

**Thesis submitted for PhD**

**Analysing Immigration Control Policy — A Case Study Regarding the  
Amendment of Art. 16 (2) of the German Constitution**

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## Abstract

This thesis formulates a methodologically flexible approach for the study of immigration control policy which emphasises structure and agency and applies this approach to a case study of the amendment of Art. 16 (2) of the German constitution in May 1993. Although authors of immigration studies have increasingly acknowledged structures and actors since the 1990s only a few have analysed explicitly the theoretical and methodological implications of the structure-agency link in the context of immigration policy. It is therefore the aim of this thesis to evaluate existing approaches in the context of the structure-agency link and to formulate and apply a theoretical model for the study of immigration control policy which acknowledges the link between structure and agency. To fulfil a flexible investigation of social structures and social actors my theoretical model is combining a conceptual framework approach with analytical dualism and formulates three layers of analysis: (i) an analysis of the contrasts between an objective analysis of the wider environment and politicians' perceptions of it, (ii) a study of the relationship between politicians and normative and interactive structures in the closer political party environment and (iii) an in-depth analysis of politicians' justifications.

The findings of my case study highlight that the structural context in the early 1990s was advantageous for a constitutional change in Germany. Supporters of the amendment made good use of this situation, while opponents failed actively to challenge the political context and, instead, worsened their already unfavourable position through their own actions. Further, a grounded theory analysis of politicians' justifications found that supporters and opponents emphasised the same core themes: both stressed the existence of an asylum problem and the promotion of humanitarianism. However, a closer analysis revealed that supporters and opponents set these themes into different conceptual and causal contexts. For example, supporters defined humanitarianism in a (socially and geographically) limited context, while opponents reflected a less restrictive use of humanitarianism. The findings also highlight that developments in the wider environment such as increasing asylum applications, decreasing recognition rates, rises in xenophobic attacks and electoral successes of the far right were misconceived by politicians and created a moral panic with regard to national stability. This misconception was not only based on an exaggeration of the situation but also on incorrect explanations of developments in the wider environment. In conclusion, the thesis substantiates theoretically and empirically my claim that immigration policy needs to be analysed through a proper investigation of the *interplay* between agency and structure; neither structural accounts nor agency based analyses are sufficient to understand the making of immigration policy.



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## Acknowledgements

I would like to thank Chris Husbands for supporting me throughout the thesis. Thanks too to my parents who have given me support and encouragement to carry on with this project and special thanks to my children, Charlot and William, who have been a wonderful source of energy, joy and motivation. I am also in debt to staff at the *Staatsbibliothek* in Munich where I spent several summers scanning through newspapers and parliamentary debates. I am grateful to staff at the UNHCR who assisted me during my internship and who gave me the opportunity to understand legal processes relating to asylum policy and to carry out a survey of NGOs in the context of European harmonisation. I also would like to thanks Stan Cohen, Chris Gifford, Chris Lyall Grant and Linda Randall for reading and/or discussing drafts of the different chapters. Special thanks also to Liza Schuster and Alice Bloch for providing me with detailed and constructive criticism. I am also grateful to Anglia Ruskin University for financing my fees.

Cambridge, January 2006

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**List of abbreviations**

BILD	Die Bild Zeitung
BKA	Bundeskriminalamt
CDU	Christlich Demokratische Union Deutschlands
CSU	Christlich-Soziale Union in Bayern e. V.
DVU	Deutsche Volks Union
ECRE	European Council on Refugees and Exiles
EVW	European Voluntary Workers
FAZ	Frankfurter Allgemeine Zeitung
FDP	Freie Demokratische Partei
ILO	International Labour Organisation
NGOs	Non-governmental organisations
PDS	Partei des Demokratischen Sozialismus
SPD	Sozialdemokratische Partei Deutschlands
SZ	Süddeutsche Zeitung
TREVI	Terrorisme, Radicalisme, Extrémisme et Violence Internationale
UNHCR	United Nations High Commissioner for Refugees



## **Chapter 1 Introduction**

- 1.1 Objectives of thesis in the light of existing studies of immigration policy and social theory
- 1.2 The amendment of Art. 16 (2) of the German constitution and its consequence for asylum policy in Germany
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### **1.1 Objectives of thesis in the light of existing studies of immigration policy and social theory**

The main objectives of my thesis are (i) to formulate a methodologically flexible approach for the study of immigration policy which emphasises the relationship between structure and agency and (ii) to apply this approach to the case study of the amendment of Art. 16 (2) of the German constitution in May 1993.<sup>1</sup>

The focus on structure and agency in the context of immigration arose out of the following observations when evaluating existing immigration studies (see chapter two for a detailed evaluation): Firstly, a significant number of studies on immigration policy, especially during the 1970s and 1980s, focus primarily on structural factors (see, Castles and Kosack 1973, Castells 1975, Miles 1982, Kay and Miles 1992, Parekh 1994 and Freeman 1995a). Secondly, since the 1990s authors have increasingly acknowledged structure and agency as more independent items of analysis (e.g. Schierup 1990 and Solomos 1993, Joly 1996, Joppke 1998a and 1998b, 1999, 2001, Brochman 1999, Guiraudon 2000, 2001, Geddes 2003 and Schuster 2003), however only a few scholars (such as Freeman 1979, Richmond 1994, Faist 2000 and Kastoryano 2002) have dealt explicitly with a theoretical discussion of structure and agency in the context of immigration. Thirdly, agency is generally represented in case studies via anecdotal content analysis (see, for example, Kay and Miles 1992, Schuster 2003) rather than other methods of analysis and a wider methodological discussion of the representation

of agency in immigration studies is missing (see chapter three for a methodological discussion of anecdotal analysis and other forms of text analysis). Finally, a number of authors suggested recently a cooperation or an ‘amalgamation’ of theoretical approaches in immigration studies (see Hollifield 2000, Meyers 2000 and Portes 1997). However, they did not explicitly discuss theoretical and methodological issues as to how different more or less deterministic paradigms emphasising structure, agency or both may be linked in practise.

Following from the above observations my thesis evaluates the handling of structure and agency in existing approaches and builds especially on approaches which are more open to incorporate agency and structure as independent analytical categories. On the background of existing studies the thesis formulates a conceptual framework which provides theoretical and methodological guidance for the systematic investigating of the link between structural factors and interactive dimensions of human conduct. A number of authors such as Archer (1995 and 1996), Bhaskar (1989), Giddens (1984) and Mouzelis (1995) dealt explicitly with this question in the context of sociological theory. I will look in more detail at Archer’s and Mouzelis’ suggestions in chapter three.

It is important to highlight that the theoretical framework and the application of the framework to the German case study deals with admission policy or ‘immigration control policy’ (see Hammar 1985) rather than settlement policy, the ‘origins of immigration’ or the ‘directionality and continuity of migrant flows’ (see Portes 1997). I follow here Portes’ (1997:810) suggestion that it is necessary to limit theoretical frameworks to a specific field of immigration policy to avoid a theoretical unification ‘at a highly abstract and possibly vacuous level’.

The first part of the thesis (chapters two and three) evaluates, therefore, existing theories of immigration policy in the context of the structure—agency debate and provides a theoretical framework for the investigation of social actors and structures in

the context of immigration policy. The second part of the thesis (chapters four to six) applies this framework to a case study relating to the constitutional amendment of Art. 16 (2) in Germany in May 1993 which will be introduced in the next section.

## **1.2 The amendment of Art. 16 (2) of the German constitution and its consequence for asylum policy in Germany**

Wisskirchen (1994a: 87) argues that the constitutional amendment of Art. 16 (2) in Germany in May 1993 reflects ‘the most radical change in the history of post-war German asylum law’. The amendment of the German constitution in July 1993 replaced Art. 16 (2) with a more restrictive Art. 16a. The new section 16a (1) refers to the original article and states: ‘politically persecuted persons enjoy the right of asylum’ (*Politisch Verfolgte geniessen Asylrecht*). However, the new section 16a paragraph 2-5 annul 16a (1) for those cases that arrive from a ‘safe-third-country’ or a ‘safe-country-of-origin’ (as approved by parliament via a list of non-persecuting countries) and makes asylum policy in Germany more restrictive (see Liebaut and Hughes 1997, Wisskirchen 1994a and b). As all countries around Germany were defined as ‘safe’, the only way to access an asylum procedure was via an airport; a special fast-track airport procedure was implemented to deal with asylum seekers quickly (for a critique of the airport procedure see Marx 1993).<sup>2</sup> As a consequence an increasing number of asylum seekers entered Germany illegally. However, this does not mean that they were not ‘genuine refugees’. For example, most of the 18 000 Albanians who arrived in Germany in 1999 had to enter illegally although they received later a *de facto* status with limited rights (see Lederer *et al.* 1999). The amendment also implemented a special status of temporary protection for persons who arrive from war zones (applied, for example, to persons who fled Kosovo in 1999). Persons who are given temporary protection do not have to prove individual persecution and are, therefore, excluded from a lengthy asylum procedure; on

the other hand they are automatically excluded from the full Convention status which is a negative aspect of this procedure.

The constitutional amendment was accepted by the necessary two-third majority of the *Bundestag* and the *Bundesrat* on 26 May and 28 May 1993 respectively. The Federal Constitutional Court accepted the amendment of the constitution in most parts on 14 May 1996 by a five to three majority and the contested airport rule was recognised as being lawful (SZ 14/15.5.1996).<sup>3</sup> Although the constitutional change had been demanded by CDU/CSU politicians since the mid-1980s it had never gained the two-third majority which was needed for such a change. The Far Left, the SPD and the FDP opposed the constitutional change throughout the 1980s and early 1990s. It was not until spring 1992 onwards, following the electoral gains of the far right in two federal elections, that leading politicians from SPD and FDP started accepting the constitutional change. Due to the salience of the constitutional change for German asylum policy and the sudden shift by politicians from the SPD and the FDP to support the amendment within a highly politicised environment (e.g. reunification and increasing xenophobic violence) the case study provides a complex scenario for investigation.

The amendment of Art. 16 (2) has meant a more restrictive approach towards asylum policy as asylum seekers from so-called safe countries were offered fewer opportunities to argue their case and, therefore, to find protection. Refugee organisations such Amnesty International and Pro Asyl criticised the correctness of safe country lists. For example, Von der Osten-Sacken and Uwer (1999) showed that the country reports for Iraq used by German diplomatic services (*Auswärtige Amt*) in the late 1990s were out of date and needed to be urgently upgraded, as refugees who were sent back to Iraq faced imprisonment, torture and possibly death. Turkey was listed as another 'safe' country where the safety of returned refugees could not be guaranteed (*Pro Asyl*, Press Release 22.6.1999, *Tageszeitung* 13.7.1999). Furthermore, the German government was

criticised by the non-governmental organisation Pro Asyl for her practice of collaborating with representatives of countries-of-origin that were listed by Amnesty International as persecuting countries. For example, only weeks before the start of the war in Kosovo the German border authority (*Bundesgrenzschutz*) had invited representatives appointed by Milosovic to Germany to help to return refugees. Similar co-operation agreements existed between the German government and Togo and Algeria; both countries were criticised by non governmental organisations for their human rights violations (*Pro Asyl*, Press Release 1.6.1999). The above examples show that the introduction of safe country lists in the constitutional article led to a lower level of protection for refugees and reflected a more restrictive approach towards asylum (for further discussion see Bosswick 2000, Lambert 1995, Liedtke 2002, Schuster 2001, Thränhardt 1999).<sup>4</sup>

Since the constitutional amendment in 1993 asylum has not gained the same importance in the political and public debate in Germany as during the beginning of the 1990s. Asylum figures have been declining since their peak in 1992 which was mainly caused by the war in former Yugoslavia and the break-up of the Soviet Union (438 191 including first asylum applications and further applications). Since 1998 the number of first applications have been below 100 000 and in 2002 71 127 persons asked for asylum in Germany; although the figures would be higher if one took into account the refugees from Kosovo and Albania who are no longer channelled through the asylum procedure and are not receiving full refugee status. Although recognition rates remain low, i.e. 1.83 per cent received the full Convention status in 2002, 39.41 per cent of asylum seekers have been granted protection in Germany in the same year for humanitarian reasons (*SZ* 5.2.2003) (see chapter four for a critical discussion regarding asylum figures and recognition rates).

The CSU tried to encourage a debate on further constitutional changes in the late 1990s but was unsuccessful in establishing a new agenda due to the debate surrounding a proposal for an immigration law which had been formulated by the newly elected coalition government of Greens and the SPD.<sup>5</sup> The immigration law was initially passed in the *Bundestag* on 1 March 2002 and in the *Bundesrat* on 22 March 2002. However, due to inaccuracies relating to the voting on the final draft in March the Constitutional Court dismissed the law on 18 December 2002.<sup>6</sup> The new immigration law was finally approved by the *Bundestag* on 1 July 2004 followed by the *Bundesrat* on 9 July 2004.

### **1.3 German asylum policy in a European context**

The following section will analyse to what extent Germany reflected a general European trend with regard to its implementation of more restrictive asylum procedures in 1993. Developments in Germany will be discussed in the context of European countries and developments regarding asylum policies on EU level.

#### **1.3.1 Social and legal provisions for asylum seekers**

Authors such as Bloch and Schuster (2002), Joly (1996 and 1997) and Rudge (1997) argue that asylum policies across Europe became more restrictive from the mid-1990s onwards. Especially in the context of welfare provisions a number of authors have recently shown how European countries exclude asylum seekers from their state provisions and limit social rights for them to a minimum (see Bloch 1997, 1999, Bloch and Levy 1999, Bommers and Geddes 2000, Bosswick 2000, Liedtke 2002, Schuster 2000 and 2003). The above analyses focus especially upon social rights and portray a very uncaring attitude of European governments towards asylum seekers where the majority of social provisions is pushed towards NGOs such as churches and charities. With regard to legal provisions restrictions have been achieved by reducing appeals

opportunities. The introduction of 'temporal protection' by countries such as France, Germany or the United Kingdom may be interpreted as positive as lengthy asylum procedures are avoided; on the other hand the above status excludes persons automatically from the full Convention status and offers only limited social and legal rights. The aim of Western governments to employ more staff to decide asylum cases in several months rather than years can be seen as a positive development if staff are properly trained and have expertise in refugee issues.

However, one needs to be careful not to over-generalise above examples as they represent only a fraction of indicators for measuring generosity or restriction of asylum policy. Comparisons between countries and over time need to be made on the basis of a fixed and detailed set of indicators. In an unpublished study I compared EU asylum policies in the mid-1990s using a scheme of 272 indicators which measured the legal and social provisions for asylum seekers during different types of asylum procedures (i.e. border procedure, the admissibility procedure, the accelerated or short (in-country) procedure and the normal procedure; whereby each procedure can be sub-divided further into the 'first-instance procedure' and the 'second-instance procedure' (see Appendix 1.1).<sup>7</sup> The systematic comparison of provisions concluded that, following the constitutional amendment, Germany was classified as having 'low' levels of legal protection ranking on the seventh position amongst the European Union countries (see Appendix 1.2). With regard to social provisions Germany was classified as 'very low' and only Austria offered fewer provisions to asylum seekers than Germany. The low ranking regarding social provisions was the outcome of the new Act on Benefits for Asylum seekers (*Asylbewerberleistungsgesetz*) which was accepted by the *Bundestag* and the *Bundesrat* at the same time as the constitutional change and implemented in July 1993.<sup>8</sup>

Nearly ten years later authors such as Bloch and Schuster (2002), Liedtke (2002) and Schuster (2003) have shown that European countries have further harmonised their social provisions on the lowest common denominator.

Although there are many non-citizens who can and do access welfare, some - such as asylum seekers - have been at the receiving end of a concerted effort to exclude them since the early 1990s.

Bloch and Schuster 2002

Bloch and Schuster (2002: 369 and 404) argue that the exclusion of asylum seekers rather than labour migrants 'lies in the different basis for granting access to the welfare state' for both groups and state asylum seekers 'are constructed only as those who take, not as real or potential contributors to the public wealth' which allowed governments to curtail their social rights and transfer their responsibility to churches and the voluntary sector; the distinction between 'genuine' and 'bogus' asylum seekers since the early 1990s justified the above restriction further. Legal rights of asylum seekers were harmonised to a lesser extent as legal systems differ substantially across Europe. However, safe-third-country rules, fast-track procedures for so-called 'unfounded' or 'manifestly unfounded' cases were implemented across Europe. Legal rights are increasingly restricted although (in distinction to social rights) governments are less capable if not unable to shift responsibility over to non-governmental organisations. Levels of legal provisions for asylum seekers are reflecting the core of asylum policy and the extent to which governments are willing to combine principles of sovereignty with human rights. Authors such as Joppke (1999), Sassen (1996) and Zolberg (1981) have in different contexts referred to the contradiction between human rights and nationhood principles. Joppke (1999) argues that, in practice, nation-states can and do incorporate both. However, the balance between human rights and sovereignty is



continuously open to change and interpretation and in the context of asylum principles of sovereignty seem increasingly to override principles of human rights.

### **1.3.2 The European harmonisation process**

Looking at the nation states' increasingly restrictive measures of asylum outlined above, it is not surprising that the European harmonisation process of asylum policies reflect similarly restrictive characteristics. Geddes (2003) argues that the harmonisation process is not only a reflection of nation states' practices but it has actually *enabled* the nation-states to limit the rights for asylum seekers throughout the 1990s:

EU co-operation and integration may actually have enabled the member states to develop new ways of regulating those forms of migration that their policies define as 'unwanted'. EU member states can thus retain a symbolic commitment to the right to asylum while eroding the ability of people who want to enter the territory of EU member states and exercise this right.

Geddes 2003: 145

Geddes (2003) proposes that harmonisation has moved from a minimal immigration policy involvement phase (1957-86), to an informal intergovernmentalism (1986-93) over to a formal intergovernmental co-operation (1993-9). Since 1999 some initial steps have been taken to move immigration policy to the Community level. The Amsterdam Treaty moved (after a five year transitional period) asylum and immigration concerns from the third pillar (decision making is based upon unanimity and decision making processes are inter-governmental and secretive) to the first pillar where the Commission has the sole right to propose legislation and the Council of Ministers make decisions by a qualified majority. The Amsterdam Treaty stated further that an EU policy on migration should be in place by 2004 and minimum standards should be developed for the following areas: criteria and mechanisms for determining which Member State is responsible for an application for asylum, the reception of asylum seekers, the

qualification of nationals of third countries as refugees, procedures for granting or withdrawing refugee status, temporary protection to displaced persons and for persons who need otherwise protection, promoting a balance of effort in receiving displaced persons between Member states ([www.ecre.org](http://www.ecre.org)). Following the Amsterdam Treaty a summit was held in Tampere (Finland) in autumn 1999 where the European Council announced to establish a Common European Asylum System which should address issues such as common standards regarding the interpretation of the Geneva Convention, the examination of asylum procedures and minimum conditions regarding reception centres for asylum seekers ([www.poptel.org.uk/statewatch/asylum/obserasylum3.html](http://www.poptel.org.uk/statewatch/asylum/obserasylum3.html)). Although proposals made at the summit promised to improve the protection of asylum seekers and to enhance harmonisation amongst member states, organisations such as the ECRE, the UNHCR and Pro Asyl argued in 2004 (at the end of the transition phase implemented by the Amsterdam treaty) that EU policies on asylum have failed to enhance the protection of asylum seekers and the harmonisation process ([www.ecre.org](http://www.ecre.org), [www.proasyl.de](http://www.proasyl.de)). Pro Asyl argued that especially Germany was a 'major blocker nation' with regard to reaching higher minimum standards of refugee protection across the EU. Since 1999 the EU focused in particular on 'illegal immigration' and less on safeguards to ensure social and legal rights of asylum seekers. Especially the Procedures Directive (agreed on 30 April 2004) permits Member States to apply restrictive measures which risk that asylum seekers are returned to countries where their safety is not guaranteed (see also section 1.2 for a further discussion of 'safe countries'). Measures include, for example, the 'safe third country rule' (the permission to remove asylum applicants to a country, other than their home country, which is classified as safe), the 'safe country of origin rule' (based on the assumption that some countries are classified as safe and, therefore, cannot produce asylum seekers) and the denial of 'suspensive effect' of

appeals which allows asylum applicants to remain in the country until the final decision on their case is reached.

Harmonisation seems to develop faster if it is dealing with issues such as border control rather than minimum standards of protection as outlined above. For example, following the events of 11 September 2001, a new border control plan was agreed on within weeks in spring 2002, implementing a new body of 'chiefs of EU border police' who will co-ordinate border control and meet regularly in Brussels. The 'Schengen Information System' has been updated and a new visa identification system has been installed to keep data on non-EU citizens (see *Der Spiegel* 17.6.2002 and [www.poptel.org.uk/statewatch/news/2002/sep/analy14.html](http://www.poptel.org.uk/statewatch/news/2002/sep/analy14.html)). The problem of international trafficking is also discussed in the context of border control. Trafficking in refugees has gained a negative connotation in the general debate and is associated with 'bogus asylum seekers'. This association needs to be treated with caution as genuine refugees may also have to rely on traffickers to find protection. For example, Morrison (1998) and Koser (2000) highlight that refugees who had been granted refugee status in Britain had used traffickers to enter Britain. In the case of Germany Lederer (1999 in Bosswick 2000) highlights that the around 180 000 Albanians who arrived in Germany in 1999 illegally were allowed to stay; although they were granted *Duldung* (a status with very restrictive legal and social rights) rather than the full refugee status. The above authors agree that the implementation of restrictive measures such as the closing down of borders via safe-third-country rules and visa policies for safe-countries-of-origin, have meant that genuine refugees often have to use illegal measures to access protection in Europe. Koser (2000: 85), for example, states that 'restrictions...have had unintended consequences that include growth of human smuggling and trafficking' and highlights that the policies to reduce asylum numbers had the controversial effect of increasing illegal entry which is used again as justification for more restriction.

Developments in immigration policy on the EU level correspond with increasing restrictions of legal and social rights in Germany. This is not surprising as EU policy on immigration is strongly influenced by the interest of the Member states and Germany has been especially influential at the EU level; being viewed by Pro Asyl as a ‘major blocker nation’ with regard to offering better standards of refugee protection. It needs to be seen to what extent powers of the European Commission and the European Parliament become more influential and may lead to better protection of asylum seekers in future (following the end of the five year transition period established in the Amsterdam Treaty).

