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Introduction

This book studies how representatives use fear of disorder to shape political outcomes. Fear of disorder imagines the breakdown of political relations within a state and the loss of authority of its prevailing institutions. This fear of disintegration resembles Thomas Hobbes's pessimistic interpretation of the state of nature, descent into which remains a perpetual possibility and one that representatives must address and counteract. While the onset of an anarchical "warre of every man against his neighbour" seems a remote prospect in ordinary democratic politics (Hobbes [1651] 1996, 171), fear of disintegration knows various guises. Crime, violence, and public protests all challenge the prevailing order. Fear of disorder is accentuated for democratic representatives, who derive their status, function, and authority from elections (Davenport 2007). During phases of disjunction, fear of disorder allows representatives to claim that their actions will reaffirm public trust in the institutions with which they are associated. In what follows, I analyze how promises of order intersect with a fear-based politics around representatives' imperative to exhibit decisiveness.

What I term the logic of decisiveness denotes a way of organizing political claims that elevates representatives' decisiveness into *the* paramount political consideration and, thus, into an end of politics itself. Amid credible challenges to order, decisiveness can sideline rights-based and procedural considerations. This concern with seeming decisiveness has implications for the mandate that representatives claim on behalf of the people and is a potential response to the twin challenges posed by populism and technocracy to party democracies. Resort to the logic of decisiveness in the context of irregular migration reveals its illiberal potential.

By its very nature irregular migration challenges existing definitions of political community and a state's ability to exert control over its borders. It

is, thus, well suited for exploring how the logic of decisiveness determines political action. The term “irregular migration” describes “the movement of people across borders without the explicit sanction of the receiving state” (McNevin 2017, 255). It accounts for the fluidity of migration statuses and the contests surrounding each attempt to categorize migrants. It is preferred here over terms such as nonstatus migration, undocumented migration, or illegal migration, which inadequately account for the fact that migrants—who often carry documents and whose information is processed in various host and transit countries—frequently sit on the boundary of different status-conferring regimes (McNevin 2011). Hence, irregular migrants include people defined (temporarily) as refugees, asylum seekers, or economic migrants by a government’s asylum regime. The use of these categories in this work reflects political discourses employed by the subjects of my investigation.

This book analyzes representatives’ definition of social problems around irregular migration and their marshaling of created publics in support of discourses and action proposals. The term “social problem” captures a broad range of cultural, economic, administrative, and security related challenges, each framed as threatening to the political order. This definition of social problems is, thus, not limited to questions of economics or distributive justice (Schwartz 1997). My analysis sheds light on the open-ended and contingent processes by which rights are conferred, defended, contested, and rescinded—often in plain contradiction to the universalistic rights understanding prevalent in contemporary liberal democracies, including the Federal Republic of Germany.

Germany consistently receives more asylum applications than any other European Union member state, making it a suitable country for evaluating the political implications of decisiveness within the field of irregular migration. At the same time, Germany’s political culture combines heightened concern for the safeguarding of human rights and for the maintenance of political order—priorities that originate in the country’s experiences with the horrors of National Socialism, the Soviet-style illiberalism of the German Democratic Republic, and the disunity brought about by more than fifty years of separation. The confluence of these competing priorities offers a useful setting for my analysis of the emergence and implications of the logic of decisiveness.

I study the actors, discourses, and practices underlying two sea changes in Germany’s asylum law framework, namely the *Asylkompromiss* (Asylum

Compromise) of 1992–93 and the legislative response to the so-called refugee crisis of 2015–16. In each case, Germany's willingness to receive and shelter people in need would be tested by unprecedented irregular migrant arrivals. Both the Asylum Compromise and the so-called refugee crisis fundamentally altered who is entitled to the protections of Germany's domestic asylum system. I focus on negotiations between individuals with the ultimate authority for making and amending national asylum laws, Bundestag parliamentarians and members of the executive. Their decisions are influenced by other power brokers, including representatives of Germany's federal states as well as various European Union institutions (Schmidt 2008, 63).

