

A HUMAN RIGHTS BASED APPROACH TO REFUGEES: A LOOK AT THE SYRIAN REFUGEE CRISIS AND THE RESPONSES FROM GERMANY AND THE UNITED STATES

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INTRODUCTION.....	56
I.HUMAN RIGHTS BASED APPROACH TO REFUGEES.....	57
A. Intrinsic Rationale: A Moral Argument	58
B. Intrinsic Rationale: A Legal Argument	60
C. Instrumental Rationale: An Economic Argument.....	62
D. Instrumental Rationale: A National Security Argument	63
E. Instrumental Rationale: An International Reputation Argument	65
II.GERMANY’S RESPONSE TO THE SYRIAN REFUGEE CRISIS	66
A. Overview of Germany’s Response to the Syrian Refugee Crisis	66
B. Germany’s Response under an Intrinsic Rationale Framework.....	66
1. Legal Argument.....	66
2. Moral Argument.....	68
C. Germany’s Response under an Instrumental Rationale Framework	69
1. Economic Argument	69
2. Reputational Argument.....	70
3. National Security Argument.....	70
III. U.S. RESPONSE TO THE SYRIAN CRISIS.....	72
A. Overview of U.S. Response to the Syrian Refugee Crisis	72
B. U.S. Response under an Intrinsic Rationale Framework.....	72
1. Legal Argument.....	72
2. Moral Argument.....	74

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C. U.S. Response under an Instrumental Rationale Framework	75
1. Economic Framework	75
2. Reputation Framework.....	76
3. National Security Framework.....	76
III.COMPARISON AND MOVING FORWARD	77
IV.CONCLUSION	79

INTRODUCTION

As of September 2016, approximately 4.8 million Syrians have fled from Syria in the midst of the civil war.¹ The Syrian refugee crisis continues to exasperate an already existing global refugee problem. Some state actors are taking on a more prominent role in alleviating the problem than others.² For instance, Egypt has accepted 115,204 Syrian refugees, Iraq has accepted 228,894, Jordan has accepted 655,675, Lebanon has accepted 1,017,433, and Turkey has accepted 2,790,767.³ Similarly, Germany accepted 326,900 Syrian refugees in 2015 and expects to take in 300,000 refugees total in 2016.⁴ In contrast, other western countries have been slow to follow suit. The United States only accepted 1,682 Syrian refugees in 2015,⁵ and has accepted 10,000 refugees as of August 2016.⁶

This paper explores which human rights based approaches incentivize state actors to resettle refugees within their borders by looking at the Syrian Refugee Crisis and comparing Germany's response to the United States' response. It begins with an overview of how refugee resettlement rationales fit within the context of human rights based approaches. Then, it examines which human rights based approaches compelled Germany and the United States to act and which hindered the states' actions. It concludes by considering what prompts state actors to take actions to resettle refugees at all, and how these approaches can be used to encourage state actors to do more in the future.

1. U.N. HIGH COMM'R FOR REFUGEES, SYRIA EMERGENCY (2016), <http://www.unhcr.org/en-us/syria-emergency.html> (last visited Dec. 20, 2016).

2. U.N. HIGH COMM'R FOR REFUGEES, HIGH COMMISSIONER'S OPENING STATEMENT AT THE 67TH SESSION OF THE EXECUTIVE COMMITTEE OF THE HIGH COMMISSIONER'S PROGRAMME (Oct. 3, 2016), <http://www.refworld.org/country,,,DEU,,57f249004,0.html>.

3. U.N. HIGH COMM'R FOR REFUGEES, SYRIAN REGIONAL REFUGEE RESPONSE, <http://data.unhcr.org/syrianrefugees/regional.php> (last visited Dec. 20, 2016).

4. BUNDESAMT FÜR MIGRATION UND FLÜCHTLINGE, MIGRATION REPORT 2015 3 (2015), http://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/Migrationsberichte/migrationsbericht-2015-zentrale-ergebnisse.pdf?__blob=publicationFile.

5. ANDORRA BRUNO, CONG. RESEARCH SERV., R44277, SYRIAN REFUGEE ADMISSIONS AND RESETTLEMENT IN THE UNITED STATES: IN BRIEF 2 (2016).

6. Haeyoun Park & Rudy Omri, *U.S. Reaches Goal of Admitting 10,000 Syrian Refugees. Here's Where They Went.*, N.Y. TIMES (Aug. 31, 2016), <http://www.nytimes.com/interactive/2016/08/30/us/syrian-refugees-in-the-united-states.html>.

I. HUMAN RIGHTS BASED APPROACH TO REFUGEES

Applying a human rights based approach to an issue involves providing states an intrinsic and instrumental rationale to take action.⁷ An intrinsic rationale “acknowledg[es] that a human rights-based approach is the right thing to do, morally or legally,” whereas an instrumental rationale, “recognize[es] that a human rights-based approach leads to better and more sustainable human development outcomes.”⁸ Typically, the instrumental rationale drives action by highlighting the economic, reputational and national security benefits conferred when state actors take action. “In practice, the reason for pursuing a human rights based approach is usually a blend of these two.”⁹ Arguments in favor of state actors assisting refugees can fit into the intrinsic and instrumental rationales under a human rights based approach.

The application of a human rights lens to assisting refugees is a fairly recent phenomenon.¹⁰ Originally, when addressing refugee assistance, state actors applied international humanitarian law in hopes of alleviating the problem.¹¹ Yet following World War II, it became clear that putting the responsibility of handling refugees on the very state actors who were persecuting them made little sense.¹² After all, “it [was] the risk of human rights violations in their home country which compel[led] the refugees to cross international borders and seek protection abroad” in the first place.¹³ Furthermore, World War II demonstrated that when refugees lost protection from their states, and no other states were obligated to protect them, “it became almost impossible to protect their human rights.”¹⁴ As a result, countries around the world realized that something needed to be done to help future refugees. There was a moral consensus that states have a responsibility to come to the aid of those fleeing the persecution of their states.¹⁵ This shift in history sparked the application of human rights law to refugees, extending the responsibility to the international community, not just one’s own state.¹⁶

7. OFFICE OF THE U.N. HIGH COMM’R FOR HUMAN RIGHTS, FREQUENTLY-ASKED QUESTIONS ON A HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT COOPERATION 16 (2006) [hereinafter OHCHR, FAQ ON A HUMAN RIGHTS-BASED APPROACH].

8. *Id.*

9. *Id.*

10. INT’L JUSTICE RESOURCE CTR., ASYLUM & THE RIGHTS OF REFUGEES, <http://www.ijr-center.org/refugee-law/> (last visited Dec. 20, 2016).

11. Rachel Brett & Eve Lester, *Refugee law and international humanitarian law: parallels, lessons and looking ahead*, 83 INT’L REV. RED CROSS 713, 715 (2001).

12. B.C. Nirmal, *Refugees and Human Rights*, 1 INDIAN SOC’Y INTL’ LAW YEAR BOOK OF INT’L HUMAN. AND REFUGEE LAW (2001), sec. I.

13. *Id.*

14. Serena Parekh, *Moral Obligations to Refugees: Theory, Practice & Aspiration*, THE CRITIQUE (Jan. 6, 2016), <http://www.thecritique.com/articles/moral-obligations-to-refugees-theory-practice-aspiration-2/>.

15. *Id.*

16. *Id.*

A. Intrinsic Rationale: A Moral Argument

A moral intrinsic approach makes the argument that taking particular actions to address a human rights violation is “the right thing to do.”¹⁷ The stages at which a state’s moral responsibility may compel them to take certain action can be categorized into three duties: the duty of a “Good Samaritan,” the duty to protect, and the duty of political responsibility.

The duty of a “Good Samaritan” says that states should take steps “to help non-citizens only when the need is great and [they] can do so at a low cost . . .”¹⁸ Thus, if a state’s own wellbeing could be compromised in helping non-citizens, such as through national security concerns or through economic burdens, then it is reasonable for states to evade helping non-citizens.¹⁹ When looking at refugee concerns, “[states] have obligations to help the most needy refugees, but only to the extent that [they] do not have to sacrifice anything of value – either by diluting [their] culture through accepting large numbers of foreigners or by funding others to do so when such funds could be used domestically.”²⁰

The duty to protect, also known as the responsibility to protect, highlights that states have to protect human lives when sovereign states fail to do so themselves.²¹ The duty to protect is viewed as an ideal, because in practice, the application of the duty is declining.²² Often times, the demand for enforcement of the duty to protect comes in the form of an emotional appeal; an argument framed around the question, “[h]ow many people must die, how many refugees must flee, how many years must people suffer, before the world takes notice?” is illustrative of such appeals.²³ These pathos arguments can strongly speak to the emotions of a state actor’s citizens. Most recently, in the context of the Syrian refugee crisis, these arguments have taken the form of photographs of children affected by the Syrian Civil War.²⁴ These emotional arguments appeal to the empathetic sense by providing stories of real people suffering from human rights violations.²⁵ As the pictures of Omran Daqneesh and Aylan Kurdi take over media platforms, they have “provoke[d] a shift in our individual – and collective – conscience: our distress is transmuted almost immediately into a demand that something be done . . . In this instance, the reverberations provoked a belated shift in our government’s response to the migrant crisis.”²⁶

17. OHCHR, FAQ ON A HUMAN RIGHTS-BASED APPROACH, *supra* note 7.

18. Parekh, *supra* note 14.

19. Alynna J. Lyon, *Global Good Samaritans: When do we Heed ‘the Responsibility to Protect’?*, 20 IRISH STUD. INT’L AFF. 41, 47 (2009).

