remain in the EU while 55% of Northern Irish voted in favour of remaining members of the EU. For these two nations, the results of the referendum have ultimately resulted in discussions revolving around breaking away from the United Kingdom and establishing independence. In the case of Northern Ireland there has even been talk of a potential re-unification of Ireland (McDonald, 2016). The results in Wales were surprisingly in favour of leaving the EU (47% voted to remain) as the polls prior to the referendum suggest the small British nation would favour staying.

The results across England also made for interesting reading. In the large, multicultural metropolis of London, almost 60% of voters chose to remain. In the other metropolitan and industrial cities of Bristol, Liverpool, Leeds and Manchester the vote was also to remain surprisingly. Of all the major cities in England, the only one that chose to leave the European Union was Birmingham and the difference between leave and remain voters there was as little as 0.8%.

In terms of demographics, young people voted overwhelmingly to remain. According to a YouGove poll 75% of voters aged between 18-24 believed the United Kingdom should remain a member of the European Union while 56% of those aged 25-49 agreed (Speed, 2016). Those over the age of 50 voted to leave the EU with 61% of those aged 65 and older voting to withdraw from membership of the EU (Speed, 2016)

Prior to the referendum of June 23rd, a poll conducted on prospective leave voters found that as many as 73% of them cited immigration issues as the main reason they would vote to leave the EU.

The United Kingdom Independence Party (UKIP) were particularly aggressive in campaigning to leave the European Union, especially on the basis of immigration control. Leader Nigel Farage presented a poster during the leave campaign with the words “Breaking Point” over a scene of Syrian refugees crossing the Croatian-Slovenian border from 2015 (Stewart & Mason, 2016). The intention was to make a connection between the record number of refugees entering Britain and the European Union’s inability to do anything about it. The public at large had been subject to seeing images of refugees crossing European borders for over 12 months at that point and the campaign seemingly had a significant effect on convincing British voters to consider voting to leave.

Already in November 2015, public opinion of accepting refugees had fallen due to the attacks in Paris. In fact, as many as 44% of Britons believed that the United Kingdom should stop accepting all refugees soon after the attacks in the French capital (Nardelli, 2015).

B. The Implications on Refugee Policy

As referred to before, in the section dealing with the United Kingdom's history of asylum policy, the UK government's position towards refugees has always been shaped in response to sentiments from the British public at large. For example, as aforementioned, the build up to the second world war featured slight but significant changes to immigration and asylum policy, which were often aimed at restricting the number of Jewish migrants that were permitted to enter into the United Kingdom. The idea behind doing this was to ensure that anti-Semitic tensions did not rise further than they already done. The fear was that if anti-Semitic tensions flared up, there could be more sympathy with Nazi Germany's ideals and therefore lead to a fascist revolution taking place within the UK.

Another example is the policy changes that took place after World War 2. While immigrant policy was affected by the Cold War and the break-up of the British Empire, perhaps another significant factor was the massive labour shortage which began in 1946. At the end of the second world war, Britain brought in over 75,000 displaced persons. These people were not to be resettled as refugees but rather as workers. The EVW scheme allowed temporary stay for European workers in return for their labour. Many of Britain's biggest industries had been affected by the war and so foreigners were needed to fill temporary gaps in the labour market. The displaced persons were ultimately an economic success as they provided cheap labour and sufficient skills to make an immediate and effective impact on the British economy. However, with the entry of more and more foreign workers the sentiments within Britain surrounding these foreigners grew to be more and more negative. Xenophobic tensions rose as workers' wages began to fall. Locals began to fear for their jobs as more skilled European workers filled jobs that the locals felt they should have been trained for.

With it quite clear that the United Kingdom has a history of shaping its migration and asylum policies with regard to the general public sentiments towards these issues, it therefore seems relevant to briefly consider the ramifications of a Brexit vote. The general feeling among the British public was that mass immigration should be stopped and this is evidenced by the vote

(in favour of leaving the EU) after a campaign that was run to a large degree focusing on immigration and border security.

The main potentially negative outcome of the vote is that the United Kingdom could do even less for refugees than it was doing. The UK government will experience even less pressure from European allies to help resettle asylum seekers. While the EU moves closer and closer towards a collective settlement of refugees spread out across each member state, the UK will now be under no European legal obligation to take any number. At the same time, pressure from within the UK itself will have less legitimacy. While liberal and leftist groups may protest in the future for the government to settle refugees, this may be dismissed by the government due to referendum results. The UK government could suggest that the majority of people want more control over immigration, as evidenced by the vote, and therefore the government will have the leverage over such pressure to not accept large amounts of refugees.

