National Immigration Policies and Subnational Resistance: 'Sanctuary Cities' in the USA vs 'Non-Sanctuary Cities' in Germany

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ABSTRACT

National immigration policies increasingly meet with fierce political resistance from lower levels of government, in particular municipalities. Amongst industrialized countries, the USA and Germany are probably the most extreme examples. In the USA, a growing numbers of subnational entities, including some of the country's largest cities, openly refuse to cooperate with federal immigration authorities. In retaliation, the Trump administrations has threatened several of these so-called 'sanctuary cities' to claim back past and to withdraw further federal funding from a number of jointly funded programs. Several court cases in this matter are pending. In stark contrast, an increasing number of German municipalities – labelled by the author as 'non-sanctuary cities' - have sought from their respective state governments a formal limitation of migration inflows into their territory, citing an overload on critical local administrative and not least housing resources. This paper contributes to the pertinent literature on multi-level governance in the area of immigration, first, by applying the economic theory of fiscal federalism to identify the theoretically appropriate level of government for defining and enforcing immigration policy. Second, the phenomenon of 'sanctuary cities' vs. 'non-sanctuary cities' and their potential impact on the design and enforcement of national immigration policies will be analyzed.

Keywords: Immigration policy; refugee crisis, multi-level governance.

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1. INTRODUCTION

National immigration policies increasingly meet with fierce political resistance from lower levels of government, in particular municipalities, in the case of illegal or refugee immigration. Amongst industrialized countries, the USA and Germany are probably the most extreme examples. As for the USA, a growing around three hundred subnational entities, including some of the country's largest cities, openly refuse to cooperate with the US Immigration and Customs Enforcement (ICE) or by disallowing local police and civil servants officers to assist ICE staff. In retaliation, the Trump administrations has threatened several of these so-called 'sanctuary cities' to claim back past and to withdraw future federal funding from a number of jointly funded programs. Several court cases in this matter are pending.

In stark contrast, an increasing number of German municipalities – labelled by the author as 'non-sanctuary cities' - have sought from their respective state governments a formal suspension of migration inflows into their jurisdictions, citing an overload on critical local

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administrative and not least housing and security resources. This is due to the fact that - since the beginning of the so-called refugee crisis (aka migration crisis) in September 2015 -, all asylum seekers are distributed throughout Germany by means of an inflexible quota system according to the so-called Königstein Formula (Königsteiner Schlüssel); it was originally designed to determine each German state's share in the funding of joint federal-state activities. Based on their respective quota allocations, the states, in turn, reallocate their share of incoming asylum seekers to their own countries and municipalities.

This papers aims to contribute to the pertinent literature on multi-level governance in the area of immigration, first, by applying the economic theory of fiscal federalism to identify the theoretically appropriate level of government for the definition and the enforcement of immigration policy. Second, the phenomenon of 'sanctuary cities' vs. 'non-sanctuary cities' and their potential impact on the effectiveness of national immigration policies will be assessed. This analysis will embrace the substantially different legal, institutional and not least fiscal constraints subnational entities are subject to in either country with respect to them having to cope with often increasing numbers of illegal immigrants and refugees and other types of asylum seekers.

2. THE ROLE OF ECONOMIC INCENTIVES: PUSH AND PULL FACTORS AS MIGRATION DETERMINANTS

Economic explanations of human behaviour generally assume rationality in the sense that individuals will always attempt to improve their utility – i.e. their material and immaterial welfare (optimal satisfaction) – by pursuing the best available options to achieve their goals under the given circumstances. In the context of migration decisions, these very circumstances are typically created by a mix of push and pull factors, i.e. temporary or permanent attractors (to other locations) and repellers (from the current location).

Accordingly, push factors of migration are all utility-reducing factors which are specific to the place of residence of the individual and which the potential migrant is unable to change at reasonable cost or in a reasonable amount of time by means of the "voice" mechanism in the terminology of Hirschman (1970). Assuming that the (historically sunk) costs of maintaining the current place of residence plus the costs of emigrating to an alternative place of residence are lower than the (expected) benefits of leaving, the rational choice in this scenario would be to exit. This individual calculation applies indiscriminately to both legal and illegal migration.