20. Parekh, *supra* note 14.

21. INT’L COMM’N ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT 69 (2001); Lyon, *supra* note 19, at 44.

22. Lyon, *supra* note 19, at 45.

23. *Id.*

24. *Looking Back at Alan Kurdi and Other Faces of Syrian Crisis*, N.Y. TIMES (Sept. 2, 2016), <http://www.nytimes.com/2016/09/03/world/middleeast/alan-kurdi-aylan-anniversary-turkey-syria-refugees-death.html>.

25. Sean O’Hagan, *The photographs that moved the word to tears – and to take action*, THE GUARDIAN (Sept. 5, 2015), <https://www.theguardian.com/commentisfree/2015/sep/06/photograph-refugee-crisis-aylan-kurdi>.

26. *Id.* In reference to the images of Omran Daqneesh, a young Syrian boy from Aleppo who survived an airstrike and of Aylan Kurdi, a young Syrian boy whose body washed up on the shore of

Finally, the duty of political responsibility puts forward that “responsibility . . . derives from [state actors’] interdependence in global processes of cooperation and competition in which [they] seek benefits and realize [their] own aims and projects.”²⁷ This “co-imbrication means that [states] must take responsibility for remedying the injustices that arise as outcomes of [their] actions.”²⁸ Political responsibility can take two forms: (1) the liability model: responsibilities one has for directly causing harm, and (2) the social connection model: the responsibilities one has “by virtue of their social roles or positions.”²⁹ Thus, countries involved in global politics and who play a role on the international stage have a responsibility to fix the “structural injustice” their actions cause.³⁰ This political responsibility “involves joining with others to organize collective action to reform unjust structures.”³¹ Western countries, in particular, have this moral obligation to act and share their weight of the responsibility.³² In the refugee context, some state actors have had a hand in causing the turmoil that has led so many to flee from their homes.³³ Thus, they should take on the responsibility to help bystanders who are subject to the state actor’s meddling.

In reality, moral arguments under the intrinsic rationale have shortcomings that call into question their effectiveness in getting states to do more than issue a reactionary statement of disapproval. For instance, with the “Good Samaritan” argument, states often claim that they need to help their own citizens first.³⁴ Because of national security concerns or domestic issues at hand, a state may defer the responsibility to someone else.³⁵ Similarly, a state may argue that their time and money can go towards combatting a human rights issue that may be more compelling.³⁶ And finally, emotional appeals made through photographs may not be enough to take action. These photographs may “for a brief window in time . . . [be] a catalyst for action among world leaders and the public,” but interest quickly vanishes in weeks or months.³⁷

Turkey.

27. Parekh, *supra* note 14, citing IRIS YOUNG, *RESPONSIBILITY FOR JUSTICE* (Oxford: Oxford University Press 2013).

28. *Id.*

29. Iris Young, *Responsibility and Global Justice: A Social Connection Model*, 39 ANALES DE LA CÁTEDRA FRANCISCO SUÁREZ 709, 719 (2005).

30. *Id.* at 723.

31. *Id.*

32. Parekh, *supra* note 14.

33. Tara McKelvey, *Arming Syrian rebels: Where the US went wrong*, BBC NEWS (Oct. 10, 2015), <http://www.bbc.com/news/magazine-33997408> (noting that “Obama’s advisors should shoulder the blame for the failure of the [Train and Equip] programme [which armed and trained Syrian rebels] and also for the failure of the US to help in Syria.”)

34. *Id.*

35. Lyon, *supra* note 19.

36. *Id.*

37. Paul Slovic & Nicole Smith Dahmen, *A year after Aylan Kurdi’s tragic death, the world is still numb to the Syrian refugee crisis*, QUARTZ (Sept. 2, 2016), <http://qz.com/772819/aylan-kurdis-tragic-death-a-year-ago-didnt-stop-us-from-staying-numb-to-the-syrian-refugee-crisis/>.

B. Intrinsic Rationale: A Legal Argument

An intrinsic rationale under a human rights based approach can also invoke legal arguments for assistance based on existing international human rights law and international refugee law.³⁸ The legal arguments typically take the stance that state actors are bound to take certain actions because of their legal obligations under the treaties or laws they have ratified.³⁹

From a refugee assistance standpoint, many state actors are bound to help refugees under international refugee law. International refugee law is encompassed in the 1951 Convention Relating to the Status of Refugees (“Convention”) and the 1967 Protocol Relating to the Status of Refugees (“Protocol”).⁴⁰

The Convention and the Protocol define a refugee as “any person who . . . owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”⁴¹

The Protocol takes away the geographic and temporal limitations included in the Convention.⁴²

The Convention provides three major protections to refugees: (1) non-discrimination, (2) non-penalization and (3) non-refoulement. The protection of non-discrimination, under Article 3, states that the provisions guaranteed under the Convention should be applied by states “without discrimination as to race, religion or country of origin.”⁴³ Non-penalization, under Article 31, ensures that states do not penalize refugees “on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened . . . enter or are present in their territory without authorization”⁴⁴ And finally, non-refoulement, under Article 33 – often considered the most important right to refugees – entails that no state “shall expel or return (“refouler”) a refugee in an 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.”⁴⁵

Other sources of international law supplement the rights provided to

38. OHCHR, FAQ ON A HUMAN RIGHTS-BASED APPROACH, *supra* note 7. The scope of this paper is limited to applying guaranteed rights under international refugee law and international human rights law. This paper does not address the sufficiency of international refugee law in protecting the human rights of all refugees.

39. *Id.* at 17.

40. U.N. HIGH COMM’R FOR REFUGEES, FACT SHEET NO. 20, HUMAN RIGHTS AND REFUGEES (1993), <http://www.ohchr.org/Documents/Publications/FactSheet20en.pdf>.

41. U.N. General Assembly, *Convention Relating to the Status of Refugees*, adopted July 28, 1951, art. 1, 189 U.N.T.S. 152.

42. U.N. General Assembly, *Protocol Relating to the Status of Refugees*, adopted Jan. 31, 1967, 606 U.N.T.S. 267.

43. U.N. General Assembly, *supra* note 41, art. 3, 189 U.N.T.S. at 156.

44. *Id.* art. 31, 189 U.N.T.S. at 174.

45. *Id.* art. 33, 189 U.N.T.S. at 176.

refugees. The International Covenant on Civil and Political Rights (ICCPR) extends non-discrimination to all human rights laws under Article 26.⁴⁶ It also provides a laundry list of rights to refugees. Such as “the right to life” under Article 6; the prohibition of torture and cruel, inhuman, or degrading treatment or punishment under Article 7; the right to liberty and security of person under Article 9; the right to private and family life under Article 17; the right to freedom of movement under Article 12; the right to equality before the law under Article 6; and cultural rights of persons belonging to ethnic, religious, or linguistic minorities under Article 27.⁴⁷ Because of Article 26, these rights apply to all persons, regardless of their citizenship status.⁴⁸

Like intrinsic moral arguments, intrinsic legal arguments to assist refugees also have limitations. Neither the Convention, nor any other source of international law, thrusts a duty on states to grant asylum.⁴⁹ Providing such a right would conflict with states’ sovereign right to control who receives admission into their borders.⁵⁰ It can be argued that in order for states to comply with their obligations under the ICCPR and the Convention, such as providing right to life and security, the implicit step to recognizing those rights is resettling refugees.⁵¹

Applying refugee law without discrimination may also seem dubious. The Convention has been called Eurocentric, as it originally gathered support during World War II, at a time when most refugees were Europeans aiming to escape communist or authoritarian governments.⁵² It could be argued that subconsciously, now that the demographics of refugees has changed substantially, there is far less enthusiasm from western countries to accept refugees.⁵³

Additionally, the right of non-refoulement has drawbacks. It is unclear whether the right to non-refoulement applies to those who arrive at the border of a state and seek admission into the state.⁵⁴ Another complex situation is whether states, who actively encourage other states to prevent refugees seeking asylum from entering or approaching their borders, are indirectly violating the right of non-refoulement.⁵⁵ States disagree about the breadth of the right of non-refoulement, and this has led to inconsistent protection of refugees.⁵⁶

Most state actors also have a set of refugee laws within their own

46. U.N. General Assembly, *International Covenant on Civil and Political Rights*, adopted Dec. 19, 1966, art. 23, 999 U.N.T.S. at 179.

47. *See generally, id.*

48. *Id.* art. 26, at 179.

49. Catherine Phuong, *Identifying States’ Responsibilities towards Refugees and Asylum Seekers* (2005), <http://www.esil-sedi.eu/sites/default/files/Phuong.PDF>.