#### **1.4 A chapter-by-chapter outline**

The following provides a chapter-by-chapter outline of the thesis which is separated into two main parts. The first part deals with the theoretical considerations regarding immigration policy while the second part presents the case study of the constitutional amendment in Germany in 1993.

Chapter two provides a critical evaluation of existing approaches dealing with the study of immigration policy in general and asylum policy in particular. The evaluation focuses in particular on the question how authors deal with structure and agency in their investigation and explanation process. It shows that a number of approaches provide less flexible frameworks for the investigation of structures and social actors. This is not to say that these studies do not provide important insights into the making of immigration policy. However, their theoretical determinism limits the scope and findings of their empirical investigations. The second and more extensive part of the evaluation looks at authors who present more flexible frameworks for the study of immigration policy dealing with structures and actors. The first part looks at approaches which provide an explicitly theoretical discussion of structure and agency in the context

of immigration while the second part evaluates case studies which have dealt with structures and agency in a non-deterministic fashion.

On the basis of the critical evaluation of existing approaches and developments in social theory I formulate in chapter three a theoretical framework for the study of immigration policy which is applied to the case study of German asylum policy in part two of my thesis. My theoretical framework can be classified as a conceptual framework which distances itself from deterministic theory and does not aim to formulate hypotheses which are tested against empirical evidence (see Mouzelis 1995, Miles and Huberman 1994). Instead, 'it is merely meant to prepare the ground for an empirical investigation of social structures and actors' (Mouzelis 1993: 676). In this sense my approach follows the tradition of authors who developed more flexible approaches and were discussed in the second part of chapter two (e.g. Freeman 1979, Schierup 1990, Solomos 1993, Richmond 1994, Joly 1996, Joppke 1998, 1999, 2001, Brochman 1999, Faist 2000, Guiraudon 2000, 2001, Kastoryano 2002, Geddes 2003, Schuster 2003). The conceptual framework is divided into three interdependent layers of analysis: (1) the study of the wider national and international environment looking at factors such as numbers and recognition rates of asylum seekers, the economic and social situation, European harmonisation, the increase of xenophobic violence, the portrayal of asylum seekers by the media and the general public. Emphasis is placed as much upon the analysis of developments in the wider environment as upon politicians' perception of these events, (2) the examination of the interplay between politicians' actions and structures within the political party system and (3) the systematic analysis of politicians' justifications regarding their decision-making on asylum policies; applying a grounded theory approach for the content analysis of parliamentary debates in 1991 and 1993. The layers of the conceptual framework are utilised to structure the case study of the amendment of the German constitution in 1993. The chapter concludes with a

methodological discussion of the grounded theory approach which I utilised for the analysis of politicians' justification schemes in chapter six.

Chapter four introduces the case study of the amendment of the German constitution by investigating to what extent wider national and international structures had an impact upon politicians' position on asylum policy during the early 1990s. Factors such as the characteristics of the asylum movement (such as number of applications, countries-of-origins and recognition rates), the economic situation, electoral successes of the far right in 1992, European harmonisation, the representation of the asylum issue in the media and public opinion polls, the rise of xenophobic attacks during the early 1990s and the social and political situation will be examined. In contrast to most of the existing literature these structural characteristics will not be directly correlated with developments in asylum policy such as an increase/decrease of recognition rates or generous/restrictive asylum legislation. Instead, the analysis of the wider national and international context will be contrasted with politicians' justification schemes to identify to what extent the politicians' perception of the environment was similar/dissimilar to that provided by a more objective analysis.

The objective of chapter five is to research the interplay between party political structures and politicians' actions and outlines the party political developments regarding asylum policy between 1991 and 1993. This chapter applies Archer's (1995) concept of analytical dualism to investigate the interplay between structures and actions in the party political context. Analytical dualism defines 'structure' as the (to a large degree) unintended outcome of past actions that *pre-dates* and *conditions* present action; present action is therefore viewed as *elaborating* (i.e. maintaining or changing) this structure. Therefore, the chapter investigates first of all the normative and communicative structures within the party environment at the beginning of 1991. Secondly, it is analysed how politicians maintained or changed these structures between

1991 and the acceptance of the constitutional amendment in May 1993; special emphasis is placed upon the role of the different social hierarchies within political parties which represent the different levels of the federal system.

Chapter six deals with the analysis of politicians' justifications in the parliamentary debates in 1991 and 1993 by applying the 'grounded-theory' of Strauss and Corbin (1998). The study of politicians' perceptions and beliefs reflects the emphasis of the thesis to investigate in detail the (representation) of the decision making process of politicians. The chapter has two objectives: on the one hand it provides numerical evidence of the extent to which individual themes were used and the extent to which they correlated with voting behaviour and party membership. Secondly, it highlights how politicians constructed their justification *schemes* by linking different individual themes; information about the *link between* justifications is the core objective of the grounded theory approach. The chapter concludes by presenting the 'semantic schemes' for different political parties and supporters and rejecters of the amendment.

The concluding chapter seven summarises the findings of the case study by highlighting the relationship between structural and voluntaristic factors which led to the acceptance of the constitutional amendment. Finally the findings are evaluated in the light of existing theories of immigration policy.

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#### Notes

<sup>1</sup> Structure should be understood as both macro factors such as the economy and politics and normative and interactive structures which govern society in general and organisations such as political parties in particular. Agency will be defined as a 'stream of actual or contemplated causal interventions of corporal beings in the ongoing process of events-in-the-world' (Giddens 1979).

<sup>2</sup> The airport procedure is characterised by limited expertise (with regard to legal and refugee issues) by those members of staff involved in the decision-making and especially in the interview process. The federal border guards are responsible for the first interview and the decision on the 'refusal of leave to enter'; refugees who are arriving from a safe-third-country are refused leave to enter. The possibility to overcome the lack of expertise by involving NGOs under a binding principle is refused. Those refugees

who have been given leave to enter are further interviewed by more experienced staff from the Federal Office for the Recognition of Foreign Refugees (Bundesamt für die Anerkennung ausländischer Flüchtlinge). The quality of the first instance is further lowered by the fact that legal and linguistic support are not guaranteed at all airports and that asylum seekers are detained at, or near, the airport for two days whilst a decision on the first instance is made. If this decision is negative asylum seekers have to remain in the transit zone of the airport or are detained in a prison. In May 1999 seventeen persons lived for more than 100 days in the transit zone of the international airport at Frankfurt and a further twenty-six men remained in detention (*Pro Asyl*, Press Release 13.5.1999). Further criticism has been raised by refugee organisations and the European Council with regard to the detention of children and unaccompanied children during the airport procedure in Frankfurt (*Pro Asyl*, Press Release 15.3.1999 and 13.5.1999, SZ 28.5.1998 and 8.11.1999). The following aspects were also part of the amendment, however they will not be discussed further as they do not directly relate to asylum policy: the permission for a limited immigration of ethnic Germans (around 225 000 per year), an easier naturalisation for foreign nationals born in Germany and persons residing in Germany for more than 15 years and the permission of entry for contract workers from Poland and the Czech Republic (see Bosswick 2000).

<sup>3</sup> The Constitutional Court was in charge of deciding on deportation procedures (and stopped a number of deportations into safe-countries-of-origin) at the airports until its confirmation of the amendment of Art. 16 (2) in May 1996. From then onwards it directed its decision-making powers to administrative courts. Refugee organisations and some judges from the Constitutional Court have severely criticised this referral of decision-making power in the context of constitutional matters. They argue that it has changed fundamentally the function of the Constitutional Court with regard to the protection of the constitution (SZ 15/16.5.1996, *Der Spiegel* 21/1996).

<sup>4</sup> The Greens demanded in March 2001 to remove the safe country rule which denies the individual right of a legal examination for asylum seekers who arrive from a safe-country-of-origin or from a safe-third-country. The European Court of Human Rights in Strasbourg decided on 7 March 2000 that Art. 3 of the European Human Rights Convention forbids deporting a refugee into a neighbouring country without an individual examination of his/her case. The reference to the safe country rule (as established in the Dublin Convention) has been declared as not being consistent with the European Human Rights Convention; the judges of the European Court decided that the Human Rights Convention takes priority over the Dublin Convention. Thus the recognition of the safe third country rule by the German Constitutional Court in 1996 was demolished on a European level of jurisdiction whereby the European judges asked for the individual examination of cases as being the basis of a European harmonisation process (SZ 16.3.2001).

<sup>5</sup> The CSU demanded that the right of asylum should be turned into an institutional guarantee (*Institutionelle Garantie*) which cannot be appealed against. Thus, CSU demanded the abolition of the individual right of asylum. However, the party gave up on the constitutional debate and co-operated, instead, with CDU to attack the proposal for an immigration law (SZ 20.4.2001).

<sup>6</sup> President Rau signed the immigration law on 20 June 2002 although the interpretation of votes in the Bundesrat in March was criticised by CDU/CSU. One of the federal states which was governed by a coalition government was interpreted as a 'yes' vote although one of the coalition partners voted against the immigration law.

<sup>7</sup> Using a quantitative method to account for legal and social provisions has the advantage of offering a controlled and transparent method of comparison. The object of the scheme is not to reflect the actual experience of asylum seekers within the member states, for which a qualitative method would be more suitable. Instead, the aim of the scheme is to measure the willingness of governments to provide a basic standard of legal and social rights. Thus the scheme does not reflect the provision of legal and social support by NGOs unless it has been financed by the government. The scheme offers a systematic comparison of indicators for social and legal rights of asylum seekers in the mid-1990s. Indicators may need to be updated in future if new aspects of legal and social provisions emerge.

<sup>8</sup> The new Act on Benefits for Asylum seekers (*Asylbewerberleistungsgesetz*) excluded asylum seekers from the Federal Assistance Act and other laws and regulations (FIAN 1998).



**PART I      THEORETICAL EVALUATION AND FORMULATION**

## **Chapter 2 An evaluation of existing approaches of immigration control policy**

- 2.1 Introduction
- 2.2 A brief overview of approaches of immigration control policy since the 1970s
- 2.3 Less flexible approaches
- 2.4 More flexible approaches
  - 2.4.1 Approaches offering explicit theoretical discussions of structure and agency in the immigration context
  - 2.4.2 The use of structure and agency in case studies of immigration policy
- 2.5 Summary

### **2.1 Introduction**

This chapter offers an evaluation of existing approaches of immigration control policy. After a brief overview of developments since the 1970s I will discuss a few selected approaches which are based on methodologically less flexible frameworks (Kay and Miles 1992, Parekh 1994 and Freeman 1995a). Although these approaches offer important insights into immigration policy their theoretical frameworks place immediate limitations on the investigation of structures and actors in the context of immigration policy (see chapter three for a further discussion on determinism and the structure-agency debate). The second and more extensive part of the evaluation will look at a wider number of approaches which propose more flexible frameworks (in both theoretical and methodological terms). I will first of all evaluate those approaches which provide more explicitly a theoretical discussion of structures and agency in the context of immigration (Freeman 1979, Richmond 1994, Faist 2000 and Kastoryano 2002). The second part analyses case studies of immigration policy which investigate more independently structures *and* actors in the processes of immigration policy (Schierup 1990, Solomos 1995, 2002, Joly 1996, Joppke 1998a, 1998b, 1999, 2001, Brochman 1999, Guiraudon 2000, 2001, Hollifield 1992, 2000, Geddes 2003 and Schuster 2003).

## 2.2 A brief overview of approaches of immigration control policy since the 1970s

During the 1970s and 1980s theories of immigration control policy were to a large extent explained via Marxist and neo-Marxist frameworks (see, for example, Castells 1975, Castles and Kosack 1973, Miles 1982 and Wallerstein 1974). It is not surprising that authors utilised Marxist frameworks as the immigration scenario after the Second World War applied very well to a Marxist theory as pointed out by Zolberg (1987):

Because the population movements in question [i.e. foreign labour after the Second World War] were so explicitly functional, they could be encompassed within an essential economic analysis, either of an institutional sort...or of a more Marxist cast.

Zolberg 1987: 408

Apart from Marxist theories a range of political analyses dealing with political systems, party politics and the electorate were also developed (Husbands 1991, Layton-Henry 1978a, 1978b, Rex 1986, Schain 1988, Studlar 1974 and 1980, Withol de Wendon 1988). By the 1990s most authors had moved away from Marxist approaches and placed more emphasis upon concepts related to the principles of the nation-state (e.g. sovereignty, citizenship, national identity, rights) and/or global factors (e.g. international human rights law, changes in transport and communication and international economic and political factors). The shift from recruitment policies of foreign labour to family reunification and asylum policies during the 1980s has demanded different explanatory strategies and concepts such as national identity, national security and sovereignty seemed to fit better the empirical scenario than pure economic frameworks (see Brubaker 1992, Faist 1994 and 2000, Fitzgerald 1996, Kurthen 1995, Parekh 1994, Thränhardt 1995 and 1999, Weiner 1996 and Weiner *et al.* 1993). A further group of authors represented by writers such as Castles and Miller (1998), Sassen (1998) and Soysal (1994) argued during the 1990s that nation-states' principles of sovereignty and

citizenship were increasingly challenged by global forces such as human rights regimes and transnational networks. Geddes (2003: 127-8) rejects such a dichotomy between the determined or the determining nation state. He shows in the context of Europe that nation-states have different impacts upon the European process regarding immigration and, vice versa, these processes influence in different ways nation-states' policies on immigration. For example, in the case of Germany, Geddes (2003) argues that it used the European space to implement more restrictive policies which would have been challenged in the national arena due to legal and political pressure. In this sense the European process strengthened state sovereignty for Germany rather than diminished it as Sassen (1998, 1999) argues.

In general approaches in immigration control policy became more dynamic during the 1990s acknowledging a variety of factors which related to structures and actors in the national and international context. The following will provide a detailed overview of existing approaches. The aim of the evaluation is to identify a wide range of (potentially) relevant factors for the analysis of immigration control policy and to investigate how existing approaches have handled theoretically and methodologically the investigation of social structures and actors. Both the identification of relevant explanatory factors for immigration policy and the way of dealing theoretically and methodologically with structures and actors will support the formulation of a new conceptual framework which will be presented in the next chapter.

### **2.3 Less flexible approaches**

Although the 1990s showed a move towards more flexible approaches (with regard to their theoretical frameworks) the following will first of all analyse contributions by Kay and Miles (1992), Parekh (1994) and Freeman (1995a) to highlight the theoretical and methodological limitations of less flexible approaches.

Kay and Miles' (1992) study dealing with the British recruitment of European Voluntary Workers (EVWs) after the Second World War is emphasising a Marxist analysis in the context of political migrants.<sup>9</sup> The study has been selected for a more in-depth evaluation as it identifies relevant factors for the conceptual framework. However, by investigating immigration policy within the framework of Marxism it also highlights the ontological problematic of rigid theoretical approaches to treat actors and structures as independent items of analysis.

Kay and Miles' (1992) argue that economic factors were primarily responsible for the acceptance of persons from refugee camps in Europe although their constituting factor was political.

In the case of EVW scheme, there is no doubt that political factors were predominant in constituting a population of Displaced Persons camps in Europe. Yet the decision of the British government to organise the EVW scheme was shaped as much, if not more, by economic rather than political considerations.

Kay and Miles 1992: 184-5

Due to its Marxist framework Kay and Miles' (1992) analysis is heavily emphasising structural components and agency is viewed as being determined by the overall structure and not seen as an independent item of analysis.<sup>10</sup> Politicians' motives are being reduced from developments in the wider structure and substantiated via anecdotal content analysis which reflects a methodological strategy that carries a high risk of incorporating bias in the research process especially if it is linked to a more deterministic approach (see chapter three for a further discussion of the advantages and disadvantages of anecdotal content analysis). Economic factors are potentially relevant for any analysis of immigration policy and are a vital element of the conceptual framework. However, the analysis of the economic context needs to take place in a theoretically and methodologically flexible context which acknowledges a variety of structures and decision-makers in their own right.

Concepts relating to the principles of the nation state such as national identity, nationhood, citizenship and sovereignty have been discussed by a variety of authors (see, for example, Brubaker 1995, Joppke 1999 and Parekh 1994).<sup>11</sup> The above authors argue that the constituting principles of the nation state determine immigration policy while Soysal (1994) turns the relationship on its head, suggesting that models of nationhood and understandings of national identity are changing *due* to immigration. Joppke (1999) opts for the middle way defending a position whereby the traditional nation-state is both enforcing immigration and being challenged by it at the same time. The following will outline Parekh's (1994) approach in more detail as he offers a rigid theoretical framework although he suggests that conceptions of the nation state are multiple and changing.<sup>12</sup> He argues that different conceptions of national identity determine states' immigration policies:

Different countries follow different immigration policies. They do so because they entertain different ideas about their identity, and different concomitant notions of who should and should not be their members. I shall argue that modern states' conceptions of themselves fall into three categories, and that these entail three different types of immigration policy.

Parekh 1994: 91-2

Parekh (1994) distinguishes here among the following three views that modern states can have of themselves: liberal, communitarian and ethnic/nationalist. The views are associated with different ideas about citizenship and access to state membership. While the liberal view demands that members acknowledge and participate in the spirit of 'civility' or 'liberal conversation', the communitarian and the ethnic/nationalist views demand cultural or blood ties respectively to gain rights to membership.<sup>13</sup> Although national identity is a potentially vital explanatory factor of immigration policy it is not *necessarily* the dominant factor as shown, for example, in studies by Kay and Miles'

(1992), Joly (1996), Schierup (1990), Guiraudon (2000) and Schuster (2003). Parekh's (1994) incorporation of the concept of national identity into a less flexible theoretical framework places unnecessary constraints on the empirical investigation of immigration policy. A more tentative framework could provide an analysis of national identity which addresses the changing relationship between national identity and other factors influencing immigration policy. This would correspond with Parekh's (1995) understanding of national identity as being a 'cluster of tendencies and values' which are not 'historically fixed'. Smith (2001) and Kastoryano (2002) have similarly placed the concept of national identity into the context of societal change and reinterpretation. Kastoryano (2002:4-5) associates national identities with the 'content of nation states' which needs to be 'redefined to take account of the expectations of social groups within the nation and in comparison with surrounding nations'. It is also important to distinguish between different analytical levels with regard to national identity. Smith (2001) highlights the distinction between the collective and the individual level. I further emphasise the structural level as being relevant as indicators for national identity can be found in the wider institutional structures of the nation state such as the judiciary and education system. For a concrete investigation of the role of national identity one would therefore need to provide a theoretical platform which can address indicators which can be found in both the structural and the agency realm: on the one hand different individuals and collectivities within a nation-state have different ideas about the nation-state; on the other hand national identity is represented by normative structures such as citizenship laws, educational curricula and political manifestos.

The next contribution by Freeman (1995a) has been selected due to its complex political explanation scheme for immigration policy which offers a wide range of explanatory factors. However, he incorporates his suggestions in a rigid hypothesis-testing framework. His main assumption is that the political system of a country

determines immigration policy; and, in particular, that the system of liberal democracy leads to expansive immigration policy (Freeman 1995a: 886). This relationship between political systems and immigration policies is based upon a number of controversial hypotheses concerning the rationale of actions by politicians and the general public (as Freeman 1995b himself admits in a rejoinder to Brubaker 1995).

The first major assumption is that politicians move towards consensus politics and avoid immigration as an election issue because of a 'strong anti-populist norm' that is endogenous to liberal democracies (Freeman 1995a: 885-6). The second assumption relates to the independence of the political debate concerned with immigration issues from public opinion. Freeman suggests that the strong 'anti-populist' norm is not challenged by a public which is in principle hostile to immigration because it is unorganised and poorly informed with regard to immigration matters (Freeman 1995a: 884-5). Further, client politics represented by strong interest groups such as employers, ethnic advocacy groups and civil and human rights organisations drive governments towards an expansive immigration policy. Freeman (1995a) explains (away) any empirical deviations from the above assumptions by referring to the 'temporal illusion' of the migration cycle and the recession phases in the business cycle (Freeman 1995a: 886-910).<sup>14</sup> Consequently, 'temporal illusion' and/or economic recession may always come to the rescue should empirical evidence contradict Freeman's hypotheses. At best, such an explanatory scheme appears *ad hoc* in character, at worst it may be tautological.<sup>15</sup>

Freeman (1995a) offers very valuable concepts which help to elucidate developments in immigration policy. However, do Freeman's hypotheses fit asylum policies of the 1990s? Brubaker (1995), Joppke (1999) and Perlmutter (1996) criticise Freeman's assumptions with empirical evidence. For example, Brubaker (1995) is doubtful about the expansive policies in a climate of increasing restriction especially for



asylum seekers. Or, Perlmutter (1996) questions Freeman's (1995a) suggestion of a 'strong' anti-populist norm amongst the political parties and argues that the traditional scenario of mass parties is no longer present; further, federal systems like in Germany create anti-immigration pressure from the grass roots and may place the immigration issue on the political agenda. Apart from the above empirical evidence which clearly contradicts Freeman's hypotheses in the current scenario of asylum policy there is, in my view, a more fundamental problem with his assumption of expansive immigration policy in liberal democracies which will be outlined in the next paragraph.

In the context of being criticised for ignoring the fact that countries such as Germany are restricting their asylum policy Freeman (1995a) argues that Germany is merely adapting to the standard of other European countries.

Germany's policies have been, for the most part, progressively restrictive. Their main effect, however, has been to bring the country in line with other Western democracies including in the case of asylum law, the English-speaking settler societies.

Freeman 1995a: 391

It seems that any intake of immigrants is utilised as a proof by Freeman (1995a) that his assumed link between liberal democracies and expansive immigration policy is correct. However, is the acceptance of some form of immigration not part of the definition of a liberal democracy? By applying a very loose definition of 'expansive immigration policy' Freeman (1995a) risks formulating a tautology as he explains expansive immigration policy by the political system of a liberal democracy which is in principle and practice linked to immigration policy. In conclusion, client politics, an adverse public opinion and an anti-populist norm amongst political parties are potentially relevant factors for the study of immigration policy. However, Freeman (1995a) incorporates these factors into a highly deterministic framework regarding assumptions

about liberal democracy and immigration policy which risks producing a tautological explanation scheme. Although he addresses actions and beliefs of politicians and the general public in his hypotheses he portrays them as marionettes in a wider political system without any choice of action.