The principal push factors identified by economic and non-economic migration theories alike range from adverse political situations (including unrest, civil war and terrorism), personal persecution on political, racial, religious grounds, war, overpopulation and the resulting persistently unfavourable labour market conditions (which are often reinforced by favouritism and youth bulge effects), inexistent, insufficient or ineffective welfare provision, to severe environmental degradation (e.g. natural disasters, negative local effects of global climate change), but also the wish to support family members and relives at home with remittances (Nuwati/Apsari/Santoso 2018).

By contrast, pull factors are all characteristics and living conditions of an alternative place of residence which are expected by a potential migrant to be more personally favourable than the corresponding living conditions in his current location. Push factors accordingly

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include better labour market conditions including higher wage levels, better welfare benefits, legal and de facto protection for personal persecution on political, racial, religious grounds, and political and societal stability.

To summarize, economic theory assumes that, from the perspective of the (potential) migrant, migration decisions – both with respect to internal and cross-border migration - are rational choices based on (real or perceived) arbitrage opportunities.

In reality, however, individual migration plans often are not compatible with the immigration policies of the migrants' preferred destinations. In reality, openness to immigration as well as immigration laws and policies fundamentally differ across countries. According to the most recent UN data (United Nations 2015), the developed countries as a group had a substantially higher share of immigrant populations (defined as foreign-born residents) at 11.7 per cent (up from 7.2 per cent in 1990) while for the developing countries their share had remained constant at 1.7 per cent. Country-specific variations are substantial, however, with the Holy See being populated 100 per cent by immigrations (1990: 100 per cent). Among the richest countries worldwide, the UAE has seen the foreign-born population increase to 88.4 per cent (1990: 72.1), Singapore to 45.5 per cent (1990: 24.1 per cent), Hong Kong to 38.9 per cent (1990: 38.1. per cent), Australia to 28.2 (1990: 23.1) and Switzerland to 29.4 per cent (1990: 20.4 per cent). By contrast, China's immigrant share has remained constant at 0.1 per cent while Japan's went up to 1.6 per cent (1990: 0.9 per cent). As for the two geographical areas which are covered by this paper, the USA's foreign-born population share has gone up to 14.5 per cent (1990: 9.2 per cent) while the EU member states' shares deviate substantially. E.g. Sweden recorded an increase to 16.8 per cent (1990: 9.2 per cent), France to 12.1 per cent (1990: 10.4 per cent), Denmark to 10.1 per cent (1990: 4.6 per cent), the Netherlands to 11.7 per cent (1990: 7.9 per cent) and Germany to 14.9 per cent (1990: 7.5 per cent). In the Eastern European part of the EU, Hungary observed an increase to 4.4 per cent (1990: 3.3 per cent), while Poland – the most populated Eastern member of the EU and its fifth most-populated one (on par with Spain) saw a decline to 1.7 per cent (1990: 3.0 per cent).

Obviously, the previous figures only represent the respective total stock of foreign-born residents according to the UN's definition but ignore net flows. Moreover, they cover neither illegal immigrants nor naturalized second- and third-generation immigrants. More importantly, the data do not distinguish either between different migrant types as both emigrants and immigrants leave their former places of residence for a variety of reasons. The distinction of migration motives is, however, crucial to understand national migration policies (and their striking differences with respect to opportunities to obtain the status of a legal immigrant or refugee status).

3. DIFFERENT (ECONOMIC) TYPES OF (CROSS-BORDER) MIGRATION

In the pertinent literature, economic and otherwise, migration is frequently categorized along three basic dimensions:

- Legal versus illegal migration (the latter variant includes visa overstays but also those immigrants whose have unsuccessfully sought to obtain legal status or who have seen their legal status revoked but are nevertheless 'tolerated', i.e. not deported to their home countries);
- voluntary versus forced migration (the latter variant includes, i.a., slavery as well as personal persecution, civil war, war and victims of natural disasters);

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- Temporary versus permanent migration (the latter may include the future obtainment of a permanent resident permit or may even result in the migrant becoming naturalized).

Based on the aforementioned push and pull factors - which apply to internal and cross-border migration alike -, an economic classification of migrant types should focus on the specific motives of individual migrants:

- Labour migrants actively seek employment in a different place of residence;
- migrants which seek access to more comprehensive welfare state benefits without intending or being qualified to integrate themselves into their destination's workforce;
- asylum seekers are those individuals who will (likely) be persecuted by state actors in their home countries and suffer grave human rights violations on grounds of their race, caste, nationality, religion, political opinions or their membership and/or participation in any particular social group or social activities;
- refugees attempt to escape existential distresses in their home countries in the form of war (including civil war), natural disasters, widespread poverty and an general lack of economic prospects;
- individuals with subsidiary protection status are those who are denied the legal status of a refugee or a political asylee but are able to demonstrate that they may suffer serious harm when forced to return to their home countries (e.g. due to the risk of torture or death penalty);
- individuals seeking family reunifications.