50. *Id.*

51. *Id.*

52. VIRGINIA SHINGAIRAI HWACHA-CHITANDA, *INTERNATIONAL PROTECTION OF REFUGEES: A HUMAN RIGHTS PERSPECTIVE* 47 (1997).

53. *Id.*

54. Phuong, *supra* note 49, at 2.

55. *See* Amy R. Grenier, *Increase in Deportations from Mexico Requires Closer Scrutiny*, *The Migrationist* (June 4, 2015), <https://themigrationist.net/2015/06/04/increase-in-deportations-from-mexico-requires-closer-scrutiny/> (questioning United States’ compliance with *non-refoulement* if the United States funds and encourages Mexico immigration enforcement for those fleeing).

56. Phuong, *supra* note 49, at 2.

government.⁵⁷ These laws further supplement the international legal obligations for those state actors.

C. Instrumental Rationale: An Economic Argument

An instrumental rationale focuses on the possible gains for a state actor who contributes to address a human rights violation.⁵⁸ Economically, refugees have the potential to positively contribute to a state's economy. Refugees can provide an additional source of human capital and labor for states.⁵⁹ They come with a certain skillset, knowledge and experience that allows them to contribute to the economy.⁶⁰ These skills can add to the state's agriculture, manufacturing or even more technical jobs, thereby creating demand on a domestic level.⁶¹ Additionally, the skills can quickly turn into entrepreneurship, as certain needs within a refugee camp or a local community are seen as "business opportunities and [refugees] start small businesses which also serve[] the local community."⁶² In some cases, immigrants often contribute more than they consume in the long run.⁶³ Refugees take the jobs that are less desired by citizens of the state.⁶⁴ Refugees also consume resources, housing, food, health and education, thus contributing to a state's economy by increasing demand in certain markets and acting as supply in others.⁶⁵ Even if the money is spent by states, it still increases aggregate demand.⁶⁶ Refugees may also bring assets with them, "includ[ing] material goods brought with them from their home countries, ranging from gold to trucks to cattle and computers."⁶⁷ Experience shows that states who have accepted refugees see a slight increase in their GDP over time, especially in "countries where the refugee inflows are concentrated."⁶⁸ Finally, "presence of international relief agencies also provides resources like employment for locals."⁶⁹ This leads to more jobs for local citizens of a host state.

Indirectly, the public benefits that come with refugees can further improve a state actor's economy by freeing up government funds to be spent in other areas. Accepting refugees brings a range of social benefits to a host state because when

57. See generally THE LAW LIBRARY OF CONGRESS, REFUGEE LAW AND POLICY IN SELECTED COUNTRIES (2016) (describing refugee laws in various states).

58. OHCHR, FAQ ON A HUMAN RIGHTS-BASED APPROACH, *supra* note 7, at 16.

59. INT'L MONETARY FUND, THE REFUGEE SURGE IN EUROPE: ECONOMIC CHALLENGES 4 (2016).

60. Kevin Shellito, *The Economic Effect of Refugee Crises on Host Countries and Implications for the Lebanese Case*, JOSEPH WHARTON RES. SCHOLARS, 2016, at 10.

61. John Cassidy, *The Economics of Syrian Refugees*, THE NEW YORKER (Nov. 18, 2015), <http://www.newyorker.com/news/john-cassidy/the-economics-of-syrian-refugees>.

62. Karen Jacobsen, *Can Refugees Benefit the State? Refugee Resources and African Statebuilding*, 40 J. MOD. AFR. STUD. 577, 585 (2002).

63. See Sari Pekkala Kerr & William R. Kerr, *Economic Impacts of Immigration: A Survey* 25 (Harvard Bus. Sch. Working Paper NO. 09-013, 2011) (noting that immigration populations usually provide a positive, small net fiscal effect to host countries).

64. Cassidy, *supra* note 61.

65. INT'L MONETARY FUND, *supra* note 59, at 12; see also Jacobsen, *supra* note 62, at 586 (noting that refugees are increasing demand in European economies and are gradually contributing as supply).

66. INT'L MONETARY FUND, *supra* note 59, at 12.

67. Jacobsen, *supra* note 62, at 584.

68. INT'L MONETARY FUND, *supra* note 59, at 14.

69. Jacobsen, *supra* note 62, at 584.

refugees enter a state, various NGOs and international organizations are involved in assisting them to assimilate into the new state.⁷⁰ Although this assistance is for refugees, it finds its way to the local communities.⁷¹ Sometimes, this assistance intentionally ends up in the local community, as “many international refugee agencies deliberately make relief assistance available to local people so as to increase the receptiveness of the host community to refugees.”⁷² For instance, “UNHCR’s Handbook for Emergencies” states that in situations where there are tensions between refugees and the local population, one of the measures to be considered is: “[b]enefiting the local community through improvements in infrastructure in the areas of water, health, roads, etc.”⁷³ NGOs and humanitarian agencies are cognizant of some of the negative consequences of accepting refugees. Thus, they “allocate part of their humanitarian assistance budget to offset the negative impact of refugees, especially those associated with the environment and public health.”⁷⁴ This takes away the monetary burden states may face providing for refugees and allows them to allocate the money somewhere else.⁷⁵ Lastly, the infrastructure and resources brought by NGOs and other agencies to aid refugees and local communities remain long after the NGOs and agencies leave.⁷⁶ This allows for “resources such as buildings and transportation equipment are turned over to the local community.”⁷⁷ These resources can range from schools, clinics, vehicles and even knowledge of various skill sets taught by the agencies.⁷⁸

More often than not, though, these benefits are overshadowed by public sentiment that refugees are an economic burden for a state actor.⁷⁹ States may argue that accepting refugees thrusts a high cost on a state and its citizens.⁸⁰ The citizens of a state may believe that the refugees are taking away from jobs available to them.⁸¹ In terms of public services, states may argue that refugees use up public services at the expense of a state’s own citizens.⁸²

D. Instrumental Rationale: A National Security Argument

Accepting refugees can help with a state’s national security concerns. International organizations and NGOs are aware that states want to close off any

70. *Id.* at 581.

71. *Id.*

72. *Id.*

73. *Id.* (quoting U.N. HIGH COMM’R FOR REFUGEES, UNHCR HANDBOOK FOR EMERGENCIES 19 (1999)).

74. Jacobsen, *supra* note 62, at 583.

75. *Id.* at 584.

76. *Id.* at 584.

77. *Id.* at 583.

78. *Id.*

79. PHILLIP CONNOR, PEW RESEARCH CTR., INTERNATIONAL MIGRATION: KEY FINDINGS FROM THE U.S., EUROPE AND THE WORLD, (Dec. 15, 2016), <http://www.pewresearch.org/fact-tank/2016/12/15/international-migration-key-findings-from-the-u-s-europe-and-the-world/>.

80. *Id.*

81. *Id.*

82. Andres Becker, *The costs of the refugee crisis*, DEUTSCHE WELLE (Feb. 1, 2016), <http://www.dw.com/en/the-costs-of-the-refugee-crisis/a-19016394> (noting the cost on Germany to take in refugees who use public services).

possibilities of terrorism or other national security threats.⁸³ They also understand that “[c]urrent anxieties about international terrorism risk fuelling [sic] the perception of [refugees] as a threat to security. This can lead to heightened levels of fear and xenophobia manifesting themselves in hostile attitudes towards, and even physical attacks against, asylum-seekers and refugees.”⁸⁴ To alleviate this issue, “[s]everal host states have negotiated significant security packages with international refugee agencies.”⁸⁵ These organizations can help countries conduct background checks, provide funds for these security services and even provide experience with patterns and efficient ways to screen refugees.⁸⁶ In some circumstances, “security threats also make authorities like police and immigration officials less likely to admit asylum seekers and more likely to expel those admitted.”⁸⁷ In response to this, the UNCHR has provided training for police forces in a number of host states.⁸⁸

Resettling refugees into a host state, instead of advocating for more refugee camps, can also inhibit the growth of extremist attitudes. Refugee camps, which are put forward as an alternative to host states’ granting asylum, can act as breeding grounds for terrorist activities.⁸⁹ “The generally squalid conditions in the camps provide terrorists organizations with convincing propaganda for recruiting. The camps also are easy places to hide within, allowing terrorist recruits ample space to carry out their efforts with very little oversight.”⁹⁰ Thus, even though refugee camps may seem like a tenable solution, they may give rise to global security concerns. Even without refugee camps, inaction can also give rise to security concerns. “When [states] fail to provide refugees with the opportunity to resume normal, productive lives, [they] contribute to the hopelessness and alienation that really does breed terrorism.”⁹¹

Finally, refugees can also act as assets in combatting terrorism. They can provide information about the enemy or provide skills that can assist host states in combating terrorism or other security threats.⁹² Refugees can act as translators or informants, providing local insight on how to combat the enemy.⁹³ This in turn

83. U.N. HIGH COMM’R FOR REFUGEES, ADDRESSING SECURITY CONCERNS WITHOUT UNDERMINING REFUGEE PROTECTION 1 (2015).

84. *Id.* at 2.

85. Jacobsen, *supra* note 62, at 591.

86. U.N. HIGH COMM’R FOR REFUGEES, *supra* note 83, at 9.

87. Karen Jacobsen, *Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes*, 30 INT’L MIGRATION REV. 655, 673 (1996) [hereinafter *Factors Influencing the Policy*].