While it is certainly clear that the UK's commitment to the UN Convention remain unchanged after this referendum, it is also clear that the more conservative government will be under much lower levels of pressure and scrutiny whilst also being able to leverage the result of the referendum against potential opponents.

The exit out of the European Union will afford the UK an opportunity to reshape its national laws and policies but this chance to soften its approach to asylum seekers will almost certainly not be taken as the current administration continues to pursue more isolationist agendas.

VIII. CONCLUSION

In summation, it is clear that the Syrian migrant crisis has brought to light many problems in dealing with mass refugee migrations. The crisis itself has displaced more refugees than have ever been seen according to the United Nations' figures. The ensuing migrant crisis has also shed light on the operations of European states in dealing with the large number of asylum seekers. While countries such as Serbia, Croatia and Hungary have sometimes taken quite

aggressive steps to keep the refugees outside their borders, the likes of France and the United Kingdom have pursued more refined strategies.

This report set out to show that European states are progressively moving away from natural law theory based ideals in their handling of refugee affairs, and more towards a system whereby the legal institutions supersede the rights or interests of refugees. This shift from natural law to legal positivism has the real effect of creating an “abject Other”. The abject other is both moulded and excluded by the state in order to be kept outside of borders, away from the internal affairs of the nation.

In this research report the examples of the United Kingdom and Germany were compared to ascertain how it is that these states are manifesting the institutionalisation of the other. It was shown that Germany has made many commitments towards removing barriers, both physically and legally, that enable the formation of the abject other. The suspension of the Dublin clause meant that Germany could accept many more refugees than was originally planned and therefore the country showed that bureaucracy would not plague the Syrian refugees much longer.

In direct contrast to Germany’s suspension of the Dublin clause, the UK implemented many strategies that resulted in only a few thousand refugees being resettled in Britain over the course of this on-going crisis. The UK’s refusal to accept refugees who had already moved into Europe was a way in which the British government sought to objectify the Syrian refugees. The asylum seekers were treated in harsh bureaucratic terms in order to present the refugees as mere objects. The United Kingdom’s initial approach of only supplying aid and not resettlement highlights the protectionist measures its government applied in order to keep the refugees as far away as possible from British shores.

The case study of the UK showed that governments are still attempting to create the image of refugees as otherly and rightfully excluded. The policies introduced were successful in restricting refugee access but have been met with worldwide criticism from international organisations such as the UNHCR. The vote to leave the European Union will likely result in even further protectionist and isolationist measures deployed by the British government.

While this thesis is not aimed at answering how it is that the UK, or other European states, have been so successful at keeping refugees out, a possible reason could be that the general public are anti-immigration in Britain. Figures from almost every single independent poll show that over half the population want immigration figures to be reduced, with large proportions of the

public demanding a radical cut in the numbers. This general sentiment is likely the driving force behind the UK's decision to leave the European Union and poses a risk for the future of refugee acceptance in Britain.

Germany, whilst not entirely focused on the needs of the refugees, have managed to settle over one million Syrian refugees. The German government made alterations to their current refugee policy in order to promote better and quicker integration of refugees into the German society. Through the course of the Syrian refugee crisis it has become clear that Germany has undertaken a project to ensure the natural rights of refugees are protected where possible. In doing this, Germany has committed to breaking down the mental barriers created by the identity politics of "us" versus "them".