4. THE LEGAL ENVIRONMENT

It is noteworthy in this context that the aforementioned terminology is not applied universally, nor is it codified uniformly in national and international immigration law. For example, German immigration rules do draw a very clear – though not necessarily economically rational - distinction between labour migrants, asylum seekers and refugees. In stark contrast, the United Nation's Convention Relating to the Status of Refugees (aka 1951 Refugee Convention) defines a refugee much more broadly as any person who,

> "*owing to well-founded 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, is unable or, owing to such fear, is unwilling to return to it.*"[1]

In other words, the UN Convention's refugee definition does not only also include persecution by non-state actors; it even stipulates that the existence of a mere persecution risk invokes a legal entitlement to refugee status.

For all the aforementioned migrant types, national migration laws of the USA and EU member states differ strongly. While the USA boasts a unified system of immigration law at the federal level – although its enforcement varies locally, especially in 'sanctuary cities' – and a much more integrated system of welfare benefits), the current immigration

[1] Article 1(A)(2) of the 1951 Convention (as amended by the 1967 Protocol)(http://www.unhcr.org/3b66c2aa10)

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regimes is substantially more complex in the EU and its member states, for the following four reasons:

- First, it is important to distinguish between the pertinent rules for intra-EU migration of EU citizens (including from/to the member states of the European Economic Area (EEA) - Liechtenstein, Norway, Iceland – and Switzerland) and immigration from third countries into the EU. Intra-EU migration is indeed guaranteed by the Treaty provisions but limited to workers, self-employed service providers and those who migrate with the aim of actively seeking employment in another EU member state (valid for six months after their entry). All other EU citizens must produce evidence of sufficient financial means and a valid health insurance to obtain a residence permit in another member state if they intend to stay longer than three months.[2]
- Second, intra-EU rules for acknowledging foreign qualifications are still not fully harmonized for a number of professional qualifications as most member states continue to regulate access to certain professions. With respect to labour immigrants from third countries, individual member states have set up their own rules and standards for the recognition of foreign qualifications.[3] Furthermore, if the qualification levels are comparable, most EU member states still require that unemployed citizens of the member states must be given preference by private sector and public sector employer over immigrants from third countries.
- Third, welfare state benefits in member states are not harmonized but instead reflect very different philosophies with respect to the responsibilities of the individual and the state when it comes to protect the individual from grave existential risks (unemployment, retirement, chronic illnesses, nursing cases etc.) as well as the income gaps between richer and poorer member states. Inevitably, eligibility criteria and welfare benefit vary massively among member states, thus giving rise to opportunities for arbitrage ('welfare shopping').
- Fourth, asylum seekers and refugees face a very complex mix of often contradictory national rules, partly harmonized European law – the Common European Asylum System (GEAS)[4] -, and international law – essentially the 1951 UN Refugee Con-

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2 In Germany, the pertinent EU' Citizens' Rights Directive 2004/38/EC ("Free Movement Directive") was transposed into German law through the Gesetz über die allgemeine Freizügigkeit von Unionsbürgern – Freizügigkeitsgesetz/EU of 2005. - Being an EU directive, member states enjoy substantial leeway in how to implement it to achieve the directive's policy objectives.

3 Even the EU'S Blue Card regime for highly qualified immigrants from third countries explicitly acknowledges the legal precedence over member states' national rules.