88. Jacobsen, *supra* note 62, at 591.

89. *Factors Influencing the Policy*, *supra* note 87, at 672.

90. Josh Hampson, *We Risk More in Not Accepting Syrian Refugees into the US*, HILL (Oct. 29, 2015), <http://thehill.com/blogs/congress-blog/foreign-policy/258440-we-risk-more-in-not-accepting-syrian-refugees-into-the-us>.

91. *Id.*

92. See PATRICK G. EDDINGTON, CATO INSTITUTE, REFUGEE RESETTLEMENT: THE SMART WAY TO DEFEAT ISIS, (Nov. 23, 2015), <https://www.cato.org/publications/commentary/refugee-resettlement-smart-way-defeat-isis>; Rick Noack, *Syrian Migrants Capture a Bomb Suspect in Germany after he Escaped Police*, WASH. POST (Oct. 10, 2016), <https://www.washingtonpost.com/news/worldviews/wp/2016/10/10/syrian-migrants-captured-a-bomb-suspect-in-germany-after-he-escaped-police/>.

93. *Id.*

reduces the support terrorist organizations seek from the vulnerable groups.⁹⁴ In giving refugees an opportunity to live in better conditions, countries can combat propaganda spewed by the terrorist organizations.⁹⁵ Whereas, in rejecting refugees, states would confirm many of the hostile notions terrorist organizations spread about how states perceive refugees.⁹⁶

Similar to economic arguments, national security arguments in favor of accepting refugees are not mainstream, and public sentiments and concerns overshadow the utility of refugees in this area. Some states still fear that refugees may bring along national security threats, since terrorists or other dangerous actors may find their way inside a state's borders under the guise of a persecuted refugee.⁹⁷ Additionally, as mentioned above, some states believe that there is still a risk in accepting refugees who have spent time in refugee camps, as they may have been exposed to extremist perspectives.⁹⁸ Finally, state actors also argue that Syrians who have survived the Civil War suffer from post-traumatic stress disorder (PTSD) and are prone to "feelings of isolation and exclusion" and "experience severe anxiety, panic attacks, insomnia, and erratic behavior."⁹⁹ This implies that Syrians with PTSD are unpredictable and dangerous because of their erratic behavior.

E. Instrumental Rationale: An International Reputation Argument

The last instrumental rationale for accepting refugees is that it can also help with a state's international reputation. There are many benefits for a state actor who helps non-citizens by resettling them within its borders. For instance, nations who accept refugees can be seen as altruistic, since there are "reputational benefits that go with nations showing themselves to others as being good global citizens."¹⁰⁰ These states can also maintain positive interactions with international organizations, whereby they are seen as influential powers.¹⁰¹ And finally, by showing that they have the capacity to resettle refugees, the state actor can be seen as a capable leader when compared to other state actors.¹⁰²

94. Josh Hampson, *supra* note 90.

95. *Id.*

96. See David Bier, *4 Selfish Reasons to Take in Syrian Refugees*, HUFFINGTON POST (Nov. 30, 2015), http://www.huffingtonpost.com/david-bier/4-selfish-reasons-to-take_b_8683600.html ("Rejecting Muslim refugees — who ISIS has condemned as traitors and apostates — would seemingly confirm its narrative that the West rejects Muslims.").

97. Josh Hampson, *supra* note 90.

98. *Id.*

99. *Admitting Syrian Refugees: The Intelligence Void and the Escalating Homeland Security Threat, Before the H. Comm. on Homeland Sec.*, 114th Cong. 11 (2015) (statement of Seth G. Jones, Policy Expert, RAND Corporation).

100. Joseph Blocher & Mitu Gulati, *Competing for Refugees: A Market-Based Solution to a Humanitarian Crisis*, 48 COLUM. HUM. RTS. L. REV. 53 (2016).

101. *Factors Influencing the Policy*, *supra* note 87, at 663.

102. *Id.*

II. GERMANY'S RESPONSE TO THE SYRIAN REFUGEE CRISIS

A. Overview of Germany's Response to the Syrian Refugee Crisis

In 2015, Germany accepted around 326,900 Syrian refugees, and expects to welcome another 300,000 in 2016.¹⁰³ Germany's decision to open its borders to Syrian refugees came largely in response to the refugee crisis in Europe.¹⁰⁴ Starting in 2013, Syrian refugees attempted to reach Europe by sea, causing countries like Greece, Italy and Hungary to carry most of the responsibility in providing assistance to these refugees.¹⁰⁵ As the situation worsened and these countries experienced increased pressure on their borders, the European Union struggled to try to respond to this emergency.¹⁰⁶ While countries like Germany and Sweden were receptive to accepting refugees, others such as Romania, Czech Republic, Slovakia and Hungary opposed.¹⁰⁷ Eventually, the European Union implemented a quota plan to relocate 120,000 refugees among the member states.¹⁰⁸ By August, however, Germany had taken its own initiative to relocate Syrian refugees within its borders.¹⁰⁹ While it is clear Germany has taken a relatively generous approach in resettling refugees, what caused this shift in 2015 requires analysis. Why did Germany decide to permit 1.1 million refugees to enter its borders?

B. Germany's Response under an Intrinsic Rationale Framework

1. Legal Argument

Although Germany has gracious refugee laws and is a signatory of pertinent refugee laws, these laws did not strongly influence its decisions in addressing the Syrian Refugee Crisis.

Following World War II, Germany enacted Article 16(II)(2) of its constitution, the German Basic Law, stating, "[p]ersons persecuted on political grounds shall have the right of asylum."¹¹⁰ This Article was interpreted as providing broader protections than the Refugee Convention itself.¹¹¹ Mortified of Germany's role in World War II, the country aimed to repaint its image through this expansive refugee policy.¹¹² The Article, though, failed to provide direction what would

103. BUNDESAMT FÜR MIGRATION UND FLÜCHTLINGE, *supra* note 4, at 3.

104. JEANNE PARK, COUNCIL ON FOREIGN RELATIONS, EUROPE'S MIGRATION CRISIS (2015), <http://www.cfr.org/refugees-and-the-displaced/europes-migration-crisis/p32874>.

105. U.N. HIGH COMM'R FOR REFUGEES, THE SEA ROUTE TO EUROPE: THE MEDITERRANEAN PASSAGE IN THE AGE OF REFUGEES 8 (2015).

106. Park, *supra* note 104.

107. *Why is EU struggling with migrants and asylum?*, BBC NEWS (Mar. 3, 2016), <http://www.bbc.com/news/world-europe-24583286>.

108. Press Release, European Commission, European Commission Statement following the decision at the Extraordinary Justice and Home Affairs Council to relocate 120,000 refugees (Sept. 22, 2015), http://europa.eu/rapid/press-release_STATEMENT-15-5697_en.htm.

109. *Thousands of refugees arrive in Germany*, DEUTSCHE WELLE (Sept. 1, 2015), <http://www.dw.com/en/thousands-of-refugees-arrive-in-germany/a-18688723>.

110. GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GRUNDGESETZ][GG][BASIC LAW], May 23, 1949 BGBl. I (Ger.), art. 16a.

111. Hélène Lambert, Francesco Messineo & Paul Tiedemann, *Perspectives of Constitutional Asylum in France, Italy, and Germany: Requiescat in Pace?*, 27 REFUGEE SURV. Q. 16, 27 (2008).

112. MATTHIAS M. MAYER, GERMANY'S RESPONSE TO THE REFUGEE SITUATION: REMARKABLE

happen to refugees following asylum.¹¹³ Even with the boom in migration, “[t]he state offered no comprehensive language courses, made it difficult for immigrants to naturalize and gave no discernable political signals that the immigrants would be welcome on a permanent basis.”¹¹⁴ Subsequently, the foreign population found it difficult to integrate into German society.¹¹⁵

Then, with migration and anti-foreigner sentiments increasing, Germany amended the German Basic Law in the 1990s and shifted to a more restrictive approach to asylum.¹¹⁶ This amendment maintained the right to asylum, but it added restrictions to unfounded asylum applications and asylum seekers who entered Germany from “safe third countries,” typically members of the European Union.¹¹⁷ Germany saw this decline in refugee asylum applicants as an opportunity to improve the integration of the refugees already in Germany. Thus, in 2005, Germany passed the Residence Act, which “provided structural integration measures such as language courses and new channels for migration based on demands of the labor market.”¹¹⁸

In 2015, attitudes temporarily shifted again in response to Europe’s migration issues caused by the Syrian Refugee crisis. On August 21, 2015, the German Federal Office for Migration and Refugees (“BAMF”) instructed that the Dublin Regulation be suspended for Syrian refugees.¹¹⁹ The Dublin Regulation essentially states that European Union member states are responsible for registering asylum applicants if they are the first country the asylum seeker enters.¹²⁰ Under the “sovereignty clause” of the Dublin Regulation, Germany became “the Member State responsible for processing their [refugee] claims” on August 21, 2015.¹²¹ The exercise of its “sovereignty clause” officially permitted the entry of the 1.1 million refugees in 2015.¹²² This number far exceeded the number of refugees BAMF expected to take in that year or typically accepted in previous years.¹²³

LEADERSHIP OR FAIT ACCOMPLI? 1 (2016).