The following will look at a range of approaches which are based upon more flexible theoretical frameworks and analyse to what extent they provide more balanced empirical investigations which can explicitly address competing explanatory factors of immigration policy.

## **2.4 More flexible approaches**

Approaches by Freeman 1979, Schierup 1990, Richmond 1994, Solomos 1995, 2002, Joly 1996, Joppke 1998, 1999, 2001, Brochman 1999, Hollifield 2000, Faist 2000, Guiraudon 2000, 2001, Kastoryano 2002, Geddes 2003, Schuster 2003 entail characteristics which indicate a move away from determinism as they are emphasising, prior to the investigation process, several potentially relevant factors. This plurality and non-hierarchical structure of concepts stands in contrast to approaches which place *a priori* the emphasis upon one single explanatory factor (at least in the last instance). The following will first of all discuss approaches which provide a theoretical discussion and/or framework for the study of structures and agency in the context of immigration while the second part evaluates approaches which have dealt with structure and agency in the context of a concrete case study.

### **2.4.1 Approaches offering explicit theoretical discussions of structure and agency in the immigration context**

The following looks at work by Freeman (1979) and Faist (2000) who formulate concrete theoretical models for the empirical investigation of immigration control policy

and immigration flows respectively. Richmond (1994) provides an in-depth discussion of structure and agency and applies it to the context of immigration control policy while Kastoryano (2002) analyses structure and agency in the context of settlement policy.

Freeman (1979) offers in his comparative study of British and French immigration policies after the Second World War a theoretical framework which acknowledges explicitly structure and agency. He places especially emphasis upon politicians' justifications and beliefs.

There is a reluctance to take anything policy-making elites say at face value, or even as informative, certainly not as the reason for their actions. This is an error, I think, because it obscures the degree to which elites do make choices which affect the course of political development. It also causes us to forget that the language and arguments which policy makers use can be a fruitful source of data on their information, perceptions, and values.

Freeman 1979: 11

While emphasising politicians as an independent analytical category, Freeman does not ignore the structural context. He acknowledges both politicians' choices and the limiting/enhancing effect of the structural context upon these choices. The politicians' decision-making processes are analysed in the context of two layers: *external constraints on policy* (economic, demographic and historical conditions) and *proximate determinants* (party systems, political styles and belief systems of decision-makers) (Freeman 1979: 311). Therefore, he investigates the objective structural context of both countries and compares it with the politicians' understanding of it. He shows, for example, that British politicians failed to see the economic advantages regarding immigration from the Commonwealth which led to an immigration debate which centred around the issues of racial conflict and immigration control rather than positive agendas of immigration in economic terms (Freeman 1979: 136). The above example highlights Freeman's suggestion that the mere correlation between structural developments such as the economic situation in advanced capitalism and immigration

policy fails to discover the impact of decision-makers upon such a link and the *alternative choices* of actors to respond to the structural factors surrounding them.

Freeman's (1979) emphasis upon agency and structure is highlighted in the following quote:

In looking at external constraints, it is important to be sensitive to the fact that, while decision makers may act within a clear environmental context, the environment intercedes into policies through the agency of individuals who take a particular point of view.

Freeman 1979: 311

It is also important to note that Freeman (1979) did not start off to test a hypothesis but began with a descriptive account and formulated his analytical/theoretical framework of *external constraints* and *proximate determinants* in the conclusion; in this respect his approach reflects a theory-building approach although he does not expand on his methodology further in his study apart from the following statement:

The research on which this study is built was not designed to test specific hypotheses or the utility of precisely operationalised concepts. What I offer...is a serious description of events in the two countries especially sensitive to the way in which those events were understood by the participants. This kind of analysis does not provide definitive explanations of behavior, but it does identify the patterns which need explanation and which otherwise might be ignored. It also serves to generate plausible hypotheses to explain these patterns.

Freeman 1979: 310

The above highlights that Freeman's (1979) approach is in methodological terms a qualitative or theory-building approach. His rejection of hypothesis-testing is reflected in the following comment:

I have not deliberately distorted reality or attempted to force the evidence into preconceived molds. On the contrary, many of the conclusions in the final chapter would have been genuinely surprising to me as I launched this project.

Freeman 1979: xi

From that point of view Freeman's (1979) study provides a concrete strategy to link structure and agency in the empirical investigation of immigration policy.

Similar to Freeman (1979) Faist (2000) suggests a more pragmatic model for the analysis of structure and agency in the context of immigration; he applies his model to the context of international migration flows. Faist (2000) constructs three levels of analysis whereby the micro level focuses upon the ability or 'freedom' of migrants to move or stay in their home country; the *meso* level represents the social and symbolic ties of immigrants and the macro level investigates the political-economic-cultural structures in the national and international environment. Similar to Faist's (2000) model for immigration flows my conceptual framework for immigration policy (outlined in the next chapter) is also structured along three levels which reflect the individual decision making level of actors (in my case politicians), the 'ties' of actors (i.e. politicians) within the political party system and the international level. I further elaborate the link between the individual and the national and international environment via the perceptions of individuals (politicians) and emphasise to what extent individuals are part of the process of constructing 'ties' in their closer environment (in my case the political party system) but also being affected by those ties in their decision making processes (see chapter three for a further discussion of Faist's framework in the context of the conceptual framework I propose).

Richmond (1994) provides an in-depth examination of structure and agency in the context of immigration policy advocating Giddens's structuration theory:

Giddens is able to transcend the split between structural theories and individualistic ones. He defines 'structuration' in terms of process, i.e., 'the structuring of social relations across time and space, in virtue of the duality of structure' (Giddens 1984: 376). By 'duality' he means that structures are both the medium and the outcome of recursively organized conduct. Systems do not exist outside of action, but are being constantly produced and reproduced (with or without modification) over time and space.

Richmond 1994: 17

In his comparative case study of Britain and Canada he identifies ‘underlying conditions’ and ‘intervening variables’ which influence immigration control policy. He associates underlying conditions with global factors and include the following:

[T]he economic disparities between developed and developing countries, the legacy of colonialism, the political confrontation of superpowers, recent changes in eastern Europe (including the disintegration of the Soviet Empire), together with the continued instability of regions such as the Middle East, Southeast Asia, and Central America

Richmond 1994: 156

Intervening variables which influence immigration policy relate to

the institutional structure of the receiving countries, the ethnic composition of their respective populations, together with demographic, educational, and socio-economic characteristics of immigrants.

Richmond 1994: 157

His emphasis of structures and agency is further reflected in his summary of Canada’s and Australia’s immigration policies:

There are too many conflicting interests to reconcile and too many structural contradictions in the global economic and social system for any policy to provide a rational or optimal solution to pressing demographic, economic, political, and humanitarian concerns.

Richmond 1994: 159

Richmond offers amongst immigration scholars in many ways the most detailed theoretical discussion regarding structure and agency (1994: 3-46). His advocating of a structuration approach is very recommendable although the various dimensions of structuration theory are not always reflected in his case studies and the link between structure and agency (‘duality’) is not clearly illustrated. The ambiguity regarding the application of ‘duality’ to a specific case study reflects a general problematic regarding

the application of structuration theory which has been identified previously by authors such as Archer (1995); arguing that structuration theory does not provide concrete strategies for an empirical study of structure and agency. As a consequence Archer (1995) develops an alternative strategy (i.e. morphogenetic sequence) which I will discuss further in the next chapter.

Another author who highlights structure and agency theoretically is Kastoryano (2002). Her work on 'negotiating identities' intends explicitly to combine a 'structuralist approach' with a 'culturalist approach' in comparative politics arguing that the 'former emphasizes the rationality of institutions, and the latter the importance of interpretation' (Kastoryano 2002: 11).

Negotiations of identity appear in various realms: in rhetoric, actions, and organizations. This results in a methodological diversity that combines the structural analysis of institutions with the cultural data they embody. If the organization and functioning of the associations relate to a structuralist approach, although grasped in its own internal and external dynamic, the norms, values, and cultures invented in their framework necessarily relate to a culturalist approach.

Kastoryano 2002: 13

On the structural level Kastoryano (2002) analyses and compares 'modes of organization of immigrant populations' in France and Germany and looks at 'the effect of public policies of immigration on the organization of groups of immigrants and on the formation and expression of their collective identity' (Kastoryano 2002: 12). On the agency level Kastoryano (2002: 12) carried out in-depth interviews with leaders and members of the Turkish and North African populations in Germany and France; focusing on the associations of immigrants and whether they defined themselves as social, cultural, religious or national communities. Additionally she interviewed a number of social actors dealing with issues of immigration such as politicians and union representatives. In this sense Kastoryano (2002) fulfils methodologically my aim to link

both structure and agency; although her focus is on settlement policy rather than admission policy.

Kastoryano (2002: 38) places national identity into the centre of her approach and argues that

[t]he discussion of immigration now relates to the discussion of national identity... the 'individual immigrant' is now perceived as a 'foreigner' belonging to an 'ethnic community', which is considered opposed to the 'national community'. The former struggles for state legitimacy, the latter for harmony and political unity.

Kastoryano 2002: 38

By referring to Benedict Anderson's (1994) work on 'imagined communities' Kastoryano (2002) highlights the construction of national identity. In the context of semantic discourses or what she names 'the war of words' she identifies for the German context core themes such as 'the problem of immigration', the 'threshold of tolerance', 'frustration of public opinion about immigration' and 'social costs' which are themes which I have also identified in the analysis of justification schemes in chapter six. Due to my focus on the political decision making process on immigration I have analysed further in chapter six how these themes interlink and how politicians are able to utilise a variety of versions of humanitarianism in the context of more restrictive asylum measures.



#### 2.4.2 The use of structure and agency in case studies of immigration policy

This section introduces case studies of immigration policy which incorporate the dimensions of structures and actors but do not discuss explicitly these concepts and/or analyse the theoretical link between them. Schierup (1990), Joly (1996), Brochman (1999) and Geddes (2000, 2001, 2003) offer a web of more concrete factors which need to be considered in the analysis of immigration policy. Other authors focus more specifically on areas such as rights, liberalism and the nation state (see Joppke 1998, 1999, 2001, Hollifield 1992, 2000 and Schuster 2003), political processes (Solomos 1995 and 2002) and control mechanisms regarding the elaboration and implementation of immigration policy (Guiraudon 2000, 2001).

Schierup's (1990) investigation of Swedish asylum policies in the late 1980s rejects economic reductionism in favour of a more open framework which emphasises a variety of interests and moral values prior to investigation. He comments that

[t]here are no direct links of transmission between 'the needs of capital', or the 'interests of the ruling class', and actual [refugee] policies. At certain times important decisions and government acts may reflect universalistic symbolic and moral values, rather than mere economic or narrow social interests.

Schierup 1990: 563

Schierup (1990) describes the relaxation of Swedish asylum policies in 1988 as being shaped primarily by the following 'pragmatic interest' of the Swedish government: the Swedish labour market requirements could be satisfied through the intake of asylum-seekers; grass-root opposition against immigration could be minimised through the intake of asylum-seekers with reference to international solidarity; those who saw Swedish asylum policies as being too liberal could be appeased by a link between the intake of refugees and labour market benefits (see Schierup 1990: 567-8). That the move to more generous asylum policies was mainly determined by pragmatic interest rather

than humanitarian interest is demonstrated by the tightening of asylum policies at the end of 1989, which coincided with the first signs of an economic recession. Schierup (1990) outlines further factors which may have determined increasingly restrictive asylum policies such as the manifestation of problems with regard to the integration of refugees into the labour market, and the prospect of Swedish membership in the European Union. In this respect Schierup (1990) provides a loose network of national and international factors to explain generosity and restriction of Swedish asylum policy during the late 1980s.

By avoiding the formulation of a deductive hypothesis, Schierup (1990) distances himself from a deterministic approach. However, his handling of social action and social structures remains unclear and inconsistent in the context of pre- and post-investigation. While Schierup's (1990) general assumption about immigration policies relates to the context of social actors (i.e. universalistic symbolic and moral values, economic and social interest) he refers in his analysis of Swedish immigration policy to structural factors such as economic recession and the prospects of Swedish membership in the European Union. But, by correlating these structural factors with immigration legislation without looking at the interactive and interpretative processes of politicians, downwards reduction enters his approach via the back door.

Joly (1996) presents an elaborated system of concepts for the study of asylum policies that are not explicitly linked in a reductionist manner. She identifies domestic policy, foreign policy and ethical factors as the main categories of analysis and attributes a number of sub-concepts to these categories. She incorporates a voluntaristic element into her scheme by arguing that power relations and belief systems of the political actors have an impact upon immigration policy (1996:21). Although Joly (1996) offers a large degree of flexibility her approach is permeated with a number of deterministic

statements. For example, she develops an extremely deterministic picture, prior to the investigation, with regard to the influence of economic factors upon asylum policies.<sup>16</sup>

In time of economic boom policies are generally more generous and relaxed than in times of recession; they appear to meet the interest of employers in an expanding economy and are generally not perceived as competitors threatening the jobs of autochthonous people.

Joly 1996: 21

Joly (1996) tries to avoid reduction; however, she fails to offer a consistent and explicit alternative to reductionism which addresses the structure—agency link. An application of her paradigm to a single case study rather than to separate occurrences of international immigration policies may have led to a further clarification of the relationship between concepts at the level of structure and agency.

Similar to Joly Brochman (1999:16-7) identifies in her analysis of immigration control policy a ‘web of factors’ of which she views as the most central ones the following: historical precedents and traditional patterns of behaviour (such as traditions in terms of humanitarian values and cultural openness towards the outside world), labour unions, parliamentary parties and non-governmental organisations and international forces such as other states’ policies and the character of the international flows in themselves. She argues that immigration policy

[R]eflects tensions and dilemmas related to sometimes contradictory interests and considerations concerning immigration. A number of national and international actors, processes and events provide background premises and represent central forces when it comes to influencing policy outcome...

Brochman 1999:16

In this sense Brochman’s analysis emphasises actors in the making of immigration policy without ignoring the wider national and international context.

Geddes (2000, 2001, 2003) has provided rich information on European immigration policies focusing on the role of organisation and institutions which foster perceptions on migration. His (2003) analysis of German asylum policy identifies a number of factors which placed pressure on the decision-makers and contributed to the change of Article 16 (2): (1) Germany's maxim of 'not an immigration country', (2) the portrayal of asylum-seekers as bogus, (3) the erosion of the status of asylum-seekers prior to the constitutional amendment, (4) the focus upon migration in the political debate following the end of the Cold War and reunification, (5) pressure from the federal states (*Länder*) which faced the problems of accommodating asylum seekers, (6) the growth of the far right which put pressure on the centre-right government and (7) the increase in xenophobic attacks during the early 1990s. Although Geddes (2003) approaches the explanation of a constitutional change in a less deterministic attitude his analysis lacks a theoretical platform which co-ordinates more systematically and methodologically the concrete findings of his empirical investigation. His emphasis upon the perception of issues is good although he does not contrast perceptions of socio-political developments with a more objective analysis of these developments as Freeman (1979) has done.

A number of authors have analysed immigration in the context of rights and the principle of the liberal state. Hollifield's (1992, 2000) 'liberal state's thesis' emphasises the relevance of rights in explaining immigration policy (expressed in legal and procedural terms at the national level and in terms of 'embedded liberalism' at the international level).

At the domestic level, rights are expressed in legal and procedural terms. Norms and principles (such as equality before the law, due process, and so on) are statements about rights. The individual and her relationship to the state become the focus of policy debates. At the international level, rights are expressed in terms of embedded liberalism.

The term was originally applied in the context of international economic analysis (see for example Ruggie 1982). Hollifield's objective is to carry out an economic and political analysis to understand how and why international migration has increased in the postwar area placing the concept of 'embedded liberalism' into the centre of his discussion:

The concept of embedded liberalism is helpful for understanding international migration, because in addition to recognizing the importance of markets in international relations, it offers a more sophisticated theory of international politics. It takes into account the role of power as well as ideas, principles, and norms in the international system. Embedded within the postwar order are liberal notions of rights. Admittedly these rights are a reflection of the politics of the hegemonic states, principally the United States...Rights are doubly important for aliens, who, as noncitizens, are among the most vulnerable individuals in liberal societies.

Hollifield 1992: 26-7

Hollifield's analysis is not only based upon the concept of rights but encompasses the other dimensions of a liberal argument, i.e. free markets and individuals and states as analytical units:

I argue that international migration is closely tied to changes in the international system which reflect the development of a new rights-based politics in democratic states. My argument is liberal in at least three aspects (1) it accepts the possibility of relatively free markets; (2) it gives primacy of place to rights in the political sphere; and (3) it takes individuals and states as the primary units of analysis.

Hollifield 1992: 27

Hollifield (2000) develops a flexible analytical model arguing that institutional and ideological variations between states make it difficult to formulate general hypotheses about the relationship between economic interest and immigration policy. Hollifield (2000: 172) allows for the inclusion of structural factors such as economic and political conditions and 'attitudes and beliefs shaped by national cultures and histories'. In

understanding immigration policy he emphasises the role of rights as an important independent variable. He concludes that

[two] theories and their attendant hypotheses have been advanced: (1) the interest-based argument of Freeman, that states are subject to capture powerful organized interests. These groups have pushed liberal democracies toward more expansive immigration policies, even when the economic conjuncture and public opinion would argue for restriction; and (2) the more comparative, historical and institutional analysis – which I have summarized as the liberal state thesis – that, irrespective of economic cycles, the play of interests and shifts in public opinion, immigrants and foreigners have acquired rights and therefore the capacity of liberal states to control immigration is constrained by laws and institutions.

Hollifield 2000: 150

Hollifield offers analytically a wide range of concepts which are viewed as independent items of analysis and therefore moves away from determinism towards a conceptual framework approach.

Joppke (1999) offers an explanation of immigration policy which centres on the concepts of citizenship and sovereignty within liberal states. He acknowledges like other authors before him (such as Sassen 1996, Walzer 1983 and Zolberg 1981) the contradiction of above nationhood principles and universal human rights in liberal states but suggests that both principles are not exclusionary, i.e. liberal states can be both strong on sovereignty and, nevertheless, be influenced by human rights.

This study takes an empirically grounded middle position between nation-state defenders and nation-state bashers. Neither is the nation-state simply reaffirmed by recent migratory challenges, nor is it undergoing fundamental transformation. We can observe both, a stubborn insistence of states to maintain control over their borders *and* increasing human-rights constraints on traditional sovereignty; a proliferation of membership categories *and* pressures to remould them as unitary citizenship; a persistence of distinct national models of handling (and containing) ethnic diversity *and* multicultural pressures on the monocultural texture of nations.

Joppke 1999: 4

Joppke (1999) avoids making concrete *a priori* assumptions concerning the relationship between human rights, sovereignty and citizenship and leaves it to the individual

historical case to identify the different constellations. He merely suggests that factors such as interest-group pluralism, autonomous legal systems and moral obligations influence different scenarios to what extent liberal states combine nation-state principles with universal principles of human rights (1999: vii). He provides an explanatory framework which is based upon several potentially relevant factors whose specific relationship is not assumed *a priori* but left to be uncovered in empirical studies of immigration policy. With regard to the acknowledgement of social structures and actors Joppke lists explanatory factors which lie both in the structural (e.g. citizenship rights, sovereignty and autonomous legal systems) and the agency realms (interest-group pluralism and moral obligations). However, he does not explicitly deal with the relationship between structures and actors and typically, represents agency via anecdotal content analysis (for further discussion on anecdotal analysis see chapter three). Although he develops a multi-factor explanation of immigration policy he concludes that the German constitution was changed due to a single factor, i.e. a 'unique impairment of sovereignty'.

In the end, Germany has only adjusted its asylum law to the international standard. If this adjustment has appeared drastic and deviated from its usually incremental policy style, it is because an essential function of sovereignty, control of territorial access, has had to be recovered from a unique impairment.

Joppke 1999: 94

I agree that concepts of citizenship and sovereignty are important but they need to be operationalised in a variety of ways both in the structural and in the agency context. One needs to investigate to what extent politicians actually referred in their justifications of immigration policy to issues relating to sovereignty combined with an analysis how different actors actually perceived structural indicators of sovereignty such as Art.16; paradoxes between normative structures such as the principle of sovereignty and the constitutional article do not necessarily lead to change unless actors decide to do so. For

example, my findings of politicians' justification schemes in chapter six highlight that justifications relating to worries about Germany's sovereignty significantly declined between 1991 and 1993 and those politicians from the SPD and the FDP who made the amendment possible did not refer to the issue of sovereignty at all.

To conclude, Joppke (1999) opens up in principle one-dimensional approaches of nationhood and immigration by defining nationhood via citizenship and sovereignty and by including other factors such as moral obligations and pluralism into his explanation. He argues that factors such as autonomous legal systems, interest-group pluralism and moral obligations influence different scenarios regarding the extent to which sovereignty and human rights principles are represented in liberal states (Joppke 1999: vii). He also is more willing to accept that general theories may be substituted with middle-range approaches of nationhood and citizenship. Joppke's approach is therefore the right step towards a methodologically more flexible approach which can deal with a variety of explanatory factors.

Schuster (2002) also emphasises the liberal state's principles in the context of immigration. In the specific context of Germany she argues that the change of Art. 16 (2) was caused by the structure of the German state as a national state, a welfare state and a liberal *Rechtsstaat* (Schuster 2003: 182). The increase in numbers of asylum seekers at the end of the 1980s was construed as a threat to these characteristics of the German state. Schuster (2002) also highlights how the increase of xenophobic attacks in the early 1990s was interpreted by politicians as a consequence of the increase of asylum seekers and a threat to the liberal *Rechtsstaat*. Further, asylum seekers were seen as threatening the welfare state by increasing the social costs (although reunification rather than asylum seekers were the main factor for the increase). Schuster outlines further how asylum seekers were viewed as endangering the national community referring to politicians' concerns regarding the integration of asylum seekers into the nation state.



With regard to agency Schuster (2002) substantiates her argument by using anecdotal content analysis. I outline in chapter three the advantages and limitations of an anecdotal approach and discuss further approaches for the representation of agency.