4 Which is primarily based upon five legal acts: The Dublin III Regulation (Council Directive 2003/9/EC of 27 January 2003) laying down minimum standards for the reception of asylum seekers, the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, and Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for

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vention – which co-exist. E.g., under Article 16a of the German Basic Law (Grundgesetz), political asylum may only be granted to an individual who did not enter German territory via a "safe third country" – which include all other EU member states and any other "third state in which application of the Convention Relating to the Status of Refugees and of the Convention for the Protection of Human Rights and Fundamental Freedoms is assured." The EU's GEAS, under the Dublin III Regulation, further stipulates that the member states which was first reached by an asylum seeker or refugee is in charge of processing their applications; the aim of GEAS is both to define EU-wide minimum standards in terms of asylum application procedures and the treatment of asylum seeker and to take effective precautions against regulatory arbitrage in the form of 'asylum shopping'. It is noteworthy in this context that, regardless of their different migration motives, asylum seekers, refugees and those seeking subsidiary protection have to undergo the same formal asylum recognition procedures in most EU member states (although Denmark has opted out of the 2004 Asylum Qualification Directive and therefore does not grant subsidiary protection. As regards the 2011 revision of this very directive, Denmark, the United Kingdom and Ireland decided to opt out). In reality, however, implementation of the GEAS differs strongly even across the adopting member states; most of all EURODAC, the harmonized fingerprint-based identification system for asylum seekers and refugees has not been effective in preventing a large number of individuals from not registering in the system but instead seeking asylum or refugee status under several aliases in different EU member states.

5. FISCAL FEDERALISM AND IMMIGRATION POLICY

The economic theory of fiscal federalism provides an analytical framework to determine the proper assignment of government policies – i.e. the optimum degree of centralisation and decentralisation in the provision of different public goods and public services - within a multi-level government system (Oates 1972 and 1999). It also offers theoretical guidance on the adequate funding scheme to finance their delivery. Essentially, it is an economic approach to operationalize the subsidiarity principle (which is a guiding principle of the EU's multi-level governance system although it originally derives from the catholic social philosophy of the early 20th century).

The main insight of the theory of fiscal federalism is that, in a multi-level governance system, the most decentralized provision of public goods and services possible - in the sense that costs and benefits spatially overlap -, tends also to be the most economically efficient assignment (and the most democratic, too).

An important element of the theory of fiscal federalism therefore is the principle of fiscal equivalence (aka connexity principle in German public law) (Olson 1969). It claims that those citizens who decide about and have to fund a certain government policy should its only or at least principal beneficiaries. However, in the real world, jurisdictional boundaries and the spatial impact of policies do not always overlap but give rise to spill-overs, i.e. positive or negative externalities, which convey economic benefits to or impose

examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice.

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economic costs upon other jurisdictions which were not involved in the decision-making process.

To internalise those spill-overs – at least those of great magnitude -, the theory of fiscal federalism, in its traditional variety, proposes centralisation as the economically efficient approach. Accordingly, all macroeconomic stabilisation policies as well as redistributive policies should be assigned to the highest level of government: The former because the multiplier and accelerator effects of macroeconomic policies cannot be contained within economically open lower level jurisdictions; the latter because the assumed high mobility of low income households - who are the (potential beneficiaries) of local or state welfare programs - might result in a massive influx of needy persons while richer households will attempt to escape the rising local tax burdens which may be required to finance those very benefits. This issue notwithstanding, a more progressive strand of the theory of fiscal federalism sees leeway for limited local/state experimentation with decentralised welfare policies: Laboratory federalism. Under this concept which assumes learning processes among the jurisdictions will take place, decentralized experimentation with innovative approaches to social policy may be tested at low cost and on a limited geographic scale and may eventually result in more effective and efficient centralised welfare policies.

6. 'SANCTUARY' CITIES IN THE USA VS. 'NON-SANCTUARY CITIES'IN GERMANY

Conflicts with respect to the ensuring the lower level implementation of federal policies and laws are no rare phenomenon in multi-level governance structures. In case of the USA, examples include the federal government's exclusive competence to negotiate and to adopt international trade agreements whose provisions may partly run afoul of state regulations (in the EU, the CETA Agreement between the EU and Canada also had to be ratified in Belgium by regional/state parliament). Another example was the recent conflict over transgender toilet access when a legal guideline issued by the Obama administration – which, although not legally binding, threatened states who would not comply with losing federal grants – was met with fierce resistance by some US states.[5]

In Germany, due with its different multi-level governance structure which constitutionally knows only few exclusive policy competences which are assigned to a specific government level. By contrast, many policy competences are defined as joint or shared, so implementation of federal policies and enforcement of federal laws is routinely and frequently contracted out to individual states. Based on their respective governments' political preferences and due to the economic (dis)incentives states may face in the case of full compliance with federal laws and regulations, implementation and enforcement levels vary considerably among German states. The two most prominent areas in this context are, on the one hand, tax collection (due to massive economic disincentives under Germany's fiscal federalism, in particular with respect to the current fiscal equalization scheme). On the other hand, this is clearly observable – measured by the respective success rates by nationality or ethnicity - as regards the application of federal immigration rules for asylum seekers, refugees, individuals who apply for subsidiary protection, and the probability of getting deported in the case of illegal aliens.