113. Lambert, Messineo & Tiedemann, *supra* note 111, at 27.

114. Mayer, *supra* note 112.

115. *Id.*

116. GESETZ ZUR ÄNDERUNG DES GRUNDGESETZES [Law Amending Basic Law], 1993, BGBl. I (Ger.), art. 16.

117. *Id.* Kay Hailbronner, *Asylum Law Reform in the German Constitution*, 9 AM. U. INT’L L. REV. 159, 160–61 (1994).

118. Aufenthaltsgesetz [AufenthG][Residence Act], July 30, 2004, BGBl. I at 1950 (Ger.). Matthias M. Mayer, *supra* note 112, at 2.

119. BUNDESAMT FÜR MIGRATION UND FLÜCHTLINGE, *Verfahrensregelung zur Aussetzung des Dublinverfahrens für syrische Staatsangehörige* [Rules for the suspension of the Dublin procedure for: Syrian nationals] (Aug. 21, 2015), http://www.asylumineurope.org/sites/default/files/resources/bamf_instructions_on_syrian_dublin_cases_august_2015.pdf.

120. Council Regulation 343/2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, 2003 O.J. (L 50) 3.

121. *Id.* Germany: Halt on Dublin Procedures for Syrians, ASYLUM INFORMATION DATABASE (Aug. 24, 2015), <http://www.asylumineurope.org/news/24-08-2015/germany-halt-dublin-procedures-syrians>.

122. Seth M. Holmes & Heidi Castañeda, *Representing the “European refugee crisis” in Germany and beyond: Deservingness and difference, life and death*, 43 J. AM. ETHNOLOGICAL SOC’Y 3, 12 (2016).

123. BUNDESAMT FÜR MIGRATION UND FLÜCHTLINGE, *Asylgeschäftsstatistik für den Monat Juli 2015* [Asylum Business Statistics for the month July 2015] (July 2015),

Germany's legal obligations seemed to have little weight in affecting its response to the refugee crisis. History demonstrates that Germany's laws have typically followed rather than instructed the course of action Germany seeks to take. As mentioned, Germany has fluctuated in its asylum policy and response over the years, typically guiding the laws enacted by the demands of the country and its citizens at the time. Because of how malleable the law is, it seems likely that Germany's generous approach to the Syrian refugee crisis was derived from another pull.

2. Moral Argument

Germany's moral responsibility may have been a major factor in its decision to welcome 1.1 million Syrian refugees. The lasting impact of World War II and the crimes of the Holocaust, continue to prompt Germany to take responsibility for its actions.¹²⁴ This weight takes the form of guilt and the form of political responsibility.¹²⁵ In terms of guilt, Germany finds it necessary to take on more supportive roles when responding to human rights issues due to the pressure it feels to make up for past crimes.¹²⁶ The current Syrian refugee crisis provides that opportunity, as Germany can lead the response in resettling the persecuted refugees, thereby giving its image a new look.¹²⁷

Additionally, Germany also feels a sense of political responsibility for the consequences of its actions during World War II that were born on others.¹²⁸ This sense of political responsibility parallels the idea that morally, state actors that take actions that affect others should take responsibility for their actions and contribute in whatever way possible.¹²⁹ Germany incidentally created the first refugee crisis following the war, which led to the passage of the Refugee Convention.¹³⁰ As European Jews migrated to Palestine to establish Israel, Palestinians fled their homes into neighboring states in the Middle East, such as Lebanon, Jordan and Syria.¹³¹ These Palestinians fell into the hands of the very governments they aim to escape now, authoritarian governments.¹³² Although a ripple effect, Germany still seems to understand that its actions on the global stage led to consequences

http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/201507-statistik-anlage-asyl-geschaeftsbericht.pdf?__blob=publicationFile.

124. DEUTSCHER BUNDESTAG: DRUCKSACHEN UND PROTOKOLLE [BT] 119/18 (Ger.). In this plenary proceeding, Federal Minister Heiko Maas argues for the acceptance of refugees and notes Germany's history of war, hatred and misery it brought to the world, and how it is a country of freedom, justice and prosperity, today.

125. *Id.*

126. THEM BISA FAKUDE, GERMANY'S EFFORTS TO RESOLVE THE REFUGEE CRISIS 4 (Al Jazeera Center for Studies eds., 2015) (noting "Young Germans often talk of the perpetual guilt of being German, and it is no secret that many Germans see, within this refugee crisis, the opportunity for change.").

127. *Id.* at 2.

128. DEUTSCHER BUNDESTAG: DRUCKSACHEN UND PROTOKOLLE [BT] 120/18 (Ger.). In this plenary proceeding, Federal Minister of Foreign Affairs Frank-Walter Steinmeier speaks to moral responsibility to end murders.

129. Young, *supra* note 29.

130. Nirmal, *supra* note 12.

131. FAKUDE, *supra* note 126, at 4-5.

132. Kate Connolly, *Angela Merkel comforts sobbing refugee but says Germany can't help everyone*, THE GUARDIAN (July 16, 2015), <https://www.theguardian.com/world/2015/jul/16/angela-merkel-comforts-teenage-palestinian-asylum-seeker-germany>.

that are felt by the very refugees they let into their borders today. Plenary proceedings of the Bundestag demonstrate this sentiment, as debates around Syrian refugees invoke strong language such as “responsible,” “moral,” and “duty.”¹³³

Another possible event that tapped on Germany’s conscience may be the publicity surrounding events leading up to Prime Minister Angela Merkel’s announcement to take in Syrian refugees in August. First, in July 2015, Merkel attended a talk with German teenagers, where her interaction with one young woman named Reem spread through social media.¹³⁴ Reem stood up and stated that she and her family were threatened with deportation, and that “[i]t’s very unpleasant to see how others can enjoy life, and I can’t myself.”¹³⁵ In response, Merkel stated that there were thousands of refugees like Reem, but Germany could not help them all.¹³⁶ Reem began to cry, and Merkel stopped speaking to console Reem by stroking her shoulder.¹³⁷ This interaction received wide publicity, and conversations about the refugee crisis and Germany’s role continued in response.¹³⁸ Merkel also faced hateful language from citizens for her position on refugees prior to August 2015.¹³⁹ These interactions may have caused Merkel to switch her approach to the refugee crisis and announce in August to accept refugees.¹⁴⁰

C. Germany’s Response under an Instrumental Rationale Framework

1. Economic Argument

Arguably, Germany had economic incentives in accepting 1.1 million refugees in 2015. According to studies, a majority of Germany’s working class continues to age to retirement, while the country’s birthrate remains among the lowest of industrial countries.¹⁴¹ This trend translates into fewer Germans entering the workforce, which in turn, could lead to Germany’s economy to decline.¹⁴² Accordingly, it is assumed that “the absorption of young Syrians, educated to a reasonable standard and with functional English, will certainly contribute to the replenishment of the declining German workforce.”¹⁴³ An issue with this economic rationale is that although most of the Syrians entering Germany are in their 20s and 30s, the refugees barely speak German or English and do not have the skills or qualifications desired by the German labor market.¹⁴⁴ Furthermore, the German

133. DEUTSCHER BUNDESTAG: DRUCKSACHEN UND PROTOKOLLE [BT] 120/18 (Ger.).

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *The Makings of Merkel’s Decision to Accept Refugees*, SPIEGEL (Aug. 24, 2016), <http://www.spiegel.de/international/germany/a-look-back-at-the-refugee-crisis-one-year-later-a-1107986.html>.

139. *Id.*

140. Mayer, *supra* note 112, at 6.

141. *Germany passes Japan to have world’s lowest birth rate – study*, BBC NEWS (May 29, 2015), <http://www.bbc.com/news/world-europe-32929962>.

142. *Id.*

143. FAKUDE, *supra* note 126, at 4.

144. Mayer, *supra* note 112, at 7.

work force is “notoriously difficult for foreigners to enter because qualifications from abroad are often not accepted, and even blue-collar professions may require years of training.”¹⁴⁵ This training and investment in refugees as work force would require investment from the government in order to reap any economic benefits.¹⁴⁶

Still, Germany has seen a slight upward trend in its market since its acceptance of refugees in 2015. According to the European Commission, “the arrival of asylum-seekers has had a positive economic impact on the GDP of EU Member States, with an anticipated average contribution of 0.2% or 0.3% by 2017. This is especially meaningful in high refugee-receiving countries such as Germany.”¹⁴⁷ The European Commission also predicts that Germany will maintain a surplus, even after accounting for the amount spent by Germany to accommodate refugees.¹⁴⁸ This increase is a positive sign, yet very slight to influence decisions to resettle.