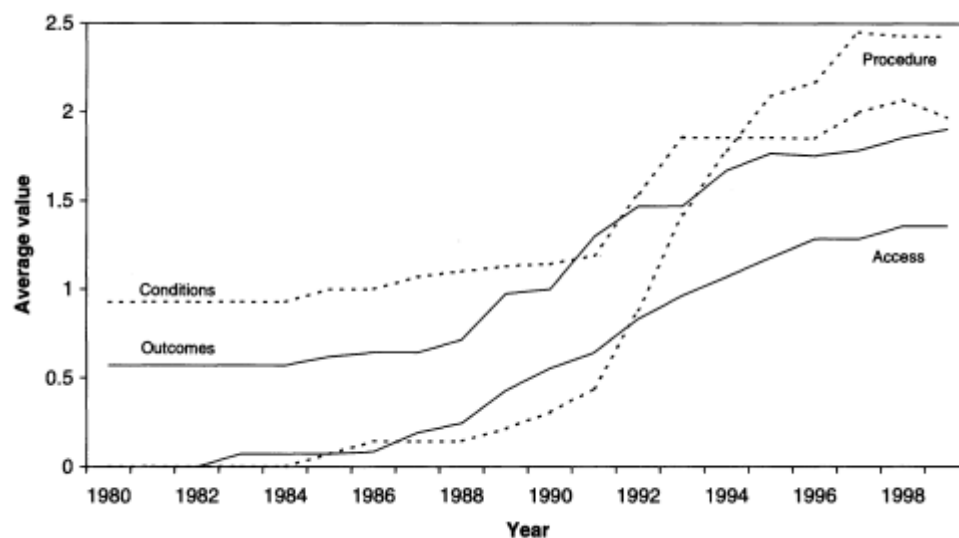
At large, Germany has shown a commitment to the values first put forward by the 1951 UN Convention, which ultimately sought to prevent the formation of the abject other after seeing the violent consequences of such actions in Germany during the holocaust.

The case study detailed in this report ultimately sought to highlight the way in which modern states are moving from a natural law to legal positivist perspective. This move has serious consequences for refugees themselves as the changing legal landscape moulds their positioning in society as the abject others. This socio-legal transitioning also undermines the international treaties that were signed and ratified to provide refugees' protection which was theirs by virtue simply by being human. The circumscription of entitlements by any factor other than one's essential humanity leaves a large, undefined policy space that is easily informed by self-driven state goals as well as self-interested public policy. This space is not a hopeful one for people's who happen not to be born on peaceful soils. There is hope, yet, that as vocally as public policy has enabled this transition, as quickly public perception may see the inhumanity of such a social environment. Indeed, this hope is contingent upon social values that are as fluid as the ever-changing ebb-and-flow of the politics that can define them, resulting in a reinforcing cycle of policy and politics.

IX. Appendix

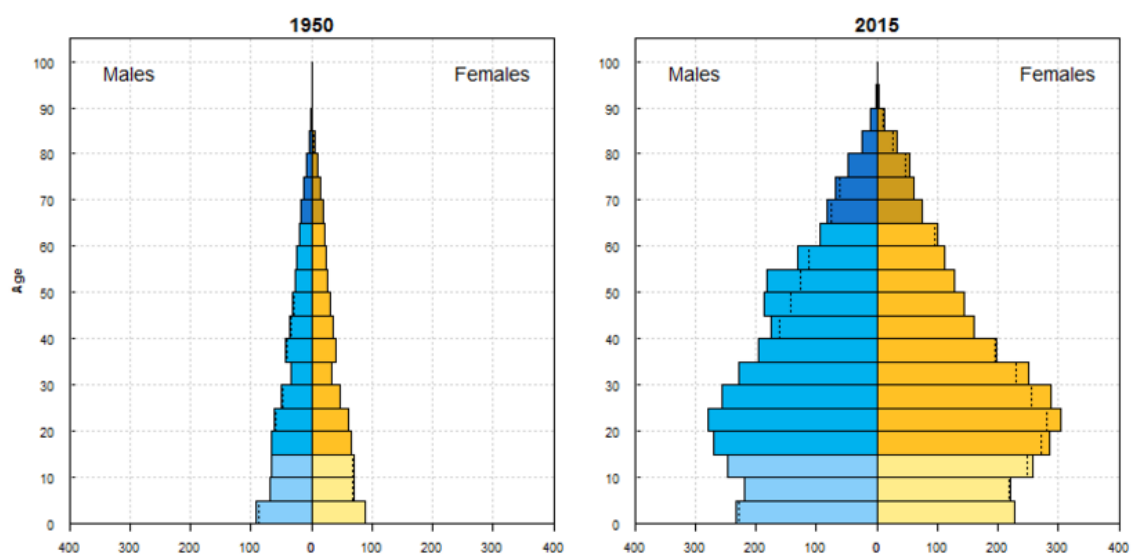
Graphs and Data

A)