[5] For details and a chronology of events see The New York Times Online Edition (2017).

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6.1 IMMIGRATION POLICY OF THE USA

The USA is arguably the world's largest "immigrant nation". In modern times,[6] i.e. since around 200 years, European immigrants formed the largest immigrant cohorts to North America - on economic, political and religious grounds alike. Nowadays the largest immigrant groups to the USA stem from Central and Latin America as well as Asia.

Descendants of earlier immigrant generations, however, were frequently hostile towards later arrivals, especially towards those from different geographic regions and/or ethnicities, in particular during war periods such as World War II, when many Japanese Americans were imprisoned in camps, and after the 9/11 attacks, when this hostility was primarily directed at immigrants from Arabic countries specifically and at Muslim immigrants more generally.

Throughout US history, immigration law were numerous times amended, and often tightened in the process, to restrict inflows from specific geographical areas and from select ethnicities. E.g., the Immigration Act of 1924 established a legal cap of 150,000 legal immigrants per year which was disaggregated into a nation-based quota systems which reflected the composition of the US population of that time (Bös 1997). In 1965, the quota system was again abolished, and visa applications were processed on a first come, first served basis until the cap was exhausted.

Under the Reagan administration, the existing immigration system gradually became a national security concern due to the high numbers of illegal immigrants, especially from Central America. In reaction, employers of illegal aliens were threatened with penal sanctions, border control was reinforced, but also qualifying illegal aliens were repeatedly granted amnesties, and a special programme for easier access to temporary legal employment for immigrants in agriculture was passed by Congress.

In 1990, additional measures to regulate immigration were adopted. In particular, immigration of qualified foreigners was promoted. Moreover, the cap was increased to 675,000 individuals per year; it included 480,000 permits for family reunification, 140,000 work visas and 55,000 Green Cards which were assigned by the Green Card lottery.

After 9/11, several initiatives to fundamentally reform immigration laws and to improve their enforcement were launched by the Bush Administration – with the aim to ease deportations - and the Obama Administrations – with the aim to facilitate the attainment of legal status for children of illegal immigrants who had obtained an education in the USA (the so-called 'Dreamers' initiative); they were met with mixed success in the political process, however, an remained politically controversial. Finally, the Trump Administration's main election promises in the field of immigration policy were to massively reduce illegal immigration into the USA through the US-Mexican border ('Build the wall'), to deport, on a large scale, illegal aliens, and to restrict immigration from countries who were not cooperating in the visa process (mostly, but not exclusively countries with a Muslim population majority, hence the grossly misleading term 'Muslim ban' which was coined by some media outlets). Apart from labour market concerns over negative wage impacts of illegal immigration, security concerns are the main guiding principles behind these policy changes according to the Trump Administration (however,

[6] Obviously, the first immigrant to the lands which later become the USA, reached the North American continent around 10,000 to 30,000 years ago during several ice ages which allowed them to cross the Bering Strait on foot. They were later named 'Indians' by European discoverers, missionaries and settlers.

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it is noteworthy in this context that the deportation targets announced by the Trump Administration essentially reflect the actual deportation rates achieved under the Obama Administration during its second term on office).
Currently (based on 2016 figures which include both new arrivals and extension of existing legal immigrant status), family-sponsored immigrants represent 68.0 per cent of all legal immigrants into the USA, compared to 11.7 per cent on work permits and 13.3 per cent who entered as asylees and refugees (all remaining legal immigrants are covered by other categories such as diversity programmes) (U.S. Department of Homeland Security 2017).