Overall, because Germany does not have the infrastructure to assimilate refugees into the workforce and likely perceives little recognizable economic value in accepting refugees, it is unlikely Germany acted in response to economic incentives. Germany’s plenary proceedings further support this notion, as a translation of Dr. Gregor Gysi statements in the proceedings indicate that even without an economic need for refugees, Germany would treat them the same.¹⁴⁹

2. Reputational Argument

Lastly, some argue that Germany accepted refugees in efforts to bolster or sustain its reputation. Germany is a leader among the European Union, so some argue that “Germany [has] significant responsibility within the European Union, given its relative wealth and its recent, widely publicized leadership role supporting austerity measures in the Greek debt crisis.”¹⁵⁰ Thus, since Germany is capable of helping and it is a strong player in the European Union, it should lead by example.¹⁵¹ It is also argued that Germany’s acceptance of Syrian refugees has become Angela Merkel’s own personal project.¹⁵² Although Merkel has faced much opposition from the rest of the country about this open asylum policy, “Merkel made a decision that Germany would honor its historical commitment to protect refugees. She had found her political project, her vision, and was ready to fight for it.”¹⁵³

3. National Security Argument

At face value, Germany’s open door policy for Syrian refugees suggests that

145. *Id.*

146. *Id.*

147. GLOBAL MIGRATION DATA ANALYSIS CENTRE, MIGRATION, ASYLUM AND REFUGEES IN GERMANY: UNDERSTANDING THE DATA 5 (2016).

148. *Id.*

149. DEUTSCHER BUNDESTAG: DRUCKSACHEN UND PROTOKOLLE [BT] 120/18 (Ger.).

150. Oliver Schmidtke, *Why Germany is taking in so many refugees – the benefits and risks*, CBC NEWS (Sept. 14, 2015), <http://www.cbc.ca/news/world/why-germany-is-taking-in-so-many-refugees-the-benefits-and-risks-1.3226962>.

151. *Id.*

152. Mayer, *supra* note 112, at 6.

153. *Id.*

Germany did not hold the same national security concerns other state actors contemplated when accepting refugees. In fact, the plenary proceedings of the Bundestag in 2015 demonstrate that terrorism and security remained on the minds of many government officials, yet assisting refugees outweighed those risks.¹⁵⁴

However, a line of violent events slowly changed Germany's original approach to national security concerns. In January 2016, a massive number of sexual assault crimes were reported on New Year's Eve in Cologne, Germany.¹⁵⁵ At first, the police in Cologne failed to report the large number of assaults, but a leaked report revealed the actual events that occurred.¹⁵⁶ Police stated that the perpetrators of these crimes were of North African or Arab origin and arrived to Germany through the European migrant crisis.¹⁵⁷ Merkel stated "the full force of the law be brought to bear."¹⁵⁸ She also introduced legislation to apprehend refugees committing crimes but remained committed to nonviolent refugees.¹⁵⁹ The German Justice minister emphasized that although it was important to find the refugees committing crimes, it was just as important to "protect the many law-abiding refugees that have sought safety and refuge with [Germany]."¹⁶⁰ Following the Cologne attacks, refugees committed a suicide bombing in Munich and a machete attack on a subway, causing more concern about accepting refugees.¹⁶¹ Still, Merkel stood steadfast to her commitment to her position on accepting refugees.¹⁶²

Even though Merkel and the German government remained committed to resettling the refugees within Germany, these violent incidents did not stop the introduction of screening requirements in order to combat some of the national security concerns for future refugees entering Germany.¹⁶³ Specifically, the

154. DEUTSCHER BUNDESTAG, *supra* note 124. In the plenary proceeding, Dennis Rohde speaks of fears that jihadists from the Islamic State will make their way from Syria to Germany.

155. *Cologne Attacks Trigger Raw Debate on Immigration in Germany*, SPIEGEL (Jan. 8, 2016), <http://www.spiegel.de/international/germany/cologne-attacks-trigger-raw-debate-on-immigration-in-germany-a-1071175.html>.

156. Eva Quadbeck, *Silvester-Täter kamen mit Flüchtlingswelle ins Land*, RHEINISCHE POST (June 9, 2016), <http://www.rp-online.de/politik/deutschland/berlin/blog/silvester-nacht-von-koeln-taeter-kamen-mit-fluechtlingswelle-ins-land-aid-1.6034491>.

157. *Id.*

158. *Merkel: Klare Zeichen an Straftäter setzen*, DIE BUNDESKANZLERIN (Jan 6, 2016), https://www.bundeskanzlerin.de/Content/EN/Artikel/2016/01_en/2015-01-05-merkel-zu-koeln_en.html.

159. Marina Koren, *Angela Merkel's Response to the New Year's Eve Assaults*, THE ATLANTIC (Jan. 12, 2016), <http://www.theatlantic.com/international/archive/2016/01/cologne-refugees-migrants-merkel/423708/>.

160. *Id.* *Niemand darf sich bei uns über Recht und Gesetz stellen*", BUNDESMINISTERIUMS DER JUSTIZ UND FÜR VERBRAUCHERSCHUTZ (Jan. 12, 2016), http://www.bmjv.de/SharedDocs/Artikel/DE/2016/01122016_Erklaerung_Verschaerfung_Ausweitung_srechts.html.

161. Kate Connolly, *Angela Merkel defends Germany's refugee policy after attacks*, THE GUARDIAN (July 28, 2016), <https://www.theguardian.com/world/2016/jul/28/merkel-rejects-calls-to-change-germanys-refugee-policy-after-attacks>.

162. *Id.*

163. *German interior ministers approve individual assessment for Syrian refugees*, DEUTSCHE WELLE (Dec. 12, 2015), <http://www.dw.com/en/german-interior-ministers-approve-individual-assessment-for-syrian-refugees/a-18894105>.

requirements shifted the open door policy by reintroducing individual interviews for all refugees, “regardless of which country they [came] from.”¹⁶⁴

Thus, although national security concerns did not restrain Germany’s efforts to resettle refugees, it did not positively influence the decision either. At first, Germany mainly looked the other way regarding national security concerns, as the need to help Syrian refugees offset the possible risks. Additionally, in response to national security threats caused by refugees, Germany responded by slightly retracting its open door policy, showing national security concerns if anything, stifled refugee resettlement.

III. U.S. RESPONSE TO THE SYRIAN CRISIS

A. Overview of U.S. Response to the Syrian Refugee Crisis

The United States has currently accepted around 12,000 Syrian refugees since the start of the Syrian refugee crisis.¹⁶⁵ In September 2015, the Obama administration announced the U.S. government would accept at least 10,000 Syrian refugees in the next fiscal year.¹⁶⁶ This decision came in response to additional pressure for the United States and other western countries to help alleviate the pressure felt by Middle Eastern and North African countries primarily dealing with the Syrian refugee crisis.¹⁶⁷ The United States also responded at a time when Europe was considering proposals to resettle thousands of refugees across various countries in Europe.¹⁶⁸ Most recently, the Trump administration placed a temporary ban on the acceptance of Syrian refugees into the United States.¹⁶⁹ Although a global power that receives many asylum applications annually, the United States’ embrace of refugees falls back by more than a million in comparison to Germany. Why did the United States have such a contrasting reaction to the Syrian refugee crisis despite facing pressures similar to Germany?

B. U.S. Response under an Intrinsic Rationale Framework

1. Legal Argument

The United States’ legal obligations and framework have likely had little effect in admitting Syrian refugees, but they might help address why the United States has only accepted around 12,000 Syrian refugees.

164. *Id.*

165. Phillip Connor, *U.S. admits record number of Muslim refugees in 2016*, PEW RESEARCH CENTER (Oct. 5, 2016), <http://www.pewresearch.org/fact-tank/2016/10/05/u-s-admits-record-number-of-muslim-refugees-in-2016/>.

166. Juliet Eilperin & Carol Morella, *President Obama directs administration to accept at least 10,000 Syrian refugees in the next fiscal year*, WASH. POST (Sept. 10, 2015), <https://www.washingtonpost.com/news/worldviews/wp/2015/09/10/president-obama-directs-administration-to-accept-at-least-10000-syrian-refugees-in-the-next-fiscal-year/>.

167. *Id.*

168. *Id.*

169. *Trump signs executive order banning Syrian refugees*, Al Jazeera (Jan. 28, 2017), <http://www.aljazeera.com/news/2017/01/trump-signs-executive-order-banning-syrian-refugees-170128033811131.html>.

Similar to Germany, following World War II, the United States enacted the Immigration and Nationality Act (“INA”) to provide protections to refugees.¹⁷⁰ The INA defines a refugee as “any person who is outside any country of such person’s nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion”¹⁷¹ Later, the Refugee Act of 1980 amended the INA so that the definition of refugee incorporated the definition under the Convention and Protocol. This amendment was in response to the Vietnam War and the United States’ attempt to resettle Indochinese refugees following the war.¹⁷² The purpose of the Refugee Act of 1980 was to “(1) to provide a uniform procedure for refugee admissions; and (2) to authorize federal assistance to resettle refugees and promote their self-sufficiency.”¹⁷³

The United States has a priority system that refugees seeking resettlement must fall within. Priority 1 includes groups referred by UNHCR, a U.S. embassy or a special NGO.¹⁷⁴ Priority 2 includes groups of special concern to the United States.¹⁷⁵ And Priority 3 includes family reunification cases.¹⁷⁶ Prioritizing refugees that are referred by the UNHCR shows a commitment to complying with the Covenant and Protocol, as those individuals are top priority.