Solomos (1986, 2002) emphasises the political processes of immigration policy. For example, in his joint publication with Back's (1995) he rejects a narrow analytical framework and advocates an engagement with approaches across the subject area of ethnicity and racialisation .

A key starting point of this research is that there is a need to go beyond a narrow analytical framework and to engage in a dialogue with the research agendas and conceptual frameworks utilised across the whole spectrum of social scientific research in forms of racialisation and ethnicity.

Solomos and Back 1995: x

Solomos offers in his publications detailed analyses of changing political processes which have produced new political discourses and mobilisation around issues of 'race' emphasising actors and structures as reflected, for example, in the following questions guiding his 1995 publication with Back.

How have new forms of mobilisation helped to change the face of political institutions and generated new means of involvement and participation in the political system? What role and impact do minority politicians have within the political system?

Solomos and Back 1995: x

In general Solomos focuses in his publications on agency by analysing political debates and extracting political ideas and values of politicians. He uses anecdotal content analysis to represent agency (politicians' ideas and values) over an extensive period of time (see chapter three for a further discussion of the advantages and disadvantages of anecdotal content analysis). Structural elements of his analysis focus on issues such as state racism and the institutionalisation of immigration controls (see Solomos 2002). In this sense Solomos offers in his case studies of British ethnic relations and immigration

policy flexible frameworks for the analysis of actors and structures which can be classified as conceptual frameworks.

Guiraudon (2001) highlights in her approach the changing role of actors in immigration policy and provides a flexible framework which allows for the acknowledgement of structures and actors in the analysis of immigration policy. She suggests in her analysis of control policy that a de-nationalization of control has taken place since the 1980s and new actors have been included in the implementation and elaboration of immigration policy that cooperate on the local/regional level, the supranational and the societal/private level (Guiraudon 2001: 34). Guiraudon's work is highlighting the importance of actors in the analysis of control policies. 'De-nationalization' is understood as a delegation of competence 'upwards' (supranational level), 'downwards' (local level) and 'outwards' (private sector).

Like artificial tentacles added on to the central body of the state, mayors, employers, individual sponsors, local social services, security agencies, transgovernmental police groups are all urged to reach deep into societies to uncover undocumented foreigners, deter asylum-seekers or verify the claims of visa applicants or candidates for family reunification.

Guiraudon 2001: 31

## 2.5 Summary

This chapter illustrated the limitations of deterministic approaches and evaluated a wide range of more flexible approaches for the study of immigration policy. Freeman (1995a), Kay and Miles (1992) and Parekh (1994) highlight the conceptual, methodological and explanatory limitations of more rigid theoretical approaches. All three identify *a priori* one major variable as being the determinant of immigration policy. This is not to say that factors such as the capitalist economy, the political system or the conception of national identity are not relevant for the analysis of asylum policy but their incorporation into deterministic hypotheses leads to a limited empirical analysis. I argue instead that theorising about immigration policies can be enhanced by

incorporating these factors into a more flexible framework and by acknowledging the perceptions and beliefs of actors as well. Studies by Freeman 1979, Schierup 1990, Solomos and Back 1995, Richmond 1994, Joly 1996, Joppke 1998a and 1998b, 1999, 2001, Brochman 1999, Faist 2000, Guiraudon 2000, 2001, Kastoryano 2002, Geddes 2003 and Schuster 2003 reflect such flexibility. That is, they are not aiming to test a deductively generated hypothesis but offer a variety of conceptual tools that are not linked in a reductionist manner. Although authors offer more dynamic analyses of structures and actors in the immigration context only a few offer concrete theoretical and methodological devices. Richmond (1994), for example, advocates the use of structuration theory although its empirical application has its limitations. Freeman (1979), Faist (2000) and Kastoryano (2002) develop more pragmatic models of investigation which relate to immigration control policy, immigration flows and settlement policy respectively. It is the aim of the next chapter to develop a theoretical model for the study of admission policy or immigration control policy. It is important to stress that the conceptual framework which I develop in the following chapter needs to be understood as an amalgamation of explanatory factors which have been provided by existing studies outlined in this chapter.

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<sup>9</sup> Miles' work is very extensive and I do not claim that the chosen study is a typical and all encompassing representation of his work. However, in the context of my case study which focuses upon asylum policy it provides an important economic perspective of refugee policy.

<sup>10</sup> For a general discussion on reductionism and Marxism see Cohen (1978). It should be noted that inflexibility with regard to the agency—structure link is not necessarily inherent to Marxist approaches; for example, Elster (1982) attempts to incorporate individual choice into a Marxist framework (see Little 1991: 127-32).

<sup>11</sup> National identity is defined by Smith (2001: 18) as 'the continuous reproduction and reinterpretation of the pattern of values, symbols, memories, myths and traditions that compose the distinctive heritage of nations, and the identifications of individuals with that pattern and heritage and with its cultural elements'; for a further discussion see p. 31-2. Brubaker (1992) has emphasised the concept of nationhood in the context of immigration. He views Germany's principles of nationhood as being Volk-centred, pre-political or ethnocultural; in contrast, for example to France which he sees as being institutional, political and assimilationist.

<sup>12</sup> Parekh has been also recently involved in a wider debate on immigration and welfare state principles encouraging diversity in the welfare state and rejecting ideas (presented for example by the Prospect editor Goodhart 2005) that solidarity in a welfare state may be damaged by 'diversity' (see Prospect Magazine May 2005).

<sup>13</sup> Parekh (1994) refers in the context of civil liberty to Ackerman (1980); authors such as Habermas (1992) have also utilised the concept of civil liberty.

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<sup>14</sup> The concept of temporal illusion refers to the fact that the initial phase of the migration cycle may give an impression of restrictive immigration policies that, however, vanishes at a later stage of the migration cycle (settlement, family reunion, chain migration processes).

<sup>15</sup> See Brubaker (1995) for a general critique of Freeman's (1995a) theory.

<sup>16</sup> The relevance of economic factors may fit more obviously in context of migrant labour, however less so in the context of asylum policy.

## **Chapter 3    A theoretical and methodological framework for the study of immigration control policy**

- 3.1            Introduction
- 3.2            The conceptual framework in the context of sociological theory
- 3.3            Outlining the conceptual framework for the study of immigration  
control policy
  - 3.3.1        The wider national and international environment
  - 3.3.2        Politicians' decision-making within the political party system
  - 3.3.3        Politicians' justification schemes
  - 3.3.4        Overview and discussion of the conceptual framework
- 3.4            Analysing justifications via the grounded theory approach
  - 3.4.1        Grounded theory in the context of other content analysis  
approaches
  - 3.4.2        The application of grounded theory in existing research and in my case  
study
  - 3.4.3        The coding procedures within grounded theory
- 3.5            Conclusion

### **3.1    Introduction**

On the basis of the literature review carried out in the previous chapter I will now formulate a theoretical model which aims to provide a methodological strategy to investigate structure and agency in immigration policy encompassing explanatory variables of existing approaches. I will first of all discuss the structure—agency link in the context of Portes (1997), Hollifield's (2000) and Meyers (2000) suggestions to link existing approaches of immigration policy followed by a discussion of flexible theoretical models and the investigation of structure and agency in the context of sociological theory. The second part of the chapter formulates a theoretical model for the study of immigration policy and provides a methodological discussion on the grounded theory approach which is the central methodology for the representation of agency in my case study.

As mentioned in chapter one there is currently a debate taking place where authors criticize the lack of co-operation between different disciplines and theoretical schools of immigration theory. For example, Hollifield (2000) demands more inter-

disciplinarity between areas such as economics, demography, social anthropology, sociology and politics while Meyers (2000) and Portes (1997) focus more closely upon the field of immigration policy. Portes (1997) suggests that new encompassing models of theories in immigration policy are necessary and that the vast amount of empirical data available needs to be linked on a more abstract level to find common trends and developments. Portes (1997) does not elaborate further this point which is vital if one wants to put his suggestion into practice. Meyers (2000) proposes more explicitly co-operation between different *theoretical* schools of immigration theory which he classifies in a limited way as Marxism, liberalism and the national identity approach. He bases his evaluation of existing theories upon their ability to explain state decisions, their clarity of explanatory variables and their ability to explain different immigration scenarios. Meyers' (2000) main aim is to identify the strong points of existing approaches and to amalgamate them in an all-encompassing theory. However, he fails to clarify in detail how theories which are based upon different ontological principles should be amalgamated. How can approaches which emphasise structural explanations be combined with those which focus upon agency? I argue that theories of immigration policy have, as any other theories in the social sciences, a hidden agenda concerning the structure—agency dilemma. This needs to be addressed if one reflects on theorising and searches for new ways of analysing immigration politics (section 3.2 analyses in more detail the structure—agency debate).

If one wants to follow Portes' (1997), Hollifield's (2000) and Meyers' (2000) suggestions of combining thoughts within and between disciplines the question arises whether one can just combine all independent variables available in the existing immigration control theories and test their relevance in the context of a specific case study such as the constitutional change in Germany; formulating hypotheses such as 'the economic recession following reunification was more likely to influence asylum policy

than other factors', or 'the conception of nationhood in Germany was more likely to determine asylum policy than other factors', or 'a limited national sovereignty was more likely to influence asylum policy than other factors' etc. However, such a catalogue of unrelated and contradictory hypotheses would be methodologically unacceptable, as a hypothesis-testing approach is based upon one major hypothesis from which, following operationalisation of the main theme, several *logically* related sub-hypotheses are derived (see Kumar 1996 and Sarantakos 1998). Therefore, the suggestion of linking theories (i.e. competing explanatory factors) may be easier said than done; at least in methodologically acceptable terms. As a hypothesis-testing approach is not capable of dealing with such objectives another methodology needs to be considered which is able to incorporate several explanatory factors in its empirical analysis. Typically, qualitative approaches have this capacity due to the fact that they are not based upon a linear process of rejecting or not rejecting a hypothesis (see Miles and Huberman 1994 and Strauss and Corbin 1998). In the context of qualitative research Miles and Huberman (1994) use the term of conceptual framework to direct and clarify the focus of qualitative research.

A conceptual framework explains, either graphically or in narrative form, the main things to be studied - the key factors, constructs or variables - and the presumed relationships among them. Frameworks can be rudimentary or elaborate, theory-driven or commonsensical, descriptive or causal.

Miles and Huberman 1994: 18

In this sense the objective of a conceptual framework is to offer the necessary flexibility for an inductive methodology as reflected in the following quote:

As qualitative researchers collect data, they revise their frameworks - make them more precise, replace empirically feeble bins with more meaningful ones, and reconstruct relationships.

Miles and Huberman 1994: 20

The above principles of a conceptual framework show that, in methodological terms, it is capable of dealing with multiple explanatory factors which address both agency and structure independently. In this sense it represents a theoretical framework which can incorporate the various approaches of immigration policy. The next section analyses Mouzelis' (1993) recommendation of a conceptual framework in the context of sociological theory.

### 3.2 The conceptual framework in the context of sociological theory

Mouzelis (1993) argues that modern sociological theory should be concerned with the formulation of conceptual frameworks rather than substantive statements or hypotheses. Conceptual frameworks develop flexible research plans which identify relevant concepts prior to research without establishing their concrete causal relationships.

[T]he chief aim of modern sociological theory is not to fashion substantive statements that can be tested against reality, but to construct what Althusser calls Generalities II, and what non-Marxist sociologists call conceptual frameworks or paradigms: i.e. sets of logically interrelated conceptual tools for looking at social phenomena in such a way that interesting questions are generated and methodologically proper linkages established between different levels of analysis. In this sense, sociological theory does not consist of, and does not aim directly at establishing empirically testable hypotheses, it is merely meant to prepare the ground for an empirical investigation of social structures and actors.

Mouzelis 1993: 676

Similar to Mouzelis (1993) Archer (1995) argues that deterministic or hypothesis-testing approaches restrict the empirical investigation of social structures and actors. She argues that deterministic approaches conceptualise the structure—agent link through *upwards* or *downwards* reduction which leads inevitably to epiphenomenalism and ontological rigidity (see Archer 1995).<sup>17</sup>



In a theoretical sense reductionism is inherent to deterministic theory because its ontological basis is formulated in the framework of deductive hypotheses.<sup>18</sup> The main characteristic of hypothesis formulation is the identification of *one* major determining factor from which several 'inferior' concepts are derived (see Kumar 1996 and Sarantakos 1998). This identification of a key variable leads to an *a priori* decision by the researcher/theorist whether to place the concept *either* within the realm of structure (by reducing agents to *träger* or bearers of structures) *or* within the realm of agency (ignoring the significance of structural conditioning). By viewing either structure or agency as the determining concepts, i.e. an exclusive disjunction, deductive hypothesising is unable to deal in an ontologically flexible manner with agency and structure; the investigation and explanation of agency and structure become constrained by the initial hypothesis.

In order to overcome the problems of deterministic theory, supporters of conceptual frameworks renounce the use of deduction as a framework for formulating an ontological base. A multi-dimensional network of related conceptual tools is therefore set against deductive hypothesis formulation to allow for ontological flexibility regarding the interplay between structure and agency which is viewed as being empirically contingent. Archer (1996) formulates a systematic and pragmatic approach for the interplay between structure and agency. By advocating 'analytical dualism' she treats structure and agency as 'irreducible constituents of social reality' (Archer 1996: 679).<sup>19</sup> Archer (1995) develops a so-called 'morphogenetic sequence' which distinguishes in temporal terms between agency and structure: structure is understood as the unintended outcome of past actions that *pre-dates* and *conditions* present action. Equally significant, present action is viewed as *elaborating* (i.e. maintaining or changing) this structure. By using the concept of conditioning rather than determination Archer allows for voluntarism: a voluntarism that is limited or enhanced

by the surrounding structures. In this sense analytical dualism provides the conceptual tools for researching the interplay between social structures and actions which accomplish the general principles of a conceptual framework.

To conclude, the above argues that conceptual frameworks are in methodological and theoretical terms more appropriate than deterministic theories to deal with structures and agency and are also more suitable to fulfil Portes' (1997), Brettell and Hollifield's (2000) and Meyers' (2000) suggestions of linking existing approaches. Archer's (1995) approach offers clear methodological guidance regarding the empirical investigation of social structures and social actors and their interaction. I have not elaborated the theoretical and conceptual discussion of Archer's (1995) suggestion in the wider context of the structure—agency debate; for the objective of my thesis it will be sufficient to identify Archer's (1995) 'morphogenetic sequence' as a methodological device for the study of actors and structures in the context of immigration policy.

### **3.3 Outlining the conceptual framework for the study of immigration control policy**

This section develops a conceptual framework for immigration policy in general that will be utilised to guide my research on the amendment of Art. 16 (2) of the German constitution. Before outlining the conceptual framework I should briefly justify the need for a conceptual framework to target immigration policies in general rather than so-called economic or political immigration in particular. As we have seen, the majority of theories explaining immigration policies focus, in an extensive sense, upon either those policies that target so-called economic migrants (see Castles and Kosack 1973, Freeman 1979 and 1995a and Parekh 1994) or policies that are directed towards political migration (see Joly 1996 and Schierup 1990) and/or forced migration (see Indra *et al.* 1999 and Castles 2003).

Are there sound conceptual and methodological reasons for applying different theories to different types of migration movements? The distinction seems unreasonable on several counts. First, it has been extensively shown that a clear-cut distinction between economic and political migration movements cannot be made (see Castles and Miller 1998, Joly 1992 and Zolberg 1989). Secondly, immigration policies that target so-called economic or political migration movements are not necessarily driven by distinct explanatory factors. The stereotypical assumption that labour migration policies are driven exclusively by economic factors while refugee policies are based upon the protection of human rights is not necessarily correct in either conceptual or empirical terms.<sup>20</sup> For example, human rights aspects have been incorporated into regulations developed by the International Labour Organisation dealing with labour migration, while International Refugee Instruments have been influenced by motives of sovereignty and national interest alongside human rights (see Hathaway 1991).<sup>21</sup> In empirical terms, research by Kay and Miles (1992) and Schierup (1990) have highlighted how interests other than those of a humanitarian type can guide refugee policies. On the other hand, family reunion policies included in labour migration policies provide an explicit human rights element to European labour migration policies since the 1970s (e.g. Joppke 1999). It follows from this that an ontologically flexible approach for immigration policies cannot focus *a priori* upon policies towards *either* so-called economic *or* political migration movements, but instead needs to target immigration policies in general. This should not mean that I intend to develop a theory which can deal with all aspects of immigration policy. Instead, my thesis deals with *admission or immigration control policy* rather than settlement policy, origins of immigration or directionality and continuity of migrant flows (see Hammar 1985 and Portes and Bach 1985). In this sense I agree with Portes (1997) that an overall encompassing theory of immigration is not feasible. Although my case study deals with admission policies towards asylum seekers

rather than other migrants, the conceptual framework will apply to all types of migrants on a very general level as conceptual and empirical overlaps between different migrants cannot justify distinct approaches *a priori* as outlined above.

The conceptual framework presented in the following section is based on the following three interdependent layers of analysis: (1) the study of wider national and international structures that condition decision-making processes on immigration via politicians' perception of surrounding structures, (2) the examination of the interplay between politicians' actions and party structures and (3) the systematic analysis of politicians' justifications for their decision-making on immigration policies

### **3.3.1 The wider national and international environment**

The first layer of the conceptual framework for immigration policies relates to wider national and international structures such as the socio-economic, political, legal and cultural spheres. The national and international environment is understood as *conditioning* structures in which decision-making takes place. The analysis of these structures deals with their *characteristics* rather than their *elaboration* (i.e. maintenance or change by actors) as their wider analysis is not in the centre of my thesis. The *characteristics* of national and international structures have been the main focus in existing studies as outlined in the previous chapter and the conceptual framework will incorporate variables which have been identified as being relevant by existing immigration studies, e.g. economic conditions (Schierup 1990, Kay and Miles 1992 and Joly 1996), the political system of liberal democracies (Freeman 1995a, Perlmutter 1996), conceptions of national identity (Parekh 1994, Joppke 1999, Kastoryano 2002 and Schuster 2003), issues relating to sovereignty (Castles and Miller 1998, Sassen 1998, Joppke 1999, Geddes 2003), domestic and foreign policy issues (Joly 1996), rights (Joppke 1998a, 2001, Hollifield 1992, 2000), ethical concerns (Joly 1996 and

Gibney 2004) and the role of organisations and institutions regarding the perception of asylum seekers (Geddes 2003). In general studies do not elaborate how these structures are perceived and represented by politicians, the media and the general public. In this respect my thesis follows Freeman (1979) and advocates the acknowledgement of politicians as *mediators* of structures. Consequently, the emphasis of my analysis of structural conditions lies as much on the 'objective' analysis of structural conditions as on politicians' representations of these structures.

### **3.3.2 Politicians' decision-making within the political party system**

The second layer of the conceptual framework focuses upon political action and structures within the political party system. Following analytical dualism this section prepares the empirical research of (1) structures within the political system which *conditioned* politicians' decision-making on immigration and (2) the way these structures were elaborated (i.e. maintained or enhanced) by politicians. First of all one needs to define social structures further. Mouzelis (1995) distinguishes between *social games* (interactive structures of collectivities) and *institutional rules* (normative structures). I apply social games to communication processes between politicians of the same party or of different parties which lead to the formulation of 'rules' relevant for immigration policies. Institutional rules are understood in the context of immigration policy as general rules concerning administrative and ideological concerns of the political party, and more specifically guidelines relating to the party's position on immigration. Thus existing social games and institutional rules which *conditioned* the process of immigration policy in Germany at the beginning of the 1990s need to be identified first of all.

Next the *elaboration* of these structures by politicians should be analysed identifying who has maintained or changed existing games and rules in a specific

context and analysing the causal factors of change or maintenance. Mouzelis suggests that there is a tendency that the hierarchical position of actors determines the extent to which they play an active role in challenging rules and games or not (Mouzelis 1995: 120-1).<sup>22</sup> He claims, for example, that lower hierarchically positioned actors within an organisation generally tend to take rules for granted. Mouzelis' (1995) suggestion is questionable in the context of immigration policy. Münch (1992) and Perlmutter (1996) have highlighted that lower hierarchies of political parties within the federal system initiated changes to rules on immigration; this is also confirmed by findings of my case study (see chapter five). Thus, although the concept of social hierarchies is a vital concept of analysis, the relationship between social hierarchies and rules and games cannot be established *a priori*; this relationship should be left to the empirical realm. A further characteristic of politicians relates to their ideological position, derived perhaps from subjective justification schemes, or from objective criteria such as their membership of groups (inside or outside the political party) with specific ideological connotations. Again, no *a priori* assumptions can be made between the link of politicians' ideological positions and their relationship to the elaboration of games and rules. It is the task of the empirical analysis to investigate to what extent politicians with similar or dissimilar ideological backgrounds participate in games and maintain or challenge rules on immigration policies.

To sum up, the second layer of the conceptual framework prepares the investigation of the interplay between politicians and structures within the political party by applying the principles of analytical dualism. First of all, the structural context that *conditions* politicians' decision-making on immigration policies is studied by applying Mouzelis' (1995) concepts of social games and institutional rules. Next, the question of who, how, when and why these structures are *elaborated* needs examining. Instead of formulating some tentative hypotheses regarding the impact of hierarchical and

ideological characteristics of politicians upon the process of elaboration the framework provides merely conceptual tools to investigate politicians' characteristics and influences in a particular empirical context. Thus the relationship between politicians' positional and ideological characteristics and the maintenance or change of party structures is left to the empirical realm.

### **3.3.3 Politicians' justification schemes**

The third layer follows Freeman (1979) and places emphasis upon the politicians' own explanations for their actions with regard to immigration policies. Politicians' justification schemes taken from parliamentary debates or interviews serve here as a methodological basis.<sup>23</sup> Existing studies tend to represent politicians' justifications either by using anecdotal content analysis or by applying a presupposed set of categories such as racism, nationalism and/or discrimination. This research advocates a content analysis that is based upon the grounded theory approach whereby categories emerge from the text and the emphasis lies on the *interrelationship* between categories and themes (see Strauss and Corbin 1998 and section 3.4 for a detailed methodological discussion). Although the proposed content analysis reflects a theory-building rather than a theory-testing approach, a certain amount of instrumentation (conceptual and methodological preparation) of the research process is necessary prior to investigation (see Miles and Huberman 1994). Analytical tools for politicians' justification schemes that can structure the investigation can be found in approaches of rational choice (and here especially those that follow 'procedural rationality' rather than 'substantive rationality').<sup>24</sup> Decision-making processes are conceptualised in rational choice as an interplay between (1) *goals*, (2) *normative principles* and (3) *perception of the environment* which will be defined further in the following section (see Sen 1982 and Simon 1985).