6.2 'SANCTUARY CITIES'

The 'sanctuary cities' movement has its roots in faith-based and religious groups – essentially Christian and Jewish – who refer provisions of the Old Testament.[7] [8] Despite the illegality of its actions under US Federal laws, after the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 by the Clinton Administration[9] and, most of all, in the aftermath of 9/11, the movement was embraced and endorsed by a number of university cities such as Berkeley (which as early as 1971 had passed a city resolution to the same effect), civil rights activists, immigration lawyers and even some US states.
While Madison, WI, is widely perceived to be the first 'sanctuary city' in the USA. In June 1983, its city council passed legislation which encourages local churches to provide shelter for illegal immigrants from Central America from deportation, so far, around three hundred US cities in all of the most populated states with the exception of Texas have followed suit by passing local laws to similar effect.[10] These approximately three hundred cities represent slightly more than fifty per cent of the total US population The Washington Times 2018).
The majority of the pertinent local laws ban local officials - and in some case also local businesses - from cooperating with the Federal US Immigration and Customs Enforcement (ICE) officer by not holding suspected illegal aliens for ICE interrogations or by disallowing local police officers to assist ICE staff. In retaliation, the Trump administrations has threatened several 'sanctuary cities' (most of which are political strongholds of the Democratic Party) to claim back past and to withdraw further federal funding from a number of jointly funded programs. Several court cases in this matter are currently pending.

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7 See, for details, Gonzalez/Collingwood/Omar El-Khatib et.al. (2017); Martinelli (2017); Center for Popular Democracy/Local Progress (2017).

8 In the Old Testament, Moses demanded that Israelites provide six cities of refuge for perpetrators of accidental manslaughter where they were secure from bloody revenge which was legal outside their boundaries.

9 The Clinton Administration's Illegal Immigration Reform and Immigrant Responsibility Act of 1996 was a legal document which aimed at clarifying the relationship between the federal government and local governments in immigration law enforcement. Its provisions also rendered some minor crimes, e.g. shoplifting, into legally acceptable grounds for deportation and removed some the previous ban some 'sanctuary cites' had imposed on municipal employees to provide information on the immigration status of clients to federal authorities.

10 For a complete list see https://en.wikipedia.org/wiki/Sanctuary_city.

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6.3 IMMIGRATION POLICY OF GERMANY

Immediately after World War II, both East and West Germany faced their first major immigration crisis when around 15 million German refugees and expellees fled their former homes throughout the Eastern territories of the Reich which were lost in the wake of the war in order to flee persecution or discrimination in return for the atrocities which were committed during the war by Germany in these very areas. With both West Germany and East Germany massively destroyed and employment opportunities and housing in very scarce supply, the post-war reconstruction boom quickly defused the situation.

In fact, when full employment was attained from the late 1950ies in West Germany, the decision was made to admit, on a temporary basis, migrant workers from a number of lower income Mediterranean countries (Seifert 2012). The legal basis were the so-called labour recruitment agreements, the first of which was concluded with Italy in 1955, followed by similar agreements with Spain and Greece in 1960, Turkey in 1961 (which was included at the specific request of the US government due to geopolitical and military considerations), Morocco in 1963, Portugal in 1964, Tunisia in 1965 and Yugoslavia in 1967 to help fill the growing number of vacancies for low-skilled blue-collar jobs in manufacturing and mining.

Before the closure of the East German-West German border on August 13th, 1961, the day the Wall was built, however, the influx of foreign labour immigrants these countries war quantitatively insignificant (between 1949 and the August 13th, 1961, East Germany lost around four million inhabitants and an estimated share of 10-15 per cent of its workforce to West Germany on political and economic grounds). Before, in the aftermath of the 1973 oil crisis, a general recruitment ban for these so-called 'guest workers' was imposed by the federal government, four million labour immigrants from the aforementioned countries had entered the German labour market. Following the recruitment ban, the number of 'guest workers' who returned to their home countries was essentially matched by those immigrants who decided to stay (as they remained on valid labour contracts) who sought and obtained the right to family reunification.

The next immigration wave was caused by refugees from the civil wars in Yugoslavia – the vast majority of whom had to return home after the end of the conflict - and the Turkish-Kurdish conflict and began in 1991. This wave was even surpassed with respect to the sheer numbers of immigrants by another wave of immigration from ethnic German resettlers ('Aussiedler' and 'Spätaussiedler') (and their family members) from the Eastern Territories of the Reich after the collapse of the communist bloc. Legally based on the Federal Law on Refugees and Exiles of 1953, this group of immigrants was assured the same legal privileges and welfare benefits as the German expellees and refugees after World War II; they also were eligible, additionally, to a quasi-automatic access to the German citizenship (including generous hereditary rights to the German citizenship for their descendants and their close non-German relatives).