The INA states that an annual number of refugee admissions is set by the President after consulting with Congress.¹⁷⁷ “The law requires congressional consultation but not congressional approval.”¹⁷⁸ Although the INA does not require congressional approval, lawmakers can and have pushed back on the refugee admission numbers set by the President.¹⁷⁹ This pushback can limit how quickly the United States resettles refugees, as lawmakers may attempt to block the acceptance of refugees in their specific states¹⁸⁰ or they may try to introduce laws to that hamper reaching the President’s ceiling numbers for the year.¹⁸¹

170. Immigration and Nationality Act 8 U.S.C. § 1101-1537 (1952).

171. *Id.* § 1101(a)(42)(A).

172. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980). AMERICAN IMMIGRATION COUNCIL, AN OVERVIEW OF U.S. REFUGEE LAW AND POLICY 1 (2015).

173. ANDORRA BRUNO, CONG. RESEARCH SERV., RL31269, REFUGEE ADMISSIONS AND RESETTLEMENT POLICY 1 (2016).

174. *United States Refugee Admissions Program*, U.S. Citizenship and Immigration Serv., https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/USAP_FlowChart_V9.pdf (last visited Dec. 20, 2016).

175. *Id.*

176. *Id.*

177. DONALD M. KERWIN, THE FALTERING U.S. REFUGEE PROTECTION SYSTEM: LEGAL POLICY RESPONSES TO REFUGEES, ASYLUM SEEKERS, AND OTHERS IN NEED OF PROTECTION 4 (2011).

178. BRUNO, *supra* note 5, at 1.

179. Lauren Gambino, Patrick Kingsley & Alberto Nardelli, *Syrian refugees in America: separating fact from fiction in the debate*, THE GUARDIAN (Nov. 19, 2015), <https://www.theguardian.com/us-news/2015/nov/19/syrian-refugees-in-america-fact-from-fiction-congress>.

180. Gabrielle Levy, *Congress aims to Block Obama’s Syrian Refugee Plan*, U.S. NEWS (Nov. 17, 2015), <http://www.usnews.com/news/articles/2015/11/17/congress-aims-to-block-obamas-syrian-refugee-plan>.

181. Peter R. Van Brunt, *DO NOT GIVE US YOUR TIRED, YOUR POOR: HOW THE AMERICAN*

For the Syrian refugee crisis in particular, President Barack Obama recommended accepting 10,000 Syrian refugees in 2016.¹⁸² But after the Paris attacks in November of 2015, many governors responded to the attacks claiming it was a security risk to accept refugees and refused to accept them.¹⁸³ They also introduced legislation to increase the security screening for refugees, thereby decreasing the number accepted or at least the pace of acceptance of refugees.¹⁸⁴ One such law, the American SAFE Act, adds additional screening measures to preexisting protocol, which is believed “to exist only to stymie resettlement of refugees” and to “effectively shut[] down the refugee resettlement program for Syrian . . . nationals . . . until a new vetting program is established.”¹⁸⁵ Consequently, these laws can have a major impact on public opinion, which in turn can affect the numbers set for refugee resettlement in the future.

Overall, the United States’ legal arguments for refugee assistance depend on the leaders in place throughout the various branches of the government. The President sets the ceiling, but the agencies and legislature have the power to hinder the efforts through legislation or through the screening process. With so much opposition and fluctuation, it is unlikely that a legal argument compelled the United States to take action.

2. Moral Argument

Moral arguments may have prompted the United States to take on more refugees from Syria, but the breadth of the impact is minor. As mentioned above, in response to the influx of Syrian refugees, the United States only increased its refugee numbers slightly. Some moral arguments may have compelled them to act, though it is unclear.

From a political responsibility perspective, the United States should have felt compelled to provide for the Syrian refugees. The United States funded the Syrian Train and Equip Program to train armed rebels that fought against Bashar Assad’s forces, directly impacting the Syrian Civil War that Syrian refugees flee from.¹⁸⁶ The United States had a direct hand in the events unfolding, but this responsibility did not compel the United States to change its typical course of action for refugee resettlement.¹⁸⁷ Furthermore, the United States had been involved in the Syrian Train and Equip Program for years, but this involvement or the fallout of the rebels work did not tug at the United States to intervene.¹⁸⁸

In comparison, though, emotional appeals about the responsibility to protect

SAFE ACT STIFLES A NATIONAL RESPONSE TO THE SYRIAN REFUGEE CRISIS, 17 RUTGERS J. L. & RELIGION 349, 361 (2016).

182. BRUNO, *supra* note 5, at 1.

183. Gambino, Kingsley & Nardelli, *supra* note 179.

184. *Id.* Van Brunt, *supra* note 181.

185. Van Brunt, *supra* note 181.

186. CHRISTOPHER M. BLANCHARD & AMY BELASCO, CONG. RESEARCH SERV., R43727, TRAIN AND EQUIP PROGRAM FOR SYRIA: AUTHORITIES, FUNDING, AND ISSUES FOR CONGRESS 4 (2015).

187. *Id.* Rupert Cornwell, *Barack Obama’s policy on Syria has been a complete and utter failure*, THE INDEPENDENT (Feb. 13, 2016), <http://www.independent.co.uk/voices/syria-civil-war-barack-obamas-policy-has-utterly-failed-and-left-him-looking-less-effectual-on-the-a6872506.html>.

188. BLANCHARD & BELASCO, *supra* note 186.

Syrians may have nudged the United States to do more for refugee resettlement. Prior to the viral picture of Aylan Kurdi, the United States had only accepted 1,500 Syrian refugees since the crisis.¹⁸⁹ The picture of the boy brought the Syrian refugee crisis back in the minds of many Americans, and arguably, it may have motivated the number of Syrian refugees projected for resettlement in 2016 to jump to 10,000.¹⁹⁰ This number, though, does not measure up to the number that organizations and leaders encouraged the United States to accept.¹⁹¹

Even with the push from emotional appeals, the United States' response to these moral appeals has been simply rhetoric. For example, in November 2015, in Turkey, Obama remarked "we have to, each of us, do our part. And the United States has to step up and do its part."¹⁹² Again, in September 2016, Obama addressed the United Nations General Assembly calling for leaders to "open our hearts and do more to help refugees who are desperate for a home."¹⁹³ This rhetoric has largely been taken at face value and seen as hypocritical, with the United States preaching but failing to take in more refugees as it urges other state actors to do so.¹⁹⁴

C. U.S. Response under an Instrumental Rationale Framework

1. Economic Framework

Although the United States could arguably benefit from the many economic advantages typically predicted for a refugee host-country, economic arguments have likely played only a minimal role in dictating the decision to accept Syrian refugees.

The United States' experience with refugees has largely been positive. Refugees work more hours, earn more and develop faster language skills than other economic immigrants.¹⁹⁵ The discrete experiences of U.S. cities demonstrate the benefits of refugee communities. Cleveland, Ohio is an example of the benefits refugees can bring to their new communities.¹⁹⁶ While refugee service providers in this area spent an estimated \$4.8 million in 2012 on services to refugees, these

189. O'Hagan, *supra* note 25.

190. Stephen Collinson, *Refugee crisis builds pressure on U.S.*, CNN (Sept. 4, 2015), <http://www.cnn.com/2015/09/04/politics/barack-obama-migrant-crisis-us-response/>.

191. Press Release, Refugee Council USA, RCUSA Statement On September 2016 UNGA & U.S. Summits On Refugees (Aug. 10, 2016), <http://www.rcusa.org/blog/rcusa-statement-on-the-upcoming-september-2016-un-general-assembly-summit-on-large-movements-of-migrants-and-refugees-the-united-states-led-leaders-summit-on-refugees>.

192. *Press Conference by President Obama – Antalya, Turkey*, THE WHITE HOUSE (Nov. 16, 2015), <https://www.whitehouse.gov/the-press-office/2015/11/16/press-conference-president-obama-antalya-turkey>.

193. *Address by President Obama to the 71st Session of the United Nations General Assembly*, THE WHITE HOUSE (Sept. 20, 2016), <https://www.whitehouse.gov/the-press-office/2016/09/20/address-president-obama-71st-session-united-nations-general-assembly>.

194. Amanda Taub, *When you see that drowned Syrian boy, you should see the United States' shameful failure*, VOX (Sept. 3, 2015), <http://www.vox.com/2015/9/3/9256985/refugee-drowned-boy-aylan-kurdi>.

195. KALENA CORTES, ARE REFUGEES DIFFERENT FROM ECONOMIC IMMIGRANTS? SOME EMPIRICAL EVIDENCE ON THE HETEROGENEITY OF IMMIGRANT GROUPS IN THE UNITED STATES 24 (2004).

196. CHMURA ECONOMICS & ANALYTICS, ECONOMIC IMPACT OF REFUGEES IN THE CLEVELAND AREA: CALENDAR YEAR 2012 3 (2013).

refugees produced almost \$48 million for the city.¹⁹⁷

However, because U.S. public opinion fears that immigrants and other migrant communities are taking jobs away from U.S. citizens, it is unlikely that this argument could have persuaded the government to take on Syrian refugees. On the contrary, it may have stifled acceptance of more refugees. According to a recent study, 27% of Americans “say immigrants are a burden on the country because they take jobs, housing and health care.”¹⁹⁸ This sentiment shows a general distaste of accepting new groups into the United States, likely impacting the government representatives who serve these citizens.