My interpretation of actors and practices as well as their intended and unintended consequences locates the sites and processes of law production within a broad sociological context. I build on a social, pragmatic, and performative understanding of rights (Silva 2013; Zivi 2012) and join a growing body of literature that recognizes the political significance of emotions (Marcus 2000; Demertzis 2006; Hoggett and Thompson 2012; Ahmed 2014).

This study of decisiveness politics within Germany's postreunification migrant politics bridges the analysis of parliamentary debate performances (Wengeler 2000; Niehr 2000; Geese 2020) and studies of social and political contexts (Schwarze 2001). In Germany, internationalist commitments coincide with an ethnic conception of belonging (*Volkszugehörigkeit*) and the belief in a German *Schicksalsgemeinschaft* (community of fate) (Klusmeyer and Papadēmētriu 2013 25). The belief in ethnic homogeneity inspired a defensive approach to immigration, which concealed Germany's experience with all conceivable forms of cross-border migration. Existing genealogies downplay the agency wielded by all major parties in the Bundestag and variously fated efforts to conceive of irregular migrants as rights-bearing members of the political community. Similarly, attempts to diagnose a straightforward liberal reorientation of Germany's migration politics (Laubenthal 2019)—what Takle (2007) refers to as a shift from “ethnos to demos”—conceal the contingency of the protections accorded to irregular migrants and underestimate demands for order at critical junctures in the asylum debates. This book's new decisiveness-centric interpretation of Germany's two migrant crises shows how fear of disorder was strategically manipulated within the parliamentary arena and its adverse effect on immigration reform. It lends support to a social constructivist understanding of representation wherein representatives present themselves as guardians of order for the represented. I also reflect on the use of decisiveness outside the irregular migra-

tion context, in response to Covid-19, in sovereign debt politics, and around the climate emergency.

In the book's principal case study chapters, I examine the contest over decisiveness in the parliamentary negotiations of the fundamental right to asylum in 1992–93 and 2015–16. In each case, I examine how political competition for attention was captured by the imperative to appear decisive and how this imperative influenced parliamentarians' ability to creatively respond to social change. I reflect on the speaker positions of claim-makers, including their status within institutional hierarchies, each claim's correspondence with arena-specific principles of selection, and their emotional salience. Hence, my analysis encompasses representatives' use of trusted third-party sources such as newspaper articles, television programs, and polling data, as well as emotive narrative techniques, image-making, and targeted provocations. Enablers and constraints on the logic of decisiveness' ability to shape political outcomes are also considered.

Conceived in the aftermath of the Second World War, Germany's Basic Law mirrors the Universal Declaration of Human Rights in its commitment to "inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world" (Basic Law, Article 1(2)). A belief in fundamental and unalterable rights is one of the Federal Republic's founding myths (Rolin 2005). Yet this natural law approach has considerable shortcomings, best revealed in situations judged as strenuous by political representatives. Parliamentarians' own definition of both case studies as migrant crises makes their analysis particularly amenable for a rethinking of laws within political contests over decisiveness.

In addition to the special emphasis accorded to universal rights in the national self-understanding, German politics also places a premium on order. The country's historical experience with hyperinflation and revolutionary upheaval during the interwar years and its culmination in over a decade of Nazi totalitarianism allows concerns with order to reverberate particularly forcefully. After a conscious reshaping of national political culture following the Second World War (Verba 2015; Berg-Schlosser and Rytlewski 2016), the upheavals brought about by Germany's reunification in 1990 further increased a general concern with social and political stability. By making concerns over rights and order explicit, German political discourse offers a suitable test bed for analyzing the use and implications of a logic of political action, which has fear of disorder as its driving emotion. While the logic of decisiveness is neither an exclusively German phenomenon, nor one that

is confined to the realm of irregular migration politics, Germany's two postreunification migrant crises combine order- and rights-based considerations in a way that make it somewhat of an ideal case. The logic of decisiveness' significance for political action within Germany is, at the very least, indicative of similar dynamics operating within other representative democracies. Further research is, however, needed to evaluate this logic's ability to shape outcomes in political cultures where concerns with social and political order are subdued or expressed only implicitly. To probe the breadth and variability of this determinant of political action, part IV probes the logic of decisiveness' application, beyond the irregular migration context, to political decision-making around Covid-19, the European sovereign debt crisis, and the climate emergency.