Finally, the ongoing 'refugee crisis' primarily in the wake of the civil war in Syria and the regime change Libya (brought about by France, the UK and the USA), the Arab Spring events in North Africa and regional unrest in parts of Afghanistan and the Sahel has had Germany and many other EU member states face an inflow of overwhelmingly low-skilled, Muslim immigrants from economically underdeveloped countries at historically unprecedented levels. In 2015, around 900,000 real (and fake) refugees entered Germany, often under chaotic circumstances; by 2017, the number of asylum applications in the wake of the 'refugee crisis' has stabilized at 649,855 for all EU member states.

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Alongside the massive challenges the EU is currently facing from the unresolved Euro crisis and the Brexit vote, the refugee crisis has not only created (or just revealed?) strong political rifts among EU member states on the proper handling of the current refugee intake in adequate fiscal and humanitarian solidarity among member states. With the refugee crisis having also laid bare substantial design flaws in the GEAS, it has also ushered in a divisive debate on the future direction and conduct of immigration policy in the EU.

6.4 'NON-SANCTUARY CITIES'

While the 'sanctuary cities' movement is gradually emerging also in Europe and Germany (Heuser 2017) - often under the 'solidarity city' label,[11] which is, in turn, an element of the 'open borders movement' – the more frequent phenomenon is the increasing number of 'non-sanctuary cities'. Although the term is not (yet) commonly used in the academic, media and political circles of Germany, it refers to those municipalities which seek a legal exemption from their respective state government with respect to the number of refugees they must legally accommodate until the completion of their application process for asylum.

To further explore the 'non-sanctuary cities' phenomenon, a closer look the formal procedures of handling incoming refugees is indispensable. To start with, individuals seeking asylum or refugee status under German and/or EU law must report to a border control post or at another state authority (e.g. police posts, refugee reception centers etc.) immediately after reaching German territory. Afterwards they will be sent to regional registration centers if they seek asylum in German. During this procedure, fingerprints and photographs are taken from anyone older (or claiming to be older) than 14 years (around 90 per cent of refugees who have entered Germany do not present IDs from their home countries which would prove their age and nationality). These data will then be shared with all involved government agencies in Germany and, via the Eurodac system, the other EU and EEA member states.

Asylum seekers then receive a proof of arrival card – which confers upon them a legal claim to numerous welfare benefits – and will be transferred (or transfer themselves) to their assigned reception centers. During the application process, asylum seekers refugees are on the one hand subject to a residence obligation (which it is de facto not strictly enforced) to prevent them from 'asylum shopping' or going underground. On the other hand, they are, however, eligible for a variety of monetary and non-monetary welfare benefits, including pocket money (€139 per month for single adults, €129 per person in couples; the allowances for children are age-related and range from €84 to €95 per month), plus free accommodation in a reception center and free food. If and once the asylum applicants has been transferred to housing outside the reception centers, an extra allowance is granted to cover extra expenses such as clothing, food, rent, heating, household items and furniture (singles: €219/month; couples: €194 per person and month; children: €133 up to €198 per child and month).

To share the financial burden to host asylum seekers fairly among the sixteen German states, their primary allocation is based on the so-called 'Königsteiner Schlüssel', a quota system which was originally developed to calculate the contribution of individual states in funding joint federal-state projects (e.g. infrastructures). A state's share is calculated by multiplying the tax revenues it generates (weight: 2/3) with its population (weight:

[11] See https://solidarity-city.eu/de/.

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1/3). Since the reform of September 24th, 2015, a substantial part of the funding has been shared between the Federal government and the respective state government.
While German counties ('Landkreise') and municipalities are largely compensated for the services they provide to asylum seekers – essentially housing and child support - from their state governments (Hummel/Thöne 2016) -, this compensation only partly covers resources with are tied up in the processing of refugees and asylum seekers. Typically, the influx of assigned refugees puts severe strains not only on existing administrative infrastructures – which have found it difficult to add qualified extra staff (except for some pensioners and volunteers) for lack of adequate funding to accommodate the additional workload without compromising on the needs of local residents and on the quality of service delivery. Moreover, physical infrastructures like housing and schools cannot be quickly extended capacity-wise. Finally, intercultural clashes between refugees and locals have become everyday occurrences throughout the country and are reflected in the strong increase in crime rates among refugees as well as in the increase of anti-refugee crimes in the 2017 criminal statistic of Germany (Bundesministerium des Innern, für Bau und Heimat 2018a and 2018b).
Meanwhile, five municipalities have requested a temporary suspension from their respective state governments ('Zuzugssperre') of their obligation to accommodate additional refugees locally: Salzgitter, Delmenhorst and Wilhelmshaven in Lower Saxony, Pirmasens in Rhineland-Palatinate and Freiberg in Saxony. A substantial increase in the number of 'non-sanctuary cities' is widely expected as it is strongly supported by the German Association of Cities ('Deutscher Städtetag').