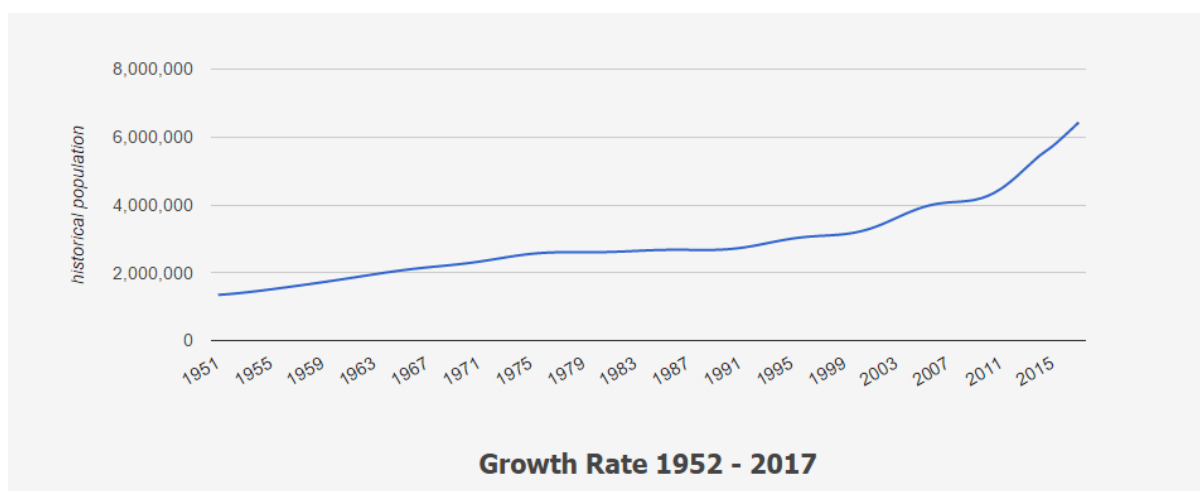
Asylum Policy Index showing the increasing difficulty in applying for asylum in Europe between 1980-1999 (Hatton 2004: 22-24)

B)



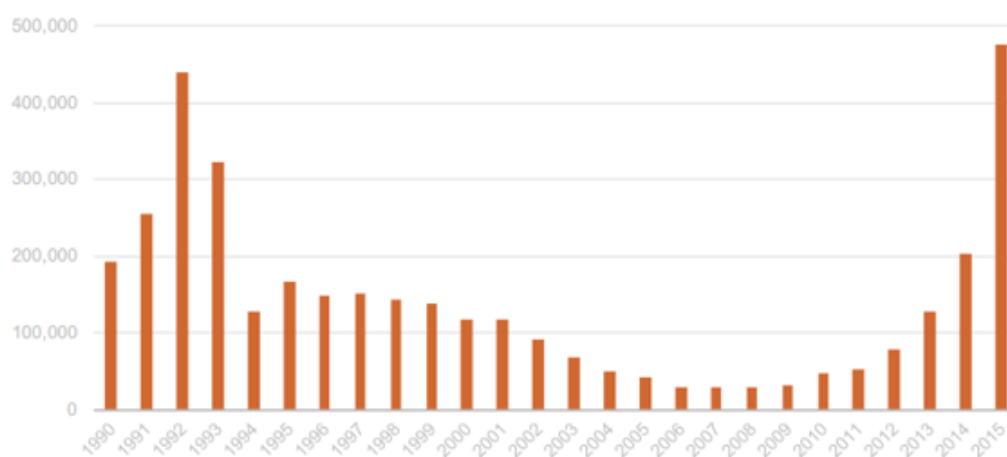
Lebanon's population growth between 1950-2015 (UN - Department of Economic and Social Affairs, 2015)

C)



Lebanon's population between 1951 and 2015. (Country Meters, 2017)

Figure D)



Asylum claims in Germany between 1990 and 2015 (Mayer, 2016)