(1) *Goals* refer to both egoistic and altruistic matters (see Sen 1982 and Simon 1985) which are relatively short term and prone to change according to shifting structural circumstances. For example, typical goals that associate German asylum policies in the early 1990s with a ‘danger to national stability’ are: the reduction of ‘overload’, ‘deviance’, ‘invasion’ and ‘democratic danger’.<sup>25</sup> While politicians who do not link asylum policies with national stability refer to these goals either in a critical manner and/or develop their own goals which surround issues such as the welfare of asylum-seekers and beneficial aspects of asylum seeking.

(2) *Normative principles* refer to fundamental value schemes which are less easily challenged by changes in the structural realm, e.g. humanitarianism, religious beliefs, ideological convictions and definitions of national identity. The case study will show how politicians managed to combine short-term goals of implementing more restrictive asylum policy with the normative principle of humanitarianism.

(3) The *perception of the environment* relates to the politicians’ conceptualisation of characteristics of their surrounding structures and their relationship to immigration movements. These structures can refer to the closer and wider national and international context such as the national economy, the far right and other political movements or the European harmonization of immigration policies. This part of the analysis of immigration policies is a response to those studies that merely correlate social structures with immigration policies without emphasising the variety of actors’ perceptions of these structures.<sup>2627</sup>

### **3.3.4 Overview and discussion of the conceptual framework**

The following offers an overview of the conceptual framework which has been chosen as a theoretical and methodological device for the case study of the amendment of Art. 16 (2) of the German constitution in 1993. Figure 3.1 reflects the general structure of the



conceptual framework. As outlined above the first layer of the framework investigates to what extent politicians' decision making on the constitutional amendment has been enhanced or limited by the wider national and international environment. Relevant variables identified by existing research are integrated into this layer. Special emphasis will lie upon the politicians as mediators between the wider national and international structures and immigration policy. Rather than correlating macro data I emphasise the methodological relevance of politicians' beliefs and perceptions of these wider structures (see chapter four). The second layer of the conceptual framework provides information about the closer context of the political party system and provides a closer analysis of the link between agency and structure. The analysis in this layer focuses on two dimensions: developments in the structural context of the political party system (looking at interactive and normative structures) and the way politicians maintained or changed the structural context (see chapter five). The third layer of the conceptual framework focuses on the politicians' justification and explanation of immigration policies and advocates a grounded theory analysis of their justification schemes. By applying the grounded theory approach it prepares (in an ontologically flexible manner) the study of social action from the actors' points of view. I elaborated the empirical study of beliefs by applying a grounded theory approach which emphasises the semantic links between concepts (see chapter six).



methodological devices for this link. Richmond (1994) whose approach I have discussed in more detail in chapter two offers a detailed theoretical account suggesting structuration theory. Faist (2000) offers a detailed framework for the analysis of international migration flows which entails three levels of analysis. His micro level focuses upon the ability or 'freedom' of migrants to move or stay in their home country; the meso level represents the social and symbolic ties of immigrants and the macro level investigates the political-economic-cultural structures in the national and international environment. Although there are some similarities between Faist's (2000) and my framework with regard to the acknowledgment of distinct levels of analysis for the investigation of structures and individual, they are significantly distinct and not interchangeable: firstly, the proposed framework in this thesis differs from Faist's (2000) model with regard to the subject of investigation; he is focusing on migration flows while I deal with admission or immigration control policy as outlined in chapter one. Further, the conceptual framework outlined above is specifically emphasising the *link* between individual and structural analysis; although Faist (2000) offers in his micro and macro levels independent analyses of agency and structure respectively, his meso level is not linking individual with structural analysis but focuses upon further structural factors, e.g. symbolic and social ties. In this respect Faist's three different levels of analysis apply specifically to his subject area of migration flows and cannot be applied to the area of admission policy; confirming Portes' (1997: 810) opinion that theoretical models need to focus on specific fields of immigration theory to avoid theoretical unification 'at a highly abstract and possibly vacuous level'.

The proposed framework sets principles of ontological flexibility and analytical dualism against reductionism and ambiguity. Ontological flexibility is represented in the formulation of conceptual tools prior to the empirical analysis without determining their relevance or analytical relationship (of cause or consequence) in a particular empirical

incidence. For example, hierarchical and ideological characteristics of politicians are identified as potentially relevant for their role in the elaboration of party political structures. However, the way in which these characteristics impact upon immigration policies in a particular historical and geographical setting is left to the empirical analysis. In this sense, the empirical analysis is not guided by presuppositions and findings are not in danger of simply reflecting initial hypotheses rather than empirical evidence. Ontological flexibility should not be misunderstood as a *tabula rasa* (see Flick 1998) approach as some general guiding concepts or categories are necessary to prepare the empirical analysis. In this sense my approach reflects a qualitative approach with a fair amount of instrumentation. For example, the third layer borrows analytical tools from rational choice approaches (i.e. goals, normative principles and perceptions of environment) that have dealt with decision-making processes of individuals and groups. These concepts serve as a broad analytical structure for the content analysis of politicians' justification schemes, whereby the particular themes and linkages relating to these concepts will emerge from the empirical investigation (i.e. text analysis) using a grounded theory approach.

The principles of analytical dualism clarify the relationship between social action and social structure without either leading to reductionism or to a situation where agency *sinks* into structure or vice versa (Archer 1995: 65). Instead, analytical dualism offers a co-ordination for the analysis of structure and action which follows a temporal order, i.e. existing structures *condition* social action which leads to an *elaboration* of these structures via interaction. Such a temporal order avoids reductionism and allows for a systematic empirical analysis of structures and actions as irreducible elements of investigation (Archer 1995: 14). The proposed framework provides, therefore, a basis for the independent analysis of structure and agency and the interaction between them: structure is investigated independently in the first layer (the wider national and

international environment) and the second layer (the closer environment of the political party system), agency is investigated independently in the first (focusing mainly on the perception of politicians of the wider environment in the context of the immigration debate; other actors such as journalists and the general public are also included in this section); the *interlink* between agency and structure is developed on several levels: firstly, the wider structure is linked to the perceptions of this structure by politicians in the first layer, secondly, the role of agency (i.e. politicians) regarding the elaboration (maintenance or change) of closer political structures is investigated in the second layer. In this sense the conceptual framework approach in combination with analytical dualism guarantees a systematic and flexible investigation of structures and actions relating to the elaboration of immigration policies which leads to the formulation of substantive theory for a particular specific case study after investigation. The following will discuss in more detail the methodology of the grounded theory approach as it represents the central methodology utilised in my case study to represent agency.

### **3.4 Analysing justifications via the grounded theory approach**

The grounded theory approach has been applied to the analysis of politicians' justifications (see chapter six for detailed discussion of findings). Grounded theory is a qualitative approach which deals with the coding of text material 'with the aim of categorizing and/or theory development' (Flick 1998: 179). Its emphasis lies upon theory which is grounded in data and more specifically upon *emerging* categories and the *relationship between* codes (reflected in the axial and selective coding phases) (see Glaser and Strauss 1967, Strauss and Corbin 1998, Glaser 1992). Although Glaser and Strauss formulated the basis of grounded theory in their 1967 publication, they evolved the approach in different ways. Strauss and Corbin (1990 and 1998) utilise, for example, causal paradigms (denoting causal conditions, context, action/interactional strategies

and consequences) for the analysis of the relationship between categories; while Glaser (1992) criticises Strauss and Corbin's approach for forcing data into preconceived frameworks which limits the formulation of grounded theory labelling their approach as 'full conceptual description' rather than grounded theory. I have applied Strauss and Corbin's (1998) coding procedures to the analysis of politicians' justifications and utilised their strategies in a flexible manner by formulating frameworks which emerged from the text. In general I do not agree with Glaser's (1992) suggestion that Strauss and Corbin's (1990) approach moves towards quantitative methodology whereby theory is based on preconceptions rather than grounded data. Although Strauss and Corbin (1990) formulate a variety of strategies to structure data they remain flexible with regard to the application of coding procedures and their overall approach remains theory building rather than theory testing leaving sufficient space for authors to have 'varying views on the use of grounded theory and ... [to] become their own methodologists to some degree' (Glaser 1994: 1). Section 3.4.1 discusses the grounded theory approach in the context of other qualitative text analysis approaches and highlights why it has been chosen for the analysis of politicians' justifications of immigration policy. It is currently widely used amongst researchers from backgrounds such as health, education but also business and political studies as outlined in section 3.4.2. Section 3.4.3 provides an overview of its coding procedures.

### **3.4.1 Grounded theory in the context of other content analysis approaches**

This section provides an overview of existing approaches in text analysis. Quantitative approaches of text analysis develop *a priori* a set of categories which are applied to the text as, for example, discussed by Weber (1985) and Krippendorf (1980). A quantitative method testing a set of pre-given categories would have not been suitable for my analysis of politicians' justifications as (i) existing research has not provided coding lists

and (ii) I was especially interested in the *semantic links* between justifications which cannot be detected via quantitative analysis. The following will outline in more detail the variety of qualitative approaches of text analysis and how the grounded theory approach relates to them.

Since the 1980s a large number of approaches have been developed for qualitative text analysis and a number of authors have provided taxonomies for them which are structured via different dimensions such as data collection methods, research purpose and data analysis. Flick (1998), for example, distinguishes between approaches which reduce the original text during the data analysis and those which aim to reconstruct the text leading to the augmentation of text material. He classifies the grounded theory as an approach which reduces text material while conversation, discourse and narrative analyses reconstruct and augment text material. Tesch (1990) offers a very comprehensive taxonomy of qualitative approaches structured by their research purposes. As he also mentions explicitly the grounded theory approach I will utilise his classification scheme to discuss in more detail how the grounded theory approach relates to other qualitative approaches and why I have chosen the grounded theory approach for my case study. Tesch (1990) distinguishes between qualitative approaches which investigate (1) 'the characteristics of language' such as discourse analysis, structural ethnography and ethnomethodology, (2) 'the discovery of regularities' such as grounded theory, transcendental realism and action research and (3) 'the comprehension of the meaning of text/action. Tesch (1990) classifies the grounded theory approach under the sub-dimension of 'identification (and categorization) of elements, and exploration of their connections' which applies to my research intentions. I was especially interested in the way politicians managed to combine humanitarian themes with increasingly restrictive measures for asylum seekers. Transcendental realism, ethnographic content analysis and event structure analysis were further

approaches which were listed by Tesch (1990) under the same sub-dimension as the grounded theory approach. Due to the nature of my data (archival data) and the objective of analysing justifications ethnographic content analysis and event structure analysis were not suitable approaches for data analysis. Transcendental realism which, for example, is represented by Miles and Huberman (1994: 4) would have offered another suitable approach and in many ways Miles and Huberman's (1994) chapters on coding and pattern coding displays some overlaps with the grounded theory approach. Lofland and Lofland's (1995: 186-193) coding suggestions also display a sensitive approach towards the development of categories and connections between categories. Their 'housekeeping' coding is especially useful to provide an initial overview and applies to the open category procedure in grounded theory. What Lofland and Lofland (1995) define as 'analytic coding' can be associated with axial coding in grounded theory although Strauss and Corbin provide more detailed strategies for this section (see 3.4.4). The grounded theory approach (rather than Miles and Huberman's 1994 or the approach by Lofland and Lofland 1995) was selected for this thesis because of its detailed discussion of strategies to identify *emerging* categories and the *relationship* between categories which were vital to decipher and reduce the large amount of data available. Secondly, the grounded theory approach is the basis of a number of computer programmes (e.g. NVivo or Atlas-ti) which also offered links to SPSS; again due to the large amount of data a computerised analysis was necessary to reduce text and to identify relevant themes and relationships. I utilised the computer programme Atlas-ti to code the parliamentary debates and linked the findings in Atlas-ti to SPSS where appropriate.

Interestingly none of the taxonomies mentioned anecdotal content analysis as methodology of qualitative text analysis which may be due to the fact that it is not a method which follows specific methodological rules and strategies. Anecdotal content



analysis is, however, the typical strategy to represent agency in the immigration context (see, for example, Kay and Miles 1992, Joppke 1999, Schuster 2003). The following will discuss to what extent anecdotal analysis can play a role in the representation of agency and where its methodological limitations and risks lie.

As mentioned above anecdotal analysis has been used by a number of authors to represent agency in the immigration context. There are advantages and disadvantages connected with the anecdotal approach to represent agency which will be briefly outlined. On the one hand anecdotal analysis offers the possibility to provide an overview of agency (e.g. actors' perceptions, values and goals) which can stretch over a longer period of time and is less time consuming than a detailed content analysis of specific text material. On the other hand anecdotal content analysis has methodological risks and limitations attached. It is easier to incorporate bias into this methodology as the selection process of quotes is not controlled by any explicit rules: authors can substantiate with a few selective codes already established assumptions which were formed prior to the investigation (omitting with more or less intention those which do not reflect these assumptions). In that respect there is no transparency to what extent the approach follows a quantitative (theory-testing) or qualitative (theory-building) rationale. I do not argue that the use of anecdotal content analysis is necessarily invaluable in the study of immigration policy. Both a more in-depth approach of content analysis and an anecdotal analysis approach are complementary rather than exclusionary methodologies which fulfil different analytical objectives and which have specific benefits and limitations. Issues such as the research objective, the geographical and the historical dimension of the research of immigration policy will influence the choice of methodology for representing 'agency'. In chapter two I have criticised Kay and Miles (1992) for viewing agency as a deduction of structure and using anecdotal analysis to represent agency; I argued that anecdotal analysis is in this context utilised to

substantiate *a priori* assumptions relating to structural factors rather than discovering new insights into agency. In this sense Kay and Miles' (1992) use of anecdotal analysis is distinct from Joppke's (1999) and Schuster's (2003) application of anecdotal analysis who offer more flexible frameworks of analysis where the 'pressure' or 'risk' of matching agency with *a priori* assumptions is less immanent.

In summary, the grounded theory approach rather than other text analysis approaches was selected to suit the research purpose (i.e. the deduction of text material and the identification of links *between* categories), the type of data available (archival data) and the compatibility with computerised text analysis.<sup>28</sup> This does not mean that other approaches are not useful for the representation of agency in the context of immigration research. Future studies may, for example, investigate in more detail the characteristics of language utilised in immigration debates (applying discourse analysis or ethnomethodology) or apply action research approaches in the context of decision making processes of immigration policy.

#### **3.4.2 The application of grounded theory in existing research and in my case study**

Grounded theory has been applied in a variety of research contexts and here especially health (e.g., Berends and Johnston 2005, Charmaz 1994, Duggleby and Wright 2005, Hayter 2005, Petrella *et al.* 2005), education (e.g. Bryce and MacMillan 2005, Keay 2005, Mullen 1994) and more recently in the area of management and financial studies utilising archival data and/or interviews as their data basis (Howell 2000, He and Balmer 2005, Larsson *et al.* 2005, McCracken 2005). Authors utilise the grounded theory approach in a variety of research settings; applying it, for example, to interview data, archival data, combining it with various data collection methods or linking it to quantitative data analysis. For example, Larsson *et al.* 2005 apply the grounded theory approach to analyse interviews with 22 commanders and 6 of their subordinates and to

identify relationships and interaction processes between these two groups. Bryce and MacMillan (2005) analyse the interviews of 21 students to compare the effectiveness of different teaching methods in physics. Keay (2005) combines the grounded theory approach with a variety of data collection methods such as case logs and structured interviews. Howell (2000) analyses EU member states' life insurance documents and legislation applying the three coding phases of the grounded theory approach which will be discussed further in section 3.4.3.

As mentioned above authors have utilised the grounded theory in various research contexts and have 'varying views on the use of grounded theory and ... [have] become their own methodologists to some degree' (Glaser 1994: 1). The same applies to my application of the grounded theory approach. Although I have followed the coding procedures I emphasise especially the link between the grounded theory method and statistical analysis; due to the large amount of data I had to apply statistical analysis to reduce data and select dominant categories for the axial coding phase. This link between qualitative and quantitative methods is fully supported by Strauss and Corbin (1998) as reflected in the following quote:

Qualitative and quantitative forms of research both have roles to play in theorizing. The issue is not whether to use one form or another but rather how these might work together to foster the development of theory. Although most researchers tend to use qualitative and quantitative methods in supplementary or complementary forms, what we are advocating is a true interplay between the two...once relevant concepts and hypotheses have emerged from and validated against data, the researcher might turn to quantitative measures and analysis if this will enhance the research process...such a task calls for sensitivity to the nuances of data, tolerance of ambiguity, flexibility in design, and a large dose of creativity.

Strauss and Corbin 1998:34

I was interested in the generalised representation of the political party as a whole rather than individual accounts of politicians. For that reason the collection of a complete data

set (i.e. all of politicians' contributions made in the parliamentary debates in 1991 and 1993) was thought to be more apt than the selection of a few cases which were ambiguous to what extent they could be generalised to the overall party. Although I utilised quantitative tools to summarise the findings of the first coding phase it is important to highlight that my approach overall remained theory building and the coding process followed grounded theory rules and concepts and categories *emerged* from the text.

### 3.4.3 The coding procedures within grounded theory

The following outlines the coding procedures of the grounded theory approach which are at the centre of grounded theory analysis (as suggested by Strauss and Corbin 1998). Three coding phases can be distinguished: open coding, axial coding and selective coding. Open coding reflects elements of the traditional phase of content analysis whereby concepts and more abstract categories are developed from the text.

Broadly speaking, during open coding, data are broken down into discrete parts, closely examined, and compared for similarities and differences. Events, happenings, objects, and actions/interactions that are found to be conceptually similar in nature or related in meaning are grouped under more abstract concepts termed "categories".

Strauss and Corbin 1998: 102

While the development of *concepts* reflect in the clearest sense the inductive process of qualitative research (often representing *in vivo* codes, i.e. terminologies taken from the respondents themselves), the identification of *categories* and the formulation of *properties* and *dimensions* incorporate more explicitly elements of deduction. Properties are defined as the characteristics of a category such as extent, height, length, duration, while dimensions refer to the range along which these characteristics vary, i.e. high—low, long—short (Strauss and Corbin 1998: 101).

This [conceptual ordering] refers to the organization of data into discrete categories (and sometimes ratings) according to their properties and dimensions and then using description to elucidate those categories... Researchers attempt to make sense out of their data by organizing them according to a classificatory scheme.

Strauss and Corbin 1998: 19

The development of these categories and dimensions is a mixture of induction and deduction. Categories have been initiated by the text; however, their properties and dimensions have not only been based upon the text but also upon analytical tools such as the *flip-fop technique* and the *systematic comparison* of two or more phenomena (Strauss and Corbin 1998: 94-8).<sup>27</sup> Properties and dimensions found in the text were similarly complemented so that all alternatives were considered in the list (see Appendix 6.1). For example, the concept of ethnic nationalism was discovered in the text, while the other concepts such as communitarian and liberal nationalism were added via deduction to complete the category of nationalism. The deductive process was necessary not only to highlight contexts in which the codes may have been used but especially to discover contexts which politicians did *not* make use of. My findings in chapter six, for example, highlight how politicians across all parties failed to discuss asylum in a positive context.

The second coding phase, axial coding, develops the deductive process further by establishing the analytical relationship *between* categories.

The process of relating categories to their sub-categories, termed “axial” because coding occurs around the axis of a category, linking categories at the level of properties and dimensions.

Strauss and Corbin 1998: 123

Categories of a particular data unit such as an interview or a speech by a politician are applied to a general paradigm model to identify their relationship to each other. The paradigm differentiates between the following concepts: cause, context, intervening conditions, action/interaction and consequence.

Beginning with analysis of the first interviews, the researcher cannot help but notice how concepts relate to each other. In explicating these relationships, the researcher begins to link categories with their sub-categories, that is, to notice that these seem to be conditions – these actions/interactions, these consequences. We call these initial hunches about how concepts relate “hypotheses” because they link two or more concepts, explaining the what, why, where, and how of a phenomenon.

Strauss and Corbin 1998: 135

As mentioned before the *link* between categories was one of the reasons why I utilised the grounded theory approach. I was especially interested in the way politicians linked their more volatile goals of asylum policy with established normative values such as humanitarianism. The findings in chapter six will show that politicians (across political parties and voting behaviour on constitutional amendment) did not differ significantly with regard to their emphasis on the dominant themes of the asylum problem and humanitarianism. However, the way they linked these central themes to specific sub-themes distinguishes politicians from different parties and different voting behaviour on the amendment.

The final coding phase, selective coding, builds a general theory that reflects the paradigm models of the individual case studies. Selective coding refers to

‘the process of integrating and refining categories...if theory building is indeed the goal of a research project then findings should be presented as a set of interrelated concepts, not just a listing of themes. Relational statements, like concepts, are abstracted from the data. However, because they are interpreted abstractions and not the descriptive details of each case (raw data), they (like concepts) are “constructed” out of data by the analyst.

Strauss and Corbin 1998: 143-145

The selective coding phase was relevant for my case study as I needed to generalise the findings relating to party profiles and voting behaviour on the amendment to understand which variables had an impact on decision making processes leading to the support of

the constitutional amendment. Special focus was on those politicians (supporters of SPD and FDP) who changed their mind shortly before the final debate on the constitutional amendment (see chapter six for detailed findings).

In general, the three coding phases of the grounded theory approach reflect a qualitative approach which is characterised by theory-building, formalisation, a continuous interplay between induction and deduction, flexibility and systematic inquiry.

The value of the methodology we are about to describe lies in its ability not only to generate theory but also to ground that theory in data. Both theory and data analysis involve interpretation, but at least it is interpretation based on systematically carried out inquiry.