7. ASSESSMENT

It is now time to address the research question: To which level of government should immigration policies be assigned? The preliminaries of the previous chapters have produced the insight that the economically optimum solution - according to the principles developed by the theory of fiscal federalism - should be very different for the USA and the EU. First, The USA is a time-tested political entity with strong legal and political institutions and a clear delineation of the respective policy competences and funding sources of all levels and government. This also applies to both of the two most crucial policy areas with respect to immigration: Immigration laws and the legal rules which determine eligibility for and access to welfare benefits. To be more specific, federal and state rules generally exclude illegal immigrants from state and municipal welfare benefits for fife years (except for short-term emergency health care, disaster relief and vaccination programs; moreover, if female illegal immigrants to the USA give birth to a child on USA soil, the child is considered a US citizens and fully eligible for US welfare benefits, and so are his parents despite their illegal alien status): However, fraud does occur as local civil servants frequently are not adequately trained and equipped to identify the true legal status of an immigrant beyond doubt – an enforcement problem which is reinforced by the unwillingness of 'sanctuary cities' to cooperate with federal agencies in this matter.
By contrast, and despite of all its comprehensive harmonisation efforts so far, the EU is nowhere close to being a true nation-state or some other form of fully integrated political and economic entity; nor is likely to evolve into one due to the very distinct cultural, linguistic and historical heritage of its 28 member states, their substantial differences in terms of economic performance (and hence per capita income and wealth levels) and with respect to the breadth and depth of their respective welfare states. In this setting, plenty of opportunities for arbitrage (e.g. in the form of 'asylum shopping') and beggar-my-

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neighbour policies by individual member states to the economic and political detriment of others remain. As was discussed in more detail before, the ongoing refugee crisis provides ample evidence for the practical relevance of this theoretical observation. Even when one assumes (despite strong evidence to the contrary) that all recent arrival were indeed refugees and asylum seekers in the meaning of pertinent national, EU, and international laws, all of them were safe from the persecution they had endured as soon as they had entered whichever EU member state. However, due to a combination of differences with respect to the magnitude of crucial pull factors and the wish of some member states to avoid the fiscal strains and potential for intercultural conflicts which is inextricably linked to hosting a large number of refugees in a very short time, a substantial number of refugees decided to move on: Towards those EU member states with the comparatively highest welfare benefits (which differ substantially amongst member states), and/or the best job market prospects and/or the lowest deportation rates (i.e. Germany and Sweden).

Having said this, the current design of the USA's immigration system comes rather close to the theoretical ideal of the theory of fiscal federalism, although enforcement issues including but not limited to the reluctance of 'sanctuary cities' to observe federal laws may have somewhat compromised its effectiveness. However, from the perspective of laboratory federalism, 'sanctuary cities' defiance may provide the scientific benefit of offering the opportunities to study empirically the labour market effects of illegal immigration as well as its contribution to regional economic growth and development in a differentiated way in controlled settings.

As for the EU, however, the very opposite holds. Despite the quite far-reaching formal harmonization of immigration rules with respect to asylum seekers and refugees, the existing pull factors cannot be equalized due to the extreme economic, political and cultural diversity of member states – neither de jure nor de facto, and not even in the long run.

From a fiscal federalism perspective this implies, as no centralization in this field would be economically sustainable (let alone politically achievable), individual EU member states, not the EU, should have full control over their respective immigration policies in general and their refugee intake in particular as they inevitable have to bear the largest share of the economic and social costs. Most likely, however, this assignment of policy competences appears impossible to implement within the existing Schengen framework and in the absence of an agreed upon system of fiscal transfers to benefit those member states who must bear the brunt of the costs of the refugee crisis – i.e. both those EU member states like Greece, Italy and, increasingly, Spain which have been the main gateways for refugees into the EU and those other EU member states which have become their preferred (final) destinations.

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