2. Reputation Framework

Though the United States stands as a world leader, its public image on the international stage has received much criticism. For instance, post 9/11, the United States has been perceived as anti-Muslim and racist.¹⁹⁹ Furthermore, as an international power, the country has lost its muscle.²⁰⁰ Even though it would be sensible for the United States to take more action to resettle refugees in order to repair its image, American public opinion stifles this. Most Americans find refugees to be a threat to the United States, and many Americans find immigrants to be a burden.²⁰¹ The Trump administration has only added on to this mentality with its rhetoric that has arguably increased xenophobic attitudes.²⁰² Because of the pushback the United States receives from its citizens, it is unlikely that reputational arguments from an international standpoint has substantially influenced its decision.

3. National Security Framework

National security concerns have hindered the United States refugee resettlement policies. To begin with, the security screening that refugees must go through is drawn-out and even prevents some refugees from entering the United States. This security screening for refugees has been described as “the most robust of any population processed by the USCIS.”²⁰³ The security screening process has been considered “so well regarded [that] other countries come to [them] to learn more about it.”²⁰⁴ The screening process for accepting refugees can be divided into

197. *Id.* at 34.

198. *Chapter 4: U.S. Public Has Mixed Views of Immigrants and Immigration*, PEW RESEARCH CTR. (Sept. 28, 2015), <http://www.pewhispanic.org/2015/09/28/chapter-4-u-s-public-has-mixed-views-of-immigrants-and-immigration/>.

199. Jonathan Masters, *Countering the U.S. Image Problem*, COUNCIL ON FOREIGN RELATIONS (Sept. 2, 2014), <http://www.cfr.org/media-and-foreign-policy/countering-us-image-problem/p33383>.

200. *Id.* (noting that “When the [Bashar al-] Assad regime in Syria crossed the “red line” President Obama had drawn [with a heightened threat of punishment for use of chemical weapons], and then the United States did nothing, American credibility suffered considerable damage.”)

201. Bruce Drake & Carroll Doherty, *Key findings on how Americans view the U.S. role in the world*, PEW RESEARCH CTR. (May 5, 2016), <http://www.pewresearch.org/fact-tank/2016/05/05/key-findings-on-how-americans-view-the-u-s-role-in-the-world>; Phillip Connor, *supra* note 77.

202. *USA: Trump’s policy decisions blocking refugees puts hateful rhetoric into action*, AMNESTY INTERNATIONAL (Jan. 27, 2017) <https://www.amnesty.org/en/latest/news/2017/01/usa-trumps-policy-decisions-blocking-refugees-puts-hateful-rhetoric-into-action/>.

203. BRUNO, *supra* note 5, at 4.

204. *The Syrian Refugee Crisis and its Impact on the Security of the U.S. Refugee Admissions Program*:

three stages.²⁰⁵ During the first stage, the UNHCR interviews the substance of a refugee's claims.²⁰⁶ "Extensive biographical information is captured, as well as preliminary analysis as to whether there are potential bars or other disqualifiers that apply to those individuals."²⁰⁷ This information is passed to the U.S. State Department, who conducts a second interview for the refugee applicants and performs another series of biographic checks.²⁰⁸ The check "queries against a number of critical law enforcement and intelligence holdings of the security advisory opinions, which are hosted by the FBI, but most important of all, what is called the interagency check. That is checked against a number of both law enforcement and intelligence holdings."²⁰⁹ Finally, the USCIS conducts another interview to gather more information about the applicant's situation, and this is "coupled with another round of fingerprinting, a set of biometric checks, checks against Department of Defense databases, Customs and Border Patrol databases, FBI databases, which further check the status of these individuals."²¹⁰ This extensive screening process makes clear that the United States government is weary of security concerns that may arise by letting in refugees, who are considered to have PTSD and may have been radicalized at refugee camps.²¹¹ Furthermore, even with all of this security screening, many still argue that there is a void of information available regarding Syrian refugees.²¹²

National security concerns have also risen due to terrorist attacks.²¹³ After the attack on September 11, 2001, the number of refugees admitted decreased substantially, and although the United States has slowly accepted more refugees, the concern remains.²¹⁴ The Paris attacks in 2015 have reintroduced these concerns. Since the Paris attacks, government representatives are attempting to tighten screening for refugees, as demonstrated by the additional screening measures that the American SAFE Act would apply.²¹⁵ Some governors have also announced that they will not even risk taking in any refugees within their states or that they are tracking Syrian refugees.²¹⁶

III. COMPARISON AND MOVING FORWARD

Though Germany and the United States have different histories and domestic issues, they are both international leaders that receive numerous refugee asylum

Hearing Before the Subcomm. On Immigration and Border Security of the Comm. on the Judiciary House of Representatives, 114th Cong. 4 (2015) (statement of Anne C. Richard, Assistant Secretary, Bureau of Population, Refugees, and Migration, U.S. Department of State).

205. *Id.* at 9 (statement of Leon Rodriguez, Director, U.S. Citizenship and Immigration Services, Department of Homeland Security).

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *Admitting Syrian Refugees*, *supra* note 95.

212. *Id.* at 9.

213. KERWIN, *supra* note 177.

214. *Id.*

215. Van Brunt, *supra* note 181.

216. Gambino, Kingsley & Nardelli, *supra* note 179.

applications and have the resources and capacity to resettle refugees. Based on both states' responses to the Syrian refugee crisis, as described above, instrumental rationales – specifically economic, reputational and national security arguments – do not compel the countries to accept refugees. If anything, these instrumental rationales hinder action, as public sentiment in both states demonstrate a concern for accepting refugees for those very reasons.

On the other hand, intrinsic rationales – specifically moral arguments – seemed to motivate both countries to take more action than they previously may have under other legal obligations. In the case of Germany, for instance, it was a combination of its political responsibility from the past and its duty to protect that moved it to resettle refugees in August 2015.²¹⁷ When the law or economic and national security concerns suggested otherwise, Germany still persevered in resettling refugees.²¹⁸ For the United States, although it did not take as sweeping action as Germany, it was only in 2015 – with emotional appeals sparked by images of Syrian children – did the administration vow to allocate spaces for at least 10,000 Syrians, almost ten times as many Syrians admitted from the year before.²¹⁹ This moral sense quickly disappeared in the United States with the entrance of the Trump administration in 2017, demonstrated by the placement of the temporary ban.²²⁰

Still, the United States lagged behind Germany in terms of the number of refugees resettled within its borders.²²¹ Arguably, the discrepancy between the numbers for Germany and the United States can be justified by the stronger tug Germany felt through the moral arguments to resettle refugees. Unlike the United States, Germany has a tainted past as a former leader caused the worst genocide in human history.²²² Furthermore, Merkel was confronted by the emotional appeals of individual refugees far more than Obama.²²³ And finally, Germany did not allow national security concern impact its decision as the United States did.²²⁴

From a human rights based approach, what can compel the United States, and other state actors, to take more action? Human advocates should use the power of moral arguments under the intrinsic rationale to compel state actors to resettle refugees. First, the power of emotional appeals through the duty to protect should not be undervalued. These images can shift public opinion and spark state actors to take action, as they did for the United States and Germany. Secondly, the international community and NGOs should hold state actors politically responsible for its actions. Had the United States been held accountable for its role

217. FAKUDE, *supra* note 126, at 4–5.

218. Connolly, *supra* note 161.

219. Collinson, *supra* note 190.

220. Sean Illing, *Why Trump's "Muslim ban" is a moral failure, explained by a political theorist*, VOX (Jan. 30, 2017), <http://www.vox.com/conversations/2017/1/30/14438326/donald-trump-syria-executive-order-immigration-ban-isis-terrorism>.

221. Nicole Ostrand, *The Syrian Refugee Crisis: A Comparison of Responses by Germany, Sweden, the United Kingdom, and the United States*, 3 J. MIGRATION & HUM. SEC., 255, 272 (2015).

222. FAKUDE, *supra* note 126.

223. Mayer, *supra* note 112, at 6.

224. *The Syrian Refugee Crisis and its Impact on the Security of the U.S. Refugee Admissions Program: Hearing Before the Subcomm. On Immigration and Border Security of the Comm. on the Judiciary House of Representatives*, *supra* note 198.

in training and equipping Syrian rebels, perhaps the United States may have been shamed into allocating more spots to Syrian refugees.²²⁵ In essence, social media, news outlets and NGOs should use both arguments to spur action by the United States and other state actors who have not shared the burden.

IV. CONCLUSION

As the Syrian refugee crisis continues, the international community, NGOs, and other stakeholders should embrace a human rights based approach in inciting action from state actors. Based on the experiences of Germany and the United States, moral arguments through an intrinsic rationale may be the most effective in desperate times, even up against instrumental rationales that typically outweigh such appeals.

225. BLANCHARD & BELASCO, *supra* note 186.