Strauss and Corbin 1998: 8

### 3.4 Conclusion

This chapter has formulated a conceptual framework for the study of immigration policy and has discussed the grounded theory approach which has been utilised to analyse politicians' justifications in chapter six. The conceptual framework approach (in connection with Archer's analytical dualism) has been identified as an appropriate theoretical and methodological framework for the study of structure and agency in the immigration context. The grounded theory approach has been selected for the case study to accommodate the type and amount of data available and to analyse in detail the relationship between categories (i.e. politicians' justifications). It has been highlighted that other approaches may be also suitable to represent agency in the immigration context and especially the advantages and disadvantages of anecdotal content analysis (utilised by the majority of immigration studies) have been discussed in more detail.

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<sup>17</sup> Downwards reduction neglects agency in favour of structure (holism) while upwards reduction reflects the opposite, i.e. the focusing upon agency while neglecting structure (individualism) (Archer 1995: 6).

<sup>18</sup> A critique of deductive hypothesis formulation is well documented in methodological literature (see, e.g., Sarantakos 1998: 137).

<sup>19</sup> The notion of analytical dualism can be tracked back to work of Lockwood (1964). Archer (1982, 1995, 1996) bases her critique of synthetic solutions to the structure—agency problem upon Bhaskar who argues that '[p]eople and society are not related "dialectically"'. They do not constitute two moments of the same process. Rather they refer to radically different things' (Bhaskar 1989 in Archer 1995:79).

<sup>20</sup> 'Human rights' is a contested concept and its definition is affected by factors such as culture, national traditions, political interest and philosophical traditions (see Bouandel 1997). Bouandel (1997) highlights that there is no precise definition of human rights; while some authors argue that human rights are political rights, others argue that they are moral rights. Bouandel (1997) argues that it is common to discuss human rights in a hierarchical manner whereby civil and political rights are seen as most important human rights, followed by economic and social rights. I will define human rights as political rights, understanding human rights as 'entitlements for everybody' (Bouandel 1997) and follow Freedon (1991: 7, cited in Bouandel 1997) who argues that '... a human right is a conceptual device, expressed in linguistic form, that assigns priority to certain human or social attributes regarded as essential to the adequate functioning of human being; that is intended to serve as a protective capsule for those attributes; and that appeals for a deliberate action to ensure such protection'. I am critical of the hierarchical order of human rights and associate human rights *equally* with civil, political, social and economic rights. Especially in the context of asylum seekers and refugees it is important to place emphasis upon all dimensions; otherwise one provides ground to violate those rights which are defined as being less important (and especially social and economic rights of asylum seekers are currently violated by EU governments). If one follows the definition by Freedon (1991) and focuses on attributes which are regarded as 'essential for the adequate functioning of human being', economic and social rights need to be regarded as being equally important as political and civil rights.

<sup>21</sup> For example, the ILO shows that labour migration is embedded into a humanitarian framework, insofar as the ILO developed a number of conventions that establish humanitarian guidelines for migrant workers, e.g. concerning the reunification of families (see Goodwin-Gill 1989: 534). Although refugee or asylum legislation reflects universal humanitarian concerns (e.g. the *non-refoulement* clause in the Geneva Convention) issues of national sovereignty may override these concerns (see Goodwin-Gill 1989; Joly 1996: 17- 8; Kimminich 1987; Weiner 1996). This infiltration with national sovereignty is apparent, for example, in the drafting process of the International Human Rights legislation. Proposals for the Universal Declaration of Human Rights (1948) initially incorporated the right for asylum-seekers to *obtain* asylum. However, the term 'obtain' was replaced in the final draft by the terms of '*right to enjoy*' or '*seek*' asylum. Attempts to integrate asylum seeking into a separate Convention also failed. Within the European context, the right of asylum did not become part of the European Convention for Human Rights and the asylum declaration that passed in 1977 is merely a *recommendation* for the member states to continue the open attitude towards asylum policies so far (see Kimminich 1987).

<sup>22</sup> Mouzelis (1995) makes the assumption that actors with different positional/hierarchical characteristics hold specific relationships to institutional rules and games:

Occupants of subordinate positions tend to relate to games played at higher organizational levels in terms of syntagmatic dualism (since as single individuals they cannot affect them significantly); whereas they relate to rules initiated from above predominantly in terms of paradigmatic duality (since they are supposed to, and often do, follow them in taken-for-granted manner). The opposite combination (syntagmatic duality and paradigmatic dualism) obtains if one looks at how occupants of superordinate positions relate to games and rules respectively on lower organizational levels.

Mouzelis 1995: 120-1

<sup>23</sup> The study of justification schemes relates to representations of actors' belief systems and there may be a discrepancy between representations and actual constituting elements of decision-making processes. It is neither assumed that politicians' representations can always be taken for granted nor is it proposed that their justifications can never be taken for granted, as suggested by Edelmann (1988) and Spector and Kitsuse (1987). Instead of *a priori* assumptions about the truth of politicians' representations of their thoughts, the empirical analysis may discover possible discrepancies between different justification systems and between justifications and actions which may reflect motives for political action which had been not made explicit.

<sup>24</sup> The substantive approach investigates individual action by applying a framework that is based upon egoistic utility-maximisation within a perfect environment. Procedural rationality focuses on both egoistic and altruistic goals and the actor's perception of the environment (see Simon 1985).

<sup>25</sup> The category of 'overload' refers to representations of immigrants as a socio-economic burden and relates to issues Joly (1996) listed under social costs and economy. 'Deviance' refers to issues which associate immigrants within a context of criminal activity. 'Invasion' relates to justification schemes



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which exaggerate the numbers of immigrants. 'Democratic danger' refers to arguments where immigration is blamed for political instability, e.g. an increase in political extremism and terrorism.

<sup>26</sup> Yarnold's (1990) study of American refugee policies is a typical example of an approach that correlates recognition rates with economic and political developments in the United States. The use of recognition rates as an indicator for immigration policies is doubtful, as these rates do not only reflect immigration legislation but also administrative structures and individual characteristics of immigration officers.

<sup>27</sup> The flip-flop technique looks at opposites or extremes of categories to bring out their significant properties and dimensions. For example, the asylum debates were dominated by a negative representation of asylum. I asked myself what a positive representation entails and integrated this dimension into the coding framework which highlighted the politicians' failure to utilise and emphasise this theme in the debates. A systematic comparison refers to the strategy of comparing an incident in the data with experience or with existing literature to gather further possible properties and dimensions for a category. I have utilised this method in the case of nationalism whereby I utilised Lepsius' (1985) classification of different types of nationalism although more inclusive forms of nationalism were not utilised in the debates (see Strauss and Corbin 1998: 95-97).

**PART II      THE AMENDMENT OF ARTICLE 16 (2) OF THE GERMAN  
CONSTITUTION**

## **Chapter 4 An analysis of the wider national and international environment between 1991 and 1993**

- 4.1 Introduction
- 4.2 The asylum movement in Germany between 1991 and 1993 and its representation in the political debate
- 4.3 Germany's asylum experience in a European context
  - 4.3.1 European harmonisation and its role in the political debate
- 4.4 Economic factors and their representation in the political debate
- 4.5 Social-political factors and their representation in the political debate and amongst the general public
  - 4.5.1 Xenophobic violence
  - 4.5.2 The far right
- 4.6 The media and their portrayal of the asylum issue
- 4.7 Public opinion on asylum
  - 4.7.1 Methodological issues and problems regarding opinion polls
  - 4.7.2 Findings
- 4.8 Conclusion

### **4.1 Introduction**

This chapter deals with the first layer of the conceptual framework addressing the question to what extent the wider environment had an influence upon the decision on accepting a constitutional change. However, rather than correlating the wider environment with developments in asylum policy I emphasise politicians' perceptions as mediating factor. First of all, I examine characteristics of the asylum movement such as the number of asylum applications and recognition rates and their effect on the decision-making process. Secondly, the European harmonisation process and its perception by politicians are investigated followed by an analysis of the impact of economic factors upon the political decision-making process. The social-political context is examined in a further section with specific emphasis upon the increase of xenophobic violence and the electoral successes of the far right in the early 1990s. Finally, I investigate the representation of the asylum issue in the media and the general public and its relationship to the political debate.

The above mentioned issues will be analysed with regard to their inter-relationship and their impact upon the asylum policy between 1991 and 1993. I am not interested how structures in the wider environment were *elaborated* (as my central focus is on immigration policy) but merely in their outlook and their perception by politicians. Developments in the wider environment are compared with politicians' justification schemes focusing on questions such as: which factors in the wider environment were utilised/not utilised in politicians' justifications? Or, was there a discrepancy between an objective analysis of a particular environment and its perception/representation by politicians?

#### **4.2 The asylum movement in Germany between 1991 and 1993 and its representation in the political debate**

Official figures for asylum applications show that 256 112 persons applied for asylum in 1991 which increased to 438 191 in 1992, while it decreased to 322 599 in 1993 (Bundesamt für die Anerkennung ausländischer Flüchtlinge 1997). Appendix 6.1 indicates that the number of asylum applications in the early 1990s was significantly higher than during the 1980s. The increase in applications in the early 1990s is mainly due to the conflict in former Yugoslavia. It is estimated by Liebaut and Hughes (1997) that by 1995 between 320 000 and 350 000 asylum seekers from former Yugoslavia had arrived in Germany.

A number of authors have identified the size of the asylum movement within Germany as the dominant factor for influencing asylum policy in Germany and Europe in general (see, e.g., Salt 1993 and Schmid 1992). However, such a link between objective numbers and asylum policy is doubtful and authors such as Bloch and Schuster (2002) and Münch (1992) highlight the social construction of the number argument. Numbers are open to different interpretations and, set into different time

contexts, can be often associated with an increase or a decrease; and, with reference to different geographical areas, can be interpreted as relatively large or small. Further, refugee organisations emphasise the shortcomings of asylum figures relating to problems such as multiple counting, missing information on deportation figures and final decisions on appeals and different rules regarding data gathering by authorities in different regions and countries (see ECRE 1995, Joly *et al.* 1992, Salt 1993 and Stöber 1990).

One cannot deny that the early 1990s and especially 1992 showed a significant increase in asylum applications in Germany. However, it was not the increase as such which led to the constitutional amendment but the changing interpretations of politicians regarding the developments of asylum. Throughout the 1980s the CDU/CSU government responded to any increase in numbers (irrespective of extent and causes) with the claim that asylum was misused and more restrictive asylum measures were necessary (see Münch 1992). This emphasis upon misuse did not change in the early 1990s when the increase in numbers was clearly caused by the conflict in former Yugoslavia. Politicians from the CDU/CSU utilised the increase in applications to criticise Germany's asylum law as a 'soft touch' within Europe and to demand a constitutional change (see Bloch and Schuster 2002 and Thränhardt 1999). The claim that misuse increased the numbers of asylum applications was substantiated further by the CDU/CSU by arguing that asylum applications decreased *after* the constitutional amendment. Such an argument needs to be treated with caution as the conflict in former Yugoslavia experienced a preliminary decline in 1993 and recording strategies of asylum seekers changed as part of the constitutional amendment, i.e. civil war refugees were taken out of the asylum procedure. For example, the implementation of temporary protection for civil war refugees meant that the numbers did not rise in 1998-9 when refugees arrived from Kosovo (see Bloch and Schuster 2002). Further, the assumption

that more restrictive legislation deters asylum seekers *arriving* at a country's border reflects the idea that asylum seekers choose their country of destination according to generosity of legal and social provisions. A number of authors have criticised this idea. A simplistic correlation between welfare provisions and asylum numbers fails to take into account micro, meso and macro factors which influence the decision-making process of refugees with regard to their geographical destination (see Faist 2000). Colonial links with country of destination, kinship networks, lack of choice and the interpretation of immigration rules are some of many factors cited by authors who studied refugees' motives for choosing a particular country of destination (see Bloch 1999, Böcker and Havinga 1997 and Koser 1997). Thus asylum seekers still arrive at German borders despite more restriction. What has been affected by the constitutional amendment is the decision-making process about these asylum seekers which is carried out in a faster and less conscientious manner than before.

The above justifications for more restrictive measures to curtail the asylum movement was an issue emphasised in the asylum debate leading up to the constitutional amendment. This is not to say that all supporters of the amendment justified their decision on these grounds. Chapter six will highlight that those politicians (from FDP and SPD) who enabled the constitutional change due to their change of position shortly before the final reading did not accept the amendment for that reason. Instead, one of their main arguments was that the amendment was *not* effective to deal with the asylum problem and that an immigration law would be a better strategy. They accepted the constitutional change for reasons of national stability which they saw damaged by the political rhetoric of CDU/CSU politicians.

The social scientific debate has picked up some of the features of the public debate and several authors assume a relationship between generosity and attractiveness as reflected by Perlmutter (1996: 379): 'In all cases, legislation passed restricting asylum

seekers' access or making it more difficult for them to live in Germany and hence less attractive for them to come' (Perlmutter 1996: 379). There is also a new trend amongst writers to point out that immigration policy is missing its 'targets' as reflected in the following quote by Castles and Miller (1998).

There is no doubt that government policies greatly influence international migration. However, there is considerable variation in the effectiveness of official policies...One of the most striking impressions which emerges from historical study of migration policies is how often they have failed to achieve their stated goals.

Castles and Miller 1998: 93

Zetter *et al.* (2003) also point that immigration policy is less influential on refugee movements than events and conditions in countries of origin. Nevertheless, Castles and Miller (1998), Geddes (2003), Joppke (1999) and Marshall (2000) argue that the constitutional amendment was effective as numbers were declining after 1993. Such a conclusion needs to be treated with caution. Although it is legitimate to analyse the discrepancy between politicians' goals and actual consequences, the link between 'effectiveness' (defined by reduced numbers) and asylum policy which is increasingly made by politicians across Europe is contradicting the moral considerations of asylum policy.

Apart from merely investigating the number of asylum applications, an analysis of the asylum movement also needs to look into recognition rates. The issue of recognition rates is closely related to the agenda of 'asylum misuse', whereby the typical argument states that the reduction of recognition rates is an indicator for an increase in asylum misuse, i.e. an influx of economic rather than political migrants. Before we look at the recognition argument in a more critical way, recognition rates for the 1980s and 1990s should be looked at. Official figures show a decrease of recognition rates to 6.9 per cent in 1991 and 4.3 per cent in 1992 (see Bundesamt für die Anerkennung

ausländischer Flüchtlinge 1997). These figures are considerably lower than during the 1980s where some years showed recognition rates of 26.6 per cent (1984) and 29.2 per cent (1985) although most years they were between 9 and 16 per cent.

However, conclusions drawn from recognition rates have to be treated with caution. First of all, percentages of recognition rates are based upon an absolute number of applications which also counts false applications (e.g. some asylum seekers may have been advised to file a separate application for their child although this is not a valid application) or those application which have been officially or unofficially withdrawn (see Stöber 1990). Although statistics for rejections by the Federal Office for the Recognition of Refugees (*Bundesamt für die Anerkennung ausländischer Flüchtlinge*) are available for the 1990s the number of actual expulsions of these refugees is not known; deportations were carried out by the local Aliens Offices, but overall figures do not exist for this time period. Information was also missing regarding the question as to how many deportees were unsuccessful asylum seekers (ECRE 1995). Further, recognition rates related to the full Convention status under the Geneva Convention and excluded asylum seekers who gained temporary protection on humanitarian grounds or a refugee status under paragraph 51 I of the Aliens Act. And the above rates failed to reflect actual recognition rates as they only related to first instance decisions by the Federal Office for the Recognition of Refugees and did not include decisions by the courts of appeal (ECRE 1995). It also needs to be acknowledged that recognition rates are affected by individual decision-making processes as the interpretation of the Geneva Convention varies between different countries, regions and even courts. An article in the *SZ* (30/31.12.2000) highlighted the subjectivity which is inherent in the decision-making process regarding asylum applications: following governmental guidelines the new head of the Federal Office for the Recognition of Refugees acknowledged gender-specific persecution of women which immediately increased recognition rates for refugee



women. Gender persecution had not been acknowledged before in Germany in this way. Further examples for discrepancies regarding the interpretation of the Convention can be found when one, for example, examines the different interpretations of the concept of 'social group' in courts within Germany (Anker 1983, France Terre d'Asil 1985 and Fullerton 1990). Further evidence which throws doubt upon the correctness of recognition rates is given by the fact that Germany did not recognise refugees from Kosovo in the beginning of 1999 although only a few months later the UN led a war against Kosovo to protect human rights in this area. Or, the persecution of persons by the Taliban was not acknowledged in Germany as it only acknowledged persecution by the 'state' and the Taliban were not classified as the state (SZ 30/31.12.2000).

Therefore, on the one hand the absolute number of applications over-represented to an arbitrary degree the applications which were actually examined and on the other hand the recognition rate under-estimated the persons who actually found protection. Therefore, recognition rates cannot be used as an indicator for asylum misuse as they do not reflect the actual number of asylum seekers who were defined by Germany as being in need of protection. Nevertheless, all parties except the Far Left focused in their justifications on asylum misuse which was substantiated with reference to low recognition rates.

### **4.3 Germany's asylum experience in a European context**

Germany has taken the main bulk of asylum seekers throughout the 1980s and early 1990s compared with other European countries, although in a global comparison these figures were still significantly small. Between 1983 and 1991 Germany dealt with 959 200 applications followed by France with 298 300 and Sweden with 170 000 (see Salt 1993).<sup>28</sup> As shown in the previous section Germany experienced a more or less steady increase in asylum applications up to 1993; dealing with 19 700 in 1983 and being

confronted with 256 100 in 1991. In comparison, the United Kingdom had in 1983 only 4 300 applications which increased in 1991 to 57 700; or, France where applications grew from 14 300 in 1983 to only 46 500 in 1991 (see Salt 1993). However, in relative terms to the overall population, Germany did not deal with the largest number of asylum applications. For example, in 1991 asylum seekers represented a larger proportion of the overall proportion in Switzerland (1.53 per cent), Sweden (1.04 per cent) and Austria (0.94 per cent) than they did in Germany (0.91 per cent) (see Salt 1993). Due to Germany's geographical position it is not surprising that Germany had to deal with the largest numbers of refugees from former Yugoslavia. For example, in 1993 72 476 persons applied from Serbia/Montenegro (including Macedonia up to July 1993) and 21 240 persons from Bosnia-Herzegovina.

In this respect politicians were correct to point out that Germany was dealing with the largest absolute number of asylum seekers in the European Union although a comparison with other countries which acknowledged the population size and wealth of a country would have made the figures look less dramatic. Nevertheless, politicians were keen to use the number argument to propose more 'burden-sharing' within the European Union and supported, therefore, European harmonisation. To what extent European harmonisation had been developed by 1993 will be examined in the next section.

#### **4.3.1 European harmonisation and its role in the political debate**

From the mid-1980s onwards developments took place to harmonise European asylum measures. German politicians were particularly keen to speed up harmonisation as an international measure of burden-sharing.<sup>29</sup> European harmonisation played a role in the decision-making process of the constitutional amendment as it encouraged rejecters from the FDP and the SPD during 1991 to accept a change of the constitution on

condition that a European asylum law was established (see chapter six). The problems and delays associated with the signing of the Maastricht Treaty at the beginning of 1992 had the effect that politicians became increasingly pessimistic regarding the harmonisation of asylum. As pointed out in chapter five politicians dropped the idea to link the constitutional amendment to developments in Europe and, instead, proposed the amendment independently from harmonisation. The following will analyse to what extent European harmonisation had been developed by the early 1990s and to what extent the initial optimism by the FDP and SPD regarding harmonisation was justified.

By 1993 three major documents governed the European harmonisation: the Schengen Agreement, the Dublin Convention and the Maastricht Treaty (Treaty on European Union). The Schengen Agreement of 14 June 1985 dealt with the abolition of internal borders; in this context harmonised visa policies, common surveillance strategies (the Schengen Information System) and carrier's liability policies were developed. It was signed initially in June 1990 by its founding members (the Benelux countries, France and Germany) followed by other European Union countries throughout the 1990s. Refugee organisations criticised especially the Carrier's Liability Act as limiting the chances of refugees to find protection and building a 'Fortress Europe' (see Blumenthal 1991, Bolten 1991 and Cruz 1990).

As a consequence of the open border policies implemented in the Schengen Agreement the Dublin Convention was signed by all member states in 1990 to determine the state that was responsible for examining an asylum application (Dublin Convention, Art. 4 to Art. 9). The justification of the member states was to avoid the 'orbit' situation of refugees who were searching for a country that was dealing with their case. The Convention was criticised by refugee organisations not only for the secret consultations amongst the TREVI group who drafted the Convention but also for building a 'Fortress Europe' rather than reducing the 'refugees in orbit' (Cruz 1990).

Opponents of the Convention argued that it may prevent the 'orbit' of refugees *within* the Community but it does not prevent member states sending an applicant to a third state' as stated in Art. 3 paragraph 5 of the Dublin Convention. Thus, the orbit situation might be purely pushed from inside the Community to the countries surrounding it (see Blumenthal 1991, Bolten 1991 and Cruz 1990).

While the Schengen Agreement and the Dublin Convention originated from intergovernmental meetings, the Maastricht Treaty (the Treaty on European Union) represented harmonisation on Community level. The Treaty on European Union prepared the path to shift asylum policy from the national and intergovernmental to the communal level. The Treaty on European Union related to the asylum issue in Title V, Article 100 (100C and 100D) and in the provisions on Co-operation in the Fields of Justice and Home Affairs (Title VI, Articles A and H). Title V was concerned with visa policy (Art. 100C) and made recommendations regarding the transition of asylum policy from the intergovernmental to the Community level. Paragraph 7 of Art. 100C regulated that issues such as sanctions of transport companies and safe country lists remained subject to the Schengen Agreement and the Dublin Convention until they were replaced by the measures of the Council. An important element of the Treaty was that 'measures of the Council' were decided unanimously until 1 January 1996. While from that date onwards the rule of qualified majority would govern the decision-making process. This change of ruling after 1996 reflected a European asylum law where the interest of individual nation-states would be less prominent than on the intergovernmental level (see Dedecker 1992).

Title VI of the Treaty 'provisions on co-operation in the spheres of justice and home affairs' constituted explicitly that asylum policy was a matter of communal rather than nation-state's interest. With the exception of the United Kingdom, eleven member states supported Article A1 of the Treaty on European Union that

the Council will consider as a matter of priority questions concerning Member States' asylum policies, with the aim of adopting by the beginning of 1993 common action to harmonise aspects of them, in the light of the work programme and timetable contained in the report on asylum drawn up at the request of the Luxembourg European Court.