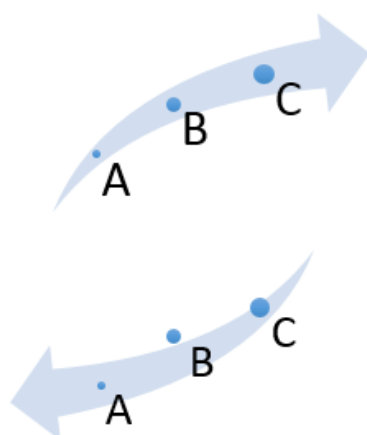
Figure E

	asylum applications total	percentage of all applications	first-time asylum applications	percentage first-time asylum applications per country	total protection rate (percentage)
Syria	162,510	34.1%	158,657	97.6%	96.0%
Albania	54,762	11.5%	53,805	98.3%	0.2%
Kosovo	37,095	7.8%	33,427	90.1%	0.4%
Afghanistan	31,902	6.7%	31,382	98.4%	47.6%
Iraq	31,379	6.6%	29,784	94.9%	88.6%
Serbia	26,945	5.7%	16,700	62.0%	0.1%
Unknown	12,166	2.6%	11,721	96.3%	80.2%
Eritrea	10,990	2.3%	10,876	99.0%	92.1%
Macedonia	14,131	3.0%	9,083	64.3%	0.5%
Pakistan	8,472	1.8%	8,199	96.8%	9.8%
Total top ten	390,352	81.9%	363,634	93.2%	54.9%
All countries	476,649	100.0%	441,899	92.7%	49.8%

Source: Bundesamt für Migration und Flüchtlinge (2016a)

Top 10 countries of origin of asylum seekers (Mayer, 2016)

Graph F



Self-produced (2017)

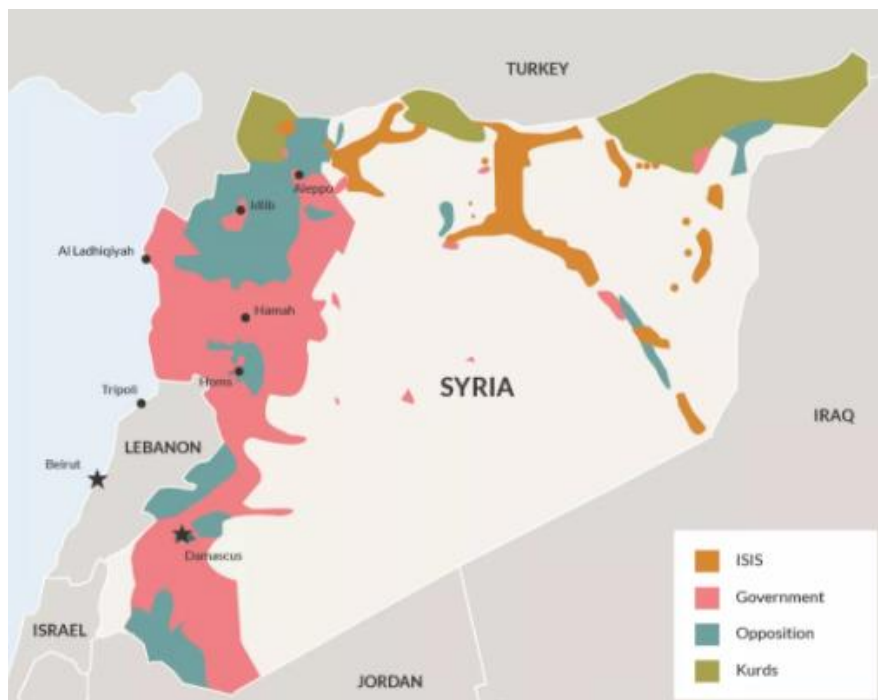
Graph G

Table 3.3 Number of asylum applications (in thousands)

	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
Britain	4.3	3.9	5.5	4.8	5.2	5.3	15.6	25.3	44.8	24.5	22.4
Switzerland	7.9	7.5	9.7	8.6	10.9	16.8	24.4	35.9	41.7	18.2	24.7
Sweden	3.0	12.0	14.5	14.6	18.1	19.6	30.4	29.4	27.4	83.2	37.6
France	15.0	16.0	25.8	23.5	24.9	31.7	58.8	49.8	45.9	26.8	27.6
Germany	19.7	35.3	73.9	99.7	57.4	103.1	121.3	193.1	256.1	438.1	322.8

Asylum applications in various European countries between 1983 and 1993 (Schuster & Solomos, 1999: 53-69)

Figure H



Map of Syrian and the various factions of each territory (Burrows, 2014)

Figure I



Map detailing the different routes taken by refugees to reach European states during 2015 (Investing, 2015)

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