In the deliberations surrounding both the Asylum Compromise and the so-called refugee crisis, resurgent xenophobic violence and increased irregular migration merged into a challenge to order, felt across Germany's two leading party factions: the Christian Democratic parties CDU/CSU (Christian Democratic Union/Christian Social Union) and the Social Democratic Party or SPD. This central consistency aside, different economic conditions, media environments, party coalitions, and leadership styles characterize each case. Hence, the case studies allow me to evaluate the salience of the logic of decisiveness across different social and temporal contexts.

Both the Asylum Compromise and the so-called refugee crisis occurred after the long decade of human rights, which swept the Western world from the late 1960s to the early 1980s (Moyn 2012). This decade witnessed the proliferation of local and international human rights organizations, the successful end of most anticolonial independence struggles, and changes in global migration flows away from Western Europe to North America and Australia (Bradley 2016, 16, 19, 31). The return of large-scale irregular migration to Europe offers a useful context for challenging the human rights universalism claimed by the institutions at the forefront of the human rights movement.

Despite its "local vernaculars" and geographical contingencies (Bradley 2016, 17), legal historian Samuel Moyn termed the 1970s human rights era a "last utopia," wherein international human rights law is understood as an "aspirational forum for humanity" and a "privileged instrument of moral improvement" (2012, 176, 211, 212). Contra Moyn, I suggest that the nation-state remains the central arena for determining the scope and content of rights claims. Rights claims are speech acts that discursively create the world

they seem to represent, thereby affirming or challenging important aspects of our democratic arrangement (Zivi 2012). In the context of irregular migration, actors use these speech acts to reimagine and, hence, transform categories of citizenship, protection, and belonging. Building on this constructivist understanding of rights, the conflictual theory of law (introduced in chapter 1) contends that transcendentalism around human rights is illusory, as practices of making, defending, and challenging rights claims are subject to perpetual political contestation.

My analysis of the Asylum Compromise commences on 30 January 1991, the first major parliamentary debate on refugees and other irregular migrant arrivals in the Twelfth Bundestag (20 December 1990–10 November 1994). It ends with the passage of a constitutional amendment to Article 16 of the Basic Law (26 May 1993). The starting point for my analysis of the so-called refugee crisis is 22 April 2015. This date marks the first debate in the Eighteenth Bundestag (22 October 2013–24 October 2017) after the tragedy of Lampedusa, in which up to 700 people drowned off the shores of the Italian island. The end point of this case study is a vote seeking to define Morocco, Algeria, and Tunisia as “safe countries of origin” (13 May 2016).

Recognizing that language sits at the heart of politics, I take Bundestag debate transcripts (see endnotes throughout) as the primary dataset for both of my principal case studies. These near verbatim accounts of public debate performances evidence the positioning and arguments of representatives over time. Parliamentary debates are pools of speech acts, official perspectives, and implicit assumptions that reveal how future visions are imbued with emotions and articulated with action proposals. My analysis of parliamentary debate transcripts is corroborated using archival material—including drafts of proposed legislation—and interviews conducted with parliamentarians. The following chapters examine discourses at three levels: prevailing causal narratives that attempt to explain the processes studied, discourses put forward by representatives within the case studies, and my own interpretive narrative, which theorizes the significance of identified discourses and practices.