Dedecker 1992:5

Article K1 mentioned asylum policy as the first area which would be subject to European Unity. Article K4 regulated the institutionalising of the harmonisation process in Europe and set up a Co-ordinating Committee of senior officials which co-ordinates, recommends and contributes to discussions regarding the determination of visa policy (Article 100C). Article K4 was important for shifting asylum policy from the national to the European level, for defining its future relationship to intergovernmental and international instruments and for integrating new conventions.

The above discussion indicates that by the early 1990s harmonisation had been advanced on intergovernmental level and some tentative steps had been taken to initiate harmonisation on Community level. Yet, to what extent were the above proposals and measures applicable in practice? With regard to the Schengen Agreement the open border policy amongst the Benelux countries, France and Germany, the Carrier's Liability Act and the Schengen Information System (SIS) were installed 'successfully'. In contrast, the implementation of the Dublin Convention was confronted with a number of problems. For example, Article 21 of the Convention stated that new members could join but did not have an obligation. Thus, a future enlargement of the Community might lead to a situation where only an enclave of the Community signed the Convention. Further, the Dublin Convention mentioned the co-operation with the UNHCR and its obligation under the Geneva Convention as amended by the New York Protocol (Article 2). However, the Dublin Convention collided with Article 33 of the Geneva Convention which demanded an individual examination of an asylum case. Another problem

regarding the implementation of the Convention in practice arises out of the situation that member states interpreted the criteria of determining refugee status in different ways. The different interpretation of the Convention by the member states might lead to a situation where an asylum seeker is rejected by one of the member states although he/she would have been accepted by another. Unless there is harmonisation of the Geneva Convention across the EU, the fate of an asylum seeker may depend on which EU country they accessed first.<sup>30</sup> The harmonisation of the interpretation of the Geneva Convention is highly unlikely as different interpretations exist even within different regions of the member states (see Fullerton 1989). Another issue which hinders harmonisation is linked to the legal system of nation-states. The introduction of the thesis has shown that European countries offer quite different legal provisions which are often linked to historical developments of the overall legal system. To make the Dublin Convention workable one would need a harmonisation of the interpretation of the refugee status and the legal system involved in the decision-making process. Geddes (2003: 132-4) defines the period between 1986 and 1993 'informal governmentalism' whereby co-operation between countries existed but various problems or resistance occurred in actually ratifying documents such as the Dublin Convention (which was not ratified until September 1997).

With regard to the harmonisation on Community level several questions arise and make harmonisation on this level even more unlikely than on the intergovernmental level. Which body would be responsible for the co-ordination of Community harmonisation? Which role would the European Court play? Which relationship would a European asylum law have to existing Conventions and Treaties on intergovernmental and Community level? To what extent are member states willing to give up sovereignty in the matter of asylum? A survey on the likelihood of harmonisation which was carried out amongst 268 European NGOs in spring 1992 reflected that refugee representatives

were not overly optimistic and lacked knowledge regarding harmonisation: 69 organisations responded, of which 33 completed the questionnaire while the remaining 36 did not complete the questionnaire due to lack of knowledge regarding the European harmonisation process.<sup>31</sup> The findings of the survey also show that more than half of the representatives of NGOs dealing with refugee matters thought that harmonisation of application procedures, legislation or the interpretation of the Geneva Convention was not likely in future. Further, southern European countries, eastern European countries, Scandinavian countries and the United Kingdom were less interested in harmonisation while Germany, France and the Benelux countries were perceived as being keen supporters of harmonisation. The main factor for this keenness or reluctance regarding harmonisation was the number of asylum applications a country had to deal with. Thus harmonisation was understood by NGOs as being a measure dealing with burden-sharing and expulsion of asylum seekers rather than with the improvement of protection for asylum seekers. The majority of NGO representatives were in favour of Community measures for regulating the interpretation of the Geneva Convention, the Schengen Agreement and Dublin Convention and future Conventions regarding asylum. All in all, the survey reflected that NGOs were in the beginning of the 1990s rather ambiguous regarding the possibility of implementing European harmonisation, although the majority was keen to move the asylum procedures on to a European level of decision-making. Writing in 2003, Geddes remains sceptical whether nation-states will be willing in future to give any competencies to the Community regarding asylum policy apart from co-ordinating and mediating processes between nation-states (Geddes 2003: 141).

To sum up, it is somehow surprising that SPD and FDP politicians in 1991 started discussing a constitutional amendment under the condition of a European asylum law. Looking at the objective developments regarding harmonisation and the opinion of NGOs dealing with refugees it must have been clear at that point in time that a European

asylum law was highly unlikely. However, politicians did not acknowledge the unlikeness of harmonisation until they encountered the problems regarding the signing of the Maastricht Treaty at the beginning of 1992. As a consequence they had to disassociate the constitutional amendment from European harmonisation. However, instead of dropping both agendas, the amendment and the European asylum law, politicians from the FDP and the SPD carried on to support the amendment but now *before* a European asylum law. In retrospect the European agenda initiated the first move of leading figures within the SPD and the FDP to support the amendment and was, therefore, a salient factor in changing the overall position of rejecters. If SPD and FDP politicians had been better informed in the first place they may not have made the association between a highly unlikely European scenario and the amendment which left them in a fragile strategic position at the beginning of 1992 when it became clear to them that a European Union asylum law was not achievable in the near future.

#### **4.4 Economic factors and their representation in the political debate**

Chapter two has highlighted that economic factors have played a central role in the explanation schemes of immigration policy. This section examines the actual economic situation and compares it with the way it was represented by politicians. I follow here Freeman (1979) who identified discrepancies and correlations between politicians' perceptions on the economic benefits of immigration and the actual economic situation. He found in his study that the British government failed to realise the economic advantage of immigration while French politicians perceived correctly the benefits of immigrants for the French economy (Freeman 1979: 212-15). I will not engage in a cost-benefit analysis of asylum seekers because economic benefits have not been researched by existing studies.<sup>32</sup> This is not to say that asylum policy is not linked to economic benefits. For example, the container industry in Germany profited substantially from the



asylum movement and reception centres have provided job opportunities. Instead, of a cost-benefit analysis I am interested in identifying how the economy was perceived by politicians and the public and to what extent politicians used economic justifications to support their position on the amendment. The next section gives a brief overview of Germany's economic situation in the early 1990s.

With regard to general economic indicators such as GDP and growth rate the economic situation in Germany looked good during the early 1990s: the GDP (in 1 000 million ECUs) increased from 1 391 500 in 1991 to 1 630 900 in 1993. The yearly growth rate of the GDP at market prices (as percentage of previous year) peaked after reunification in 1991 at 13.2 and went back to its normal level of 2.2 in 1992 and -1.1 in 1993 (see Eurostat 1995). Although the above indicates a wealthy nation, unemployment increased by 41 per cent between 1991 and 1993: from 5.6 per in 1991 to 7.9 per cent in 1993. This represented a middle position when compared to other European Union countries: Luxembourg and Austria had less than 6 per cent of unemployment whereby Spain and Finland had the highest unemployment rates (22.8 per cent and 17.5 respectively) (see Eurostat 1995). However, there were large differences between the East and the West regarding unemployment. Unemployment increased in the East from 240 000 in 1990 to 1 150 000 in 1993. The largest increase occurred immediately after reunification and by 1991 912 000 persons were unemployed (*Bundesanstalt für Arbeit* 1993). Economic, monetary and social unification which took place on 1 July 1990 and the official reunification three months later on 3 October meant that the principle of former East Germany regarding the 'right of work' changed into the western principle of 'protection of employment' (Belwe 1991). Following reunification the formerly publicly owned companies were sold to private owners by an organisation called *Treuhand*. The selling of companies by *Treuhand* started slowly and by the end of 1990 only 400 companies had been sold. However, the process sped up

and a further 1 200 companies were sold in the first four months of 1991 (see Härtel and Krüger 1991). By March 1993 2578 companies had been closed down in the East because they were not internationally competitive which caused the exorbitant rise of unemployment in former East Germany (Häussermann and Heseler 1993).

The above discussion gives some objective figures on the economic situation. However, how did the population perceive the economic situation and to what extent did politicians use the economy in the asylum debate? The Allensbacher Institut, an organisation for opinion polls which is affiliated with the political right, observed in 1992 that 54 per cent of the population were worried about the economic situation and believed that the next six months would show a worsening of the economy; 28 per cent believed that the economy remained stable while only 11 per cent were optimistic about economic developments. The negative perception of the economy was especially visible in the West while the East was generally more optimistic, which was surprising considering the rise of unemployment in the East (*Allensbacher Berichte* 1992). However, another opinion poll gathered by the organisation *Forschungsgruppe Wahlen* which was associated with the political left measured the perception of the economy in more differentiated ways and reached quite different conclusions. Their monthly publication *Politbarometer* differentiated between the perception of the general economic situation and one's own economic position; and it incorporated a middle scale of 'partly good, partly bad' when measuring the perception of the economy. Their findings showed that the positive perception of the general economic situation had been drastically declining between 1991 and 1993 in the East and West: While over 70 per cent of the population were optimistic in 1991, only 10 per cent had such feelings in 1993. The shift over to pessimism was also reflected in the fact that the negative perception increased between 1991 and 1993 from less than 5 per cent to nearly 40 per cent. Yet a large number of persons who did not perceive the economic situation any

longer as positive moved over to a middle position viewing it partly as good, partly as bad (around 20 per cent in 1991 to around 50 per cent in 1993). However, the above pessimism and ambiguity is not reflected when one examines the perception of the interviewees' personal economic situation; by 1993 only 10 per cent of the population viewed their situation as being negative (*Politbarometer* 1993).

To sum up, reunification had a positive effect regarding the overall GDP. However, it brought along a significant rise in unemployment in former East Germany although the overall unemployment figures between 1991 and 1993 were not exceptionally high, especially when compared with Spain and Finland. The general public became increasingly pessimistic and ambiguous about the overall economic situation although they perceived their personal situation in positive terms in the East and the West.

Although the economic developments following reunification were dominating the public debate, the political debate on asylum did not emphasise explicitly the general economic developments in Germany (see chapters five and six). This is not to say that economic concerns were not part of the political debate. However, they were discussed in the indirect context of xenophobia and with regard to the financial power of towns and municipalities. Especially in the 1991 debate politicians from the left referred to the social and economic situation of youngsters as a reason for an increase of xenophobic attacks in former East Germany. A more permanent topic which was used throughout the debate was the perception that asylum seekers were an economic burden for towns and communities. Thus economic factors were discussed in the local rather than the national context and became interwoven with party politics. Causal factors which were typically discussed by authors in the context of labour migration policy such as the economic cycle or unemployment were not explicit determinants of asylum policy in the early 1990s. Instead, financial concerns were discussed in the local context which had a

large impact upon the decision-making process leading up to the constitutional change. In particular, SPD politicians from lower hierarchies portrayed the situation of towns and municipalities as desperate and used it to justify their support of a constitutional change (see chapter five), although the problematic situation was often caused by governmental strategies to disadvantage SPD-governed towns and federal states regarding the distribution of asylum seekers (see Münch 1992).

#### **4.5 Social-political factors and their representation in the political debate and amongst the general public**

The following section analyses the wider political environment between 1991 and 1993 and here specifically developments regarding the far right and the increase in xenophobic attacks after reunification. Although an analysis of the far right is not necessarily empirically distinguishable from xenophobic attacks and vice versa, I will look at them separately in my analysis as both phenomena had a different impact upon the asylum debate at different times. The electoral successes of the far right in spring 1992 played a vital role regarding the national stability theme which motivated former rejecters of the constitutional amendment finally to support it. The increase of xenophobic attacks following reunification was influential in the first stages of the asylum debate but less influential during the final phase in 1993 when the attacks had decreased and the focus moved over to the far right.

##### **4.5.1 Xenophobic violence<sup>33</sup>**

The early 1990s showed an increase in xenophobic attacks against asylum seekers and foreigners. This rise in violent attacks motivated by xenophobia became a topical theme in the public and political debate during 1991 and 1992. Although the discussion of xenophobic attacks was no longer dominant in the parliamentary debate in May 1993

the attacks were utilised by the CDU/CSU to justify the constitutional amendment throughout 1991 and 1992 (see chapter six and seven for a further discussion of xenophobia and its role in the political process of amending Art 16 (2)).

The organisation for the protection of the constitution (*Verfassungsschutz*) registered in 1991 1 483 crimes based on xenophobia (whereby three victims died) which increased to 2 285 xenophobic attacks and 17 deaths in 1992; an increase of over 50 per cent. The crime statistics show that there was a cluster of attacks around late summer and autumn months (so-called 'hot autumns') in 1991 and 1992: between January 1991 and September 1991 99 arson attacks were committed on the accommodation of asylum seekers and foreigners of which 72 took place in August and September (*Verfassungsschutzbericht 1992*). September 1992 was the month with the highest number of crimes: the *Verfassungsschutz* counted 518 xenophobic crimes and the Bundeskriminalamt (BKA), the governmental office for crime, counted 1 057 crimes associated with xenophobia including arson, detonations, attacks of individual persons, insults, damage of property and propaganda. From September 1992 onwards the attacks decreased to 112 in the first half of December (BKA).

The above crimes were mainly committed by young persons. For example, of the determined cases in 1991 70 per cent were committed by persons under the age of 21 (*Verfassungsschutzbericht 1992*). Further, in relation to the number of inhabitants, the East experienced a higher presence of xenophobic attacks than the West. For example, between January 1991 and September 1991 276 attacks were committed against foreigners in the East compared with 241 in the West although the old federal states (West) had four times more inhabitants (*Verfassungsschutzbericht 1992*). The most prominent cases were the arson attack on the asylum seeker accommodation in Hoyerswerda (former East Germany) in September 1991, the life-threatening injury of two refugee girls in Hünxe (former West Germany) in October 1991 after their home

had been attacked with Molotow Cocktails by two extremists from the far right, an attack of a centre for asylum seekers in Rostock-Lichterhagen (former East Germany) which was applauded by a crowd of onlookers and the murder of five Turkish women and girls in Mölln (former West Germany) in November 1992.

How did the general public respond to these attacks? Opinion polls attempted in different ways to measure xenophobia within the population. The Allensbacher Institut measured the attitude of the population towards the attacks of asylum seeker homes and found an increase regarding the understanding for these attacks between 1991 and 1992 (an increase from 12 to 16 per cent in the West and from 11 per cent to 15 per cent in the East).<sup>34</sup> The trend towards an understanding of the attacks was also reflected in the *decreasing* number of persons who had 'no understanding at all for xenophobic attacks' (from 77 per cent to 70 per cent in the West and 80 per cent to 69 per cent in the East). One has to be careful with the above survey as the Allensbacher Institut which was affiliated with the political right was keen to portray a population which was not xenophobic but which was frustrated with the asylum system. The question regarding the attacks on asylum seekers' homes referred to the derogatory concept of *Asylanten* rather than *Asylbewerber* and only two response categories were offered ('have understanding for xenophobic attacks' and 'have no understanding at all for xenophobic attacks'); generally, it is recommended to offer five response categories for attitudinal questions (see Judd *et al.* 1991). In another question the Allensbacher Institut asked interviewees to decide between two opinions regarding the attacks against foreigners ('I am not for violence but one needs to make some noise in this way so that something is happening' and 'certainly, something needs to be done but violence is definitely not acceptable and should be punished severely'). The results showed again an increase regarding the understanding of xenophobic attacks as by 1992 25 per cent of the population in the West and 30 per cent in the East agreed with the first response

category (see above), compared with 1991 when 18 per cent in the West and 16 per cent of the East agreed that the xenophobic attacks were encouraging political action in the context of asylum. The response categories were again methodologically questionable (reflecting a double-barrelled question) as both assumed that the interviewees agreed that an asylum problem existed ('something needed to be done').

What was the general mood towards asylum seekers and foreigners in general in the early 1990s? Over half of the population (53 per cent) in the West were not content that many foreigners resided in Germany while 47 per cent were happy with the situation. The majority of CDU/CSU voters (62 per cent) and SPD voters (52 per cent) were against the number of foreigners residing in Germany while supporters of the FDP and the Greens were overall content with the situation (55 per cent and 78 per cent respectively). Findings for the East produced similar results (52 per cent were not content while 46 per cent were content); and the relationship between political affiliation and attitudes towards foreigners in the East was similar to that in the West. Although the majority was not happy with the presence of foreigners in Germany, the majority in the West believed that foreigners were needed in the economy (67 per cent) while 64 per cent of the population in the East did not perceive foreigners as necessary for the economy (see *Allensbacher Berichte* 1992).

The discrepancy between East and West concerning the opinion towards foreigners becomes more explicit when we examine opinion polls of young people. Various studies regarding the opinions of young people showed an increase in right-wing tendencies in the East since reunification.<sup>35</sup> For example, a survey from the university in Leipzig found that the belief that 'Germans are the greatest' increased between 1990 and 1992 from 20 per cent to 34 per cent amongst apprentices (Starke 1993). Or, by 1992 40 per cent of apprentices believed that 'National Socialism had also some good aspects (increase from 20 per cent in 1991). Although xenophobic violence

increased in the East following reunification, it was already present in former East Germany. A report by the East German secret service (the 'Stasi') showed that in 1987 800 persons aged between sixteen and twenty-five had been registered as Skinheads and that between October 1987 and January 1988 forty preliminary proceedings had been carried out against 108 extremists from the far right; 94 persons had been arrested (SZ 5/6.1.1993). Insufficient dealings with the Nazi history, economic, social and psychological problems after reunification and a negative representation of history of former East Germany were listed as reason for this increase (SZ 9.7.1992). Another study published by the *Deutsche Jugendinstitut* (German Youth Institute) in 1993 reflected similar tendencies towards the far right amongst the youth in the East. For example, in 1990 64 per cent of pupils in the East were proud to be German (48 per cent were proud in the West), 10 per cent admired Hitler (7.6 per cent did so in the West) and 40 per cent felt that there were too many foreigners in Germany (30 per cent felt this way in the West). Thus above studies found that youngsters in the East were significantly more xenophobic than youngsters in the West although only 1 per cent of foreigners lived in the East.

The above highlighted a rise in xenophobic attacks in Germany between 1991 and 1992 and an increase in explicit xenophobic feelings especially amongst the young population in former East Germany. Regarding xenophobic violence one needs to be careful to overstate the *increase* as variables such as increased awareness by the police, media and governmental institutions, different recording strategies and definitions (as reflected in significant differences between figures on xenophobic crimes by the BKA and the *Verfassungsschutz*) and an increase in the reporting of crimes have effects upon the overall data (Miles 1994). On the other hand, one cannot deny that more severe crimes such as arson attacks on homes for asylum seekers occurred more often during the early 1990s because they would have been less affected by the variables Miles



(1994) points out. Therefore, assuming that there was a real increase in xenophobic attacks following reunification the next question to answer is 'why' there was such an increase. The following section displays a number of explanations for the increase in xenophobia which were provided by politicians and social scientists.

With regard to politicians' explanations chapter six highlights that in 1991 politicians emphasised the fight against xenophobic attacks during the asylum debate and explained xenophobic attacks mainly by factors other than asylum (42 per cent), while only four per cent blamed the asylum movement for the increase in violent attacks against asylum seekers. During the parliamentary debate in 1993 a discussion of xenophobia and racist attacks were not in the centre of the debate; 7 per cent of politicians discussed xenophobic violence in the causal context of asylum and 6 per cent focused upon factors other than asylum such as the political debate and the media. My analysis of parliamentary debates showed that 1991 was marked by the account, condemnation and explanation of the racist attacks occurring in Germany and a general discussion on racism and the causes of it while 1993 emphasised a damaged national stability; characterised by a general population which showed angst, frustration and lack of trust in the political system. The reluctance to focus explicitly on existing xenophobia and racism in the 1993 debate can be explained by the decline in xenophobic attacks, a realisation that the gains of the far right in 1992 were sporadic, the keenness of politicians to emphasise that Germany is not racist and the reluctance amongst politicians to portray the constitutional amendment as a response to racist actions (see chapter six and seven for further analysis of xenophobia and its representation and influence on the political debate).

During 1991 party affiliation was a vital factor for the explanatory context in which the theme of xenophobia was discussed. Chapter six demonstrates that politicians on the left of the political spectrum explained xenophobia by other factors than the

asylum movement while politicians from the right blamed the asylum movement for the increase of xenophobia. The above division between the political left and right continued up to 1993 and was also reflected in the parliamentary debates between 1991 and 1993 which dealt explicitly with xenophobic violence. I found that CDU/CSU politicians continuously discussed xenophobia in the context of asylum while the other parties argued that the exaggeration of the asylum topic in the political debate and the media led to the rise in xenophobic attacks (see *Bundestag* 10.10.1991 and 23.6.1992). The constructed link between xenophobia and political asylum was not exceptional to Germany. For example, the Conservative party in Britain justified its restriction on asylum in the early 1990s by referring to Germany where the intake of large numbers of asylum seekers apparently led to an increase of xenophobia (Kaye 1994).

The explanation of xenophobia by social scientists differed from the political discourse by emphasising the economic, political and psychological problems of the modernisation process of society in general (associated with phenomena such as individualisation and rationalisation) and reunification in particular (see Fijalkowski 1993, Heitmeyer *et al.* 1992 and Möller 1993). A large amount of studies focused upon psychological factors such as the loss of identity amongst young people in former Germany, the loss of trust under the former regime of East Germany or the consequences of authoritarian upbringing in former East Germany (see, for example, Leiprecht *et al.* 1997). I will not analyse in more detail the different approaches regarding the explanation of xenophobia; however, it should be noted that the political debate surrounding xenophobia was significantly different to the social scientific debate which focused especially on phenomena surrounding reunification. One cannot deny that reunification caused a social and psychological upheaval especially amongst the youngsters of former East Germany. However, the increased focus on an exclusive nationalism which was the basis of reunification *per se* and which was mediated via the

media and the political debate was another vital factor for the increase in xenophobic attacks in the early 1990s. Social scientists also criticised the asylum debate. For example, Brochmann and Hammar (1999) found a link between an increasing anti-immigration rhetoric and xenophobic attacks across Europe. Or, Bosswick (2000) highlights for the early 1990s how claims by the CDU/CSU that they were not able to solve the asylum problem led to what Leggewie (1992) called *violent plebeian activism*.