While accepting many of Michel Foucault’s insights regarding the intrinsic connection between knowledge and power (1971) and the importance of discourse formations that constitute and sustain regimes of truth (Hall et al. 2013, 34), I stress the importance of reconstruction through empirical research and interpretive theorization (Keller 2017, 62, 65). Leveraging insights rooted in social interactionism and Peter Berger and Thomas Luck-

mann's studies of how meaning is typified, realized, and institutionalized through human interactions, my approach focuses on discourses within their social context, whether they appear as *dispositifs* (assemblages of actors, practices, things) performing discourse production or in social practices, communication processes, and subject positions (Keller 2011, 44, 49). I thus remain conscious of the interactions between agents and structures, which constantly adjust, transform, resist, or reinvent social arrangements (Hajer 1997, 58).

This book is divided into four parts. Part I sets out the theoretical innovations that underpin my investigation. In chapter 1, I use insights derived from Pragmatism and existing social conceptions of rights to put forward the conflictual theory of law. This theory harbors the normative aspiration that social problems are best resolved by recognizing and accounting for the widest possible group of inquirers, including all those immediately affected by a social problem and its proposed solutions. Although this aspiration is rarely achieved in practice, the conflictual theory of law allows us to break down law-production processes into their constituent elements and appraise departures from this ideal standard.

Chapter 2 explores how questions of fear and order come to dominate parliamentary meaning-making. The logic of decisiveness emerges from representatives' fear of disorder and can sideline procedural and right-based arguments. Chapter 2 traces the ideational origins of this logic to Hobbes's theory of authorization and Carl Schmitt's decisionism. I then situate the approach to politics implied by decisiveness on a sliding scale between decisionism and deliberative democracy. A politics of emotion premised on cycles of confidence and insecurity identifies the concrete emotional contexts in which the logic of decisiveness shapes political action vis-à-vis alternative logics or meaning-making strategies. I also explore the mandate implied by resorts to the logic of decisiveness, namely representatives' claim to act as responsible guardians of the political order, on behalf of the represented.

Part II applies the abovementioned theories to the Asylum Compromise. I evaluate the competing social problem and solution proposals defined in response to increased irregular migration throughout the early 1990s and tie parliamentarians' fear of disorder to their perceived need to appear decisive in the eyes of publics and fellow representatives. This imperative inspired forceful calls to curtail irregular migration, including through a constitutional amendment.

Germany's so-called refugee crisis is the subject of part III. I interrogate the logic of decisiveness' significance for the country's transition from a welcome culture via a loss of control toward renewed attempts to curtail irregular migration. Unlike in the Asylum Compromise, parliamentary representatives recognized irregular migrants' predicament within their countries of origin, on their migration trajectories, and upon arrival in Germany. Yet such recognition was ultimately sidelined by representatives' perceived need to appear decisive in the face of looming disorder. Intra- and supranational developments simultaneously enabled and constrained parliamentarians' ability to project decisiveness.

Part IV explores the implications of my analysis beyond the principal case studies. First, chapter 5 revisits the Asylum Compromise and the so-called refugee crisis to assess their implications for questions of rights and belonging. Second, I test how the logic of decisiveness operates outside the irregular migration context. To sharpen the contours of this logic of political action, chapter 6 evaluates three additional contexts, each influenced to a different extent by the logic of decisiveness. The Bundestag's initial response to the coronavirus pandemic is emblematic of decisiveness-inspired political action. Concern with upholding appearances of decisiveness also featured in the European Central Bank's response to the European sovereign debt crisis, yet its reaction is a less straightforward application of this logic. In the United States, the logic of decisiveness remains largely absent from government responses to climate change. In chapter 7, I examine decisiveness' significance for the crisis of democracy diagnosis.

With this structure in mind, we now turn to the interpretative model that underpins this book. The conflictual theory of law's agential and discourse-centric perspective lends consistency to my analysis and structures my contribution to the literatures introduced here.