The media also played a vital role in the process which led to the change of the amendment. The majority of the population will access information about asylum seekers via the media rather than first-hand experience. Both the tabloids and the broadsheets focused on the asylum problem and the tabloids exaggerated, in particular, the asylum problem. Section 4.6 provides a more detailed analysis regarding the portrayal of asylum seekers in three German newspapers between 1991 and 1993. The fact that the attacks on asylum seekers and foreigners occurred especially during the months surrounding the first two anniversaries of reunification and the decrease of attacks after autumn 1992 suggests that the attacks were especially triggered by a nationalistic debate surrounding reunification.

#### **4.5.2 The far right**

Betz (1991) argues that the early 1980s were marked by an increasing support of parties at the left of the established parties while the beginnings of the 1990s displayed a shift towards the far right of the political spectrum across Europe. In the context of Germany Betz (1991) refers to the *Republikaner* and their gains in the Berlin election in 1989 where they received 7.5 per cent of the vote and eleven seats in the state council of Berlin while the FDP, for example, only managed 3.9 per cent. However, the Greens were still represented with 11.8 per cent in this election which indicates, contrary to Betz's (1991) suggestion that the support of the Far Left continued *parallel* to the

support of the far right. Further evidence regarding the increase of the far right is the electoral success of the DVU in Bremen where the party gained 6.2 per cent of the votes in 1991. Followed by another success of the far right in spring 1992 when the *Republikaner* gained 10.9 per cent in the regional election of Baden-Württemberg and the DVU received 6.3 per cent in the regional elections of Schleswig-Holstein. Although the above examples show that the far right sporadically gained over 5 per cent of the vote in elections between 1991 and 1993, their overall support in federal elections during this time was generally below 2 per cent. The election successes outlined above did not continue and, for example, in Baden-Württemberg the support of the *Republikaner* decreased to 3.1 per cent in the general elections of 1994. The Far Left (i.e. Greens and/or PDS) continued throughout the early 1990s to gain above 5 per cent in most federal state elections except for Schleswig-Holstein (see Forschungsgruppe Wahlen 1995). In that respect the fear of politicians that the far right endangered national stability was exaggerating the political situation. Politicians further emphasised that political frustration was the main motivation for people to turn towards the far right. It might be true that the population showed political frustration with established parties during the early 1990s, reflected in opinion polls on established parties and the support of parties such as STATT ('Instead') in Hamburg and Niedersachsen.<sup>36</sup> However, political frustration is not a new phenomenon and Stöss (1990) argues that critique and 'sulkiness' regarding the established parties have been always present amongst the majority of the population and are a necessary element of the democratic structure. He suggests that they are the consequence of changing social structures and the adaptation of the population to new situations and are vital for the democratic system.

The above comments by Stöss (1990) throw a different light upon politicians' justifications that supported the constitutional change to counteract the assumed widespread and exceptional political frustration which might endanger the democratic

system and national stability in general. First of all, neither the far right nor the phenomenon of political frustration experienced any exceptional increase during the early 1990s and secondly, political frustration is not the primary motivation of supporting the far right. Opinion polls show that the vast majority of persons who were frustrated with the political parties (i.e. the majority of the population) did not support the far right but continued to vote for the established parties, fringe parties which were not associated with the far right or abstained. Thus political frustration alone cannot explain the support of the far right. Xenophobic feelings rather than political frustration is the prime motive for supporting the far right which was reflected in the anti-immigration agenda and exclusive nationalism of the far right.

In conclusion, both the xenophobic attacks and the electoral successes of the far right determined to a large extent the political debate surrounding the constitutional amendment. In this sense it reflected the notion by Bloch and Schuster (2002: 407) that 'racist attacks can be used by the authorities as a way of legitimizing further restrictions...What we are seeing in European countries of asylum is a cyclical process based on the interaction of politicians, the media and the general public.' The increase in xenophobic attacks was emphasised in 1991 while the political debate in 1992 and 1993 focused on the electoral gains of the far right. The above investigation showed that xenophobia increased in real terms between 1991 and 1992 and politicians were right to be concerned about it. However, the causal context in which they discussed xenophobia was not reflected in an objective analysis of xenophobia. While studies and surveys showed that the increase in xenophobia had more to do with psychological and structural factors following reunification, politicians carried on to explain it either by referring to the asylum movement (CDU/CSU politicians) or with reference to the political debate (SPD and FDP politicians). With regard to the far right, politicians exaggerated the meaning of sporadic electoral successes by the far right. The far right

gained in general electoral support below 2 per cent and even in places where they gained some seats in local councils they were overturned in the next election as in the case of Baden-Württemberg. Politicians did not only exaggerate the extent to which the far right might destabilise the nation but they also exaggerated the factor of political frustration which they thought was the cause for the success of the far right. Politicians were correct to perceive widespread political frustration but they misinterpreted it as something exceptional. Stöss (1990), for example, argues that political frustration is an established feature of the democratic process and that it does not lead necessarily to the support of the far right. I argued that the emphasis upon exclusive nationalism in the context of reunification rather than political frustration was the primary factor for the increase of xenophobia and the far right. The proposition of exclusive forms of nationalism gained respectability in the public and political debate during the early 1990s as it was the basis for reunification. In this climate of exclusive nationalism the far right appeared less extremist and more acceptable to a larger number of people. However, politicians were reluctant to focus on reunification when explaining xenophobia and the electoral successes of the far right. Instead, supporters of the amendment used the seemingly endangered national stability to defend their position.

## **6.6 The media and their portrayal of the asylum issue**

Various studies have highlighted the negative portrayal of asylum seekers in the media (CARF 2001, Coole 2002, Cottle 2000, d'Haensens and de Lange 2001, Kaye 1994). This is in line with a negative media portrayal of migrants in general (see Jakubowicz *et al.* 1994, van Dijk 1985). The following will give a systematic analysis of three German newspapers and their portrayal of asylum seekers in the context of the constitutional amendment. The objective of the small-scale analysis is to find out to what extent the representation of the asylum issue in the media was a reflection of the political debate

and whether political affiliations of the newspapers influenced the portrayal of the asylum issue.

German newspapers and television showed an increased interest in the asylum issue during the early 1990s. The media analysis which is presented in this section is based upon a newspaper survey which has been carried out for 1991 and 1993. Two broadsheets (*Süddeutsche Zeitung* and *Frankfurter Allgemeine Zeitung*) and one tabloid (*BILD Zeitung*) were selected for the content analysis of newspapers in Germany in 1991 and 1993. The *Süddeutsche Zeitung* (SZ) is in general classified as representing the political left, while the *Frankfurter Allgemeine Zeitung* (FAZ) and the *BILD Zeitung* (BILD) are associated with the political right. The aim of the analysis was not only to compare newspapers along political lines but also to compare tabloids with broadsheets. Therefore, the BILD will be contrasted with the SZ and FAZ.

The newspapers for 1991 were selected using an 'every-eighth-day' sample while the selection for 1993 was based on an 'every-eight-day' sample *and* an 'every-day' sample for the week before and after the amendment of the constitution on 26 May 1993. The analysis utilises the coding scheme which had been developed for the study of politicians' justifications in chapter five; however, it does not apply a grounded theory approach as I am interested in identifying individual themes which are associated with the asylum issue rather than a detailed semantic analysis of its portrayal. The focus upon individual themes will be sufficient to give an indication of the extent to which there was a similar portrayal of asylum seekers in the media, the political debate and the general public.

The following summarises the findings of the analysis which was based upon representative but in some cases relatively small samples. The sample sizes reflect that the SZ showed the most continuous interest in covering developments regarding the asylum issue. For 1991 the sample sizes were as follows: *BILD* (17), *FAZ* (23) and *SZ*

(45). The every-eighth-day analysis for 1993 produced the following differences in sample sizes: nine articles for the *BILD*, sixteen articles for the *FAZ* and thirty-six articles for the *SZ*. The every-day analysis one week before and after the parliamentary debate in May 1993 showed that the broad-sheets covered the asylum debate to a similar extent while the *BILD* was significantly less interested in the final debate: thirteen articles for the *BILD*, twenty-five articles for the *FAZ* and twenty-five articles for the *SZ*.

The following themes were present in the newspapers (themes were identified utilising the coding scheme which had been developed for the political debate in chapter six). The recurring theme of an **asylum problem** associates asylum seekers with images such as burden, overload, flood and crime and a critique of such an association (reflected in the code: 'critique of asylum problem'); the coding scheme of newspapers also differentiates between the discussion of an asylum problem which blames the asylum seekers themselves and one which focuses on other factors such as the government. Another theme which was detected is **exclusion**. Exclusion has several sub-dimensions. General exclusion is understood as territorial exclusion referring to detention and deportation measures and a distinction is made between a supportive and a critical discussion of these themes. The following extract from the *BILD* shows a support of exclusionary measures:

A more restrictive asylum legislation is necessary to exclude bogus asylum seekers from seeking immigration [in Germany]

Die *BILD*, 12 April 1993

Another sub dimension of exclusion relates specifically to the support or criticism of the safe-third-country rule. A third overall theme relates to **humanitarianism**. I distinguish between a 'strong' and a 'weak' form of humanitarianism (see also chapter six). A strong humanitarianism incorporates types of humanitarianism which are inclusive and 'sincere' (e.g. the advocating of normative principles within Germany, the critique of



the violation of humanitarianism within and outside Germany) while a weak humanitarianism relates to an exclusive and/or politically 'insincere' notion (e.g. the assertion that the constitutional change is humanitarian, the advocating of humanitarianism outside Germany, the perception that humanitarianism exists in Germany, the perception that humanitarianism exists outside Germany). **Exclusive nationalism** refers to an understanding of nationalism which relates to what Parekh (1994) defines as communitarian and ethnic nationalism in distinction to an inclusive nationalism which relates to a so-called liberal nationalism. Parekh's (1994) defines the liberal view of the nation-state as an acknowledgement of the spirit of 'civility' or 'liberal conversation' while the communitarian type is based upon the existence of cultural ties and the ethnic or nationalist type is based upon blood ties. A damaged **national stability** is a major theme in the newspaper reports of 1993. Arguments such as the need to reduce frustration and angst amongst the population, the re-establishment of trust in the political system and the preservation of good ethnic relations have been used as justifications of amending the constitution. The following quote by the FAZ focuses on the lack of trust (in the political system) by the general public:

It would be deplorable if the compromise [constitutional change] next week would not gain the majority of the *Bundestag*. It would be a further damage to the democratic state. The trust of the public would be reduced further.

FAZ, 22 May 1993

The representation of **xenophobic violence** has been a major theme in the newspaper sample of 1991. The coding makes a distinction between the provision of neutral information on the attacks and a critical representation of these attacks. Another code relates to the demonstrations surrounding the debate. The code which deals with the representation of the demonstration is not further analysed as it is not relating directly to my overall objective of this section, i.e. the comparison of politicians' justifications of

the constitutional amendment with reports in the media (see p. 116-8). The following presents first of all the findings of the newspaper analysis.

Table 4.1 The representation of the asylum issue in German newspapers during 1991

Theme	<i>BILD</i>	<i>FAZ</i>	<i>SZ</i>
Asylum problem (caused by asylum)	60%	26%	36%
Critique of asylum problem	0%	0%	4%
Exclusion (general)	19%	17%	18%
Exclusion (safe third country)	0%	22%	11%
Crit. Exclusion (safe third country)	1%	17%	13%
Damaged national stability	0%	0%	0%
Humanitarianism (strong)	1%	17%	29%
Humanitarianism (weak)	0%	0%	4%
Critique of humanitarianism	0%	0%	4%
Information on Xenophobic violence	1%	0%	2%
Crit. of xenophobia	14%	13%	7%
European harmonisation	0%	22%	9%
Nationalism (exclusive)	0%	0%	0%

Table 4.1 indicates that all newspapers placed most emphasis upon the asylum problem; although the *BILD* did so to a significantly larger extent than the *FAZ* and the *SZ*. The topic of exclusion was another issue which was discussed frequently by all three newspapers. With regard to the coverage of the other topics there was a clear division between the broadsheets and tabloid. As expected the tabloid focused less upon technical issues of asylum such as the safe-third-country rule and European harmonisation and, instead, discussed topical issues such as asylum misuse and general

exclusion (especially deportation measures). In contrast the broadsheets the *FAZ* and the *SZ* picked up upon the technical issues parallel to the asylum problem and discussed strong forms of humanitarianism. The political affiliation of newspapers was less influential upon the newspaper coverage than the classification of newspapers as tabloid or broadsheet. The only issue where there was a significant distinction between the right-wing *FAZ* and *BILD* and the left-wing *SZ* was the critical discussion of xenophobia. The right-wing newspapers focused on xenophobia more than the *SZ*; possibly due to the fact that they had a vested interest explicitly to distance themselves from the far right.

Table 4.2 The representation of the asylum issue in German newspapers during 1993

<b>Theme</b>	<b><i>BILD</i></b>	<b><i>FAZ</i></b>	<b><i>SZ</i></b>
Asylum problem (caused by asylum)	50%	27%	30%
Crit. of asylum problem	0%	0%	2%
Exclusion (general)	14%	2%	2%
Exclusion (safe third country)	5%	37%	26%
Crit. Exclusion (safe third country)	0%	17%	23%
Damaged national stability	9%	12%	3%
Humanitarianism (strong)	0%	7%	21%
Humanitarianism (weak)	9%	37%	2%
Information on xenophobia	5%	5%	8%
European harmonisation	0%	2%	0%
Nationalism (exclusive)	0%	2%	0%
Demonstration <sup>37</sup>	62%	28%	16 %

Table 4.2 shows that during 1993 the highest number of articles in all newspapers dealt with the asylum problem although the *BILD* focused significantly more upon the asylum

problem than the other newspapers. However, the focus in 1991 upon exclusionary measures (in the sense of territorial exclusion) no longer existed in the broadsheets in 1993; and only the *BILD* emphasised stories which dealt especially with deportation measures. Similar to 1991 there was a distinction between broadsheets and tabloids with regard to the coverage of technical issues and more topical issues: the safe country rule remained the domain of the broadsheets while the asylum problem and the demonstration, which took place during the final parliamentary debate on the constitutional change in May 1993, were discussed extensively by the *BILD*, whereby the demonstration was interpreted by the *BILD* as radicalism from the left. The political affiliation between newspapers was more obvious in 1993 than in 1991, whereby the right-wing newspapers focused upon a damaged national stability and a weak form of humanitarianism and the left-wing *SZ* emphasised a strong humanitarianism. Indicators for a damaged national stability were seen in the lack of the public's trust into the democratic system reflected in the support of peripheral parties on the left and the right, and an increased angst and frustration amongst the public with regard to the political developments regarding asylum. Similar to the political debate especially the right wing newspapers created a moral panic regarding the general national situation and utilised this to support the constitutional amendment (see chapter seven for a further discussion of moral panic). Although asylum and the safe-third-country rule remained the dominant topics in 1993, one can identify a change with regard to more peripheral themes. Newspapers in 1991 dealt with a critique of xenophobic attacks on asylum seekers while by 1993 they mainly discussed xenophobia as an information issue (i.e. listing crimes related to xenophobia without any further commentary). And European harmonisation, which was on the media agenda in 1991, was not mentioned at all in 1993. The change of peripheral themes between 1991 and 1993 is an indication that xenophobic attacks

and European harmonisation were no longer topical issues in the public and political arena. Instead, the theme of national stability took over in 1993 (see chapter seven).

If we look at the general style of news coverage in 1991 and 1993, the *BILD* provides the highest amount of value judgement within its articles followed by the *FAZ* and the *SZ*. It was also noticeable that the *FAZ* favoured a support of the amendment because it reported the position of rejecters without further elaboration while supporters' justifications were outlined in detail.

To what extent did the news coverage in 1993 correspond to the political debate at the time of the constitutional amendment? The dominant themes within the political debate were a strong type of humanitarianism (i.e. a critique of limitation of humanitarianism within Germany) (57 per cent), the goal to reduce the asylum problem (44 per cent) and the perception of an asylum problem (44 per cent) (see chapter five). All newspapers picked up on the asylum problem while the 'strong type of humanitarianism' was merely represented by the *SZ* which focused upon the normative principle of safeguarding internal humanitarianism. The safe-third-country rule which was especially emphasised by the broadsheets was less dominant in the political debate (around 16 per cent), while national stability was less represented in the newspapers than during the debate. Above findings indicate that newspapers were keen to focus on concrete themes such as the asylum problem and the third-country-rule rather than on the more abstract concepts of humanitarianism and national stability which were dominant in the political debate.

Let us have a brief look to what extent newspapers in 1993 represented their political affiliations. Chapter six shows that SPD politicians emphasised the critique of a limitation of humanitarianism within Germany and the advocating of humanitarianism. The *SZ* focused especially on the latter theme while the limitation of humanitarianism was less emphasised. The ambiguous coverage of the safe-third-country ruling by the *SZ*

mirrors very well the political debate. In this respect the *SZ* reflects fairly well the position of the SPD although it ignores some of the dominant themes which were used by SPD politicians such as the critique regarding the lack of humanitarianism and the lack of effectiveness of the amendment. The *FAZ* reflects the position of the CDU/CSU by mentioning frequently the asylum problem (27 per cent of all articles), national stability (12 per cent of all articles) and a 'weak humanitarianism' (37 per cent); the latter refers mainly to the argument that the compromise was humanitarian. In comparison to the *FAZ* the *BILD* is especially reporting on the asylum problem (50 per cent of all articles) but less on the humanitarian issue (9 per cent). National stability is used by the *FAZ* and the *BILD* more often than by the *SZ*. Yet, it does not take the same priority as in the political debate of CDU/CSU politicians.

To sum up all newspapers irrespective of their political affiliation picked up upon the overriding theme of an asylum problem in 1991 and 1993. The political affiliation of newspapers became more influential in the coverage in 1993: the left-wing *SZ* focusing upon strong humanitarianism while the right-wing *BILD* and *FAZ* dealt with national stability and weak forms of humanitarianism. However, the more important distinction is the one between the broadsheets and the tabloid newspaper. As expected from a tabloid, *BILD* emphasised significantly more topical themes such as the asylum problem, the general exclusion of asylum seekers and the demonstration against the constitutional amendment in May 1993, while the broadsheets dealt with technical issues such as the safe-third-country ruling and European harmonisation. However, with regard to the political debate none of the newspapers reflected the more complex justification schemes used in the political debate. In the context of existing literature my findings confirm the negative portrayal of asylum seekers in the media across Europe. They also highlight that mainstream newspapers with different ideological concerns do not associate fundamentally different themes with asylum seeking. Thus, in line with

their characteristics of being 'mainstream', they reflect the dominant debate on asylum rather than alternative and more peripheral issues and positions.

#### **4.7 Public opinion on asylum**

This section investigates developments regarding public opinion on asylum between 1991 and 1993. I am interested to find out to what extent public opinion on asylum correlated with the media representation and the political debate. Opinion polls on asylum are gathered from the two institutes which have been mentioned before: the institute in Allensbach (*Institut für Demoskopie Allensbach*) which is affiliated with the political right and publishes regularly in the *FAZ*. The *Forschungsgruppe Wahlen* which is associated with the political left and publishes its monthly *Politbarometer* in the *SZ*. The following elaborates my earlier criticism of opinion polls in 4.5.1.

##### **4.7.1 Methodological issues and problems regarding opinion polls**

The survey of the *Allensbacher Institut* and the *Politbarometer* published by *Forschungsgruppe Wahlen* in Mannheim were based upon fairly large samples (between 1 500 and 2 200) which is a positive feature of them. However, the organisation in Mannheim used telephone interviews in the West which is a problematic method of data collection due to issues such as increased risks of misunderstanding, appropriateness of environment and a relative short time span for responses (Sarantakos 1998). They used face-to-face interviews in the East which is, in principle, a better method of data collection than telephone interviews (see Sarantakos 1998). Although they used a better method of data collection in the East, they sub-contracted their work to an organisation in East Berlin (USUMA GmbH) which raises further methodological problems. The *Allensbacher Institut* states in its surveys on asylum (*Allensbacher Berichte* 1991 and 1993) that it used 520 and 532 interviewers respectively. With such a large number of

interviewers it is questionable to what extent they were experienced. A further obstacle which influences the collection of valuable and unbiased information is the political affiliation of both organisations; the *Allensbacher Institut* displays a much greater bias regarding the formulation of questions and the interpretation of findings when compared with the *Forschungsgruppe Wahlen* in Mannheim. For example, the *Allensbacher Institut* formulated double-barrelled and leading questions with an insufficient number of response categories (see, for example, 4.5.1 on public opinion regarding xenophobic attacks and questions regarding the constitutional amendment in 4.7.2).

Further, it remains questionable to what extent public opinion polls using a short number of closed-ended questions in a very limited time scale can produce more than a reflection of a spontaneous and uninformed feeling on asylum seekers. Further, the analysis of relationships (such as political affiliation and opinion regarding asylum policy) is based upon a comparison of percentages. Significant tests would be a more valuable statistical method for such an analysis. In this respect assumptions regarding the link between factors such as political affiliation, education, age and geographical background and attitudes towards asylum seekers need to be treated with caution. Despite the above critique, the following summarises the findings of the opinion polls and gives some indication as to how the general public viewed the asylum issue between 1991 and 1993.

#### **4.7.2 Findings**

From 1992 onwards up to August 1993 the asylum theme was identified by the general public in the West as being the most important political theme followed, with a significant gap, by the theme of unemployment. In contrast the population of former East Germany identified unemployment as the key problem followed by the asylum topic in second position (see *Politbarometer* 1993).



With regard to the change of the constitution the *Allensbacher Institut* showed that the public support for a change of Art. 16 was not continuous: there was an increase between 1990 and 1991; however the support had decreased by May 1992 and had fallen below that in 1990 (see Table 4.3). Several authors argue that the public support for an amendment placed pressure upon the amendment of the constitutional article (Geddes 2003, Joppke 1999 and Marshall 2000). One cannot deny that the public had a negative attitude towards Art. 16; however, fluctuations in public opinion and between different opinion polls show that public opinion was not only influenced by the wording of questions but also by general developments in the asylum debate. Thus towards the end of the debate in 1992 the public were less keen to change the constitution than they were in 1991 as illustrated in table 4.3. It seems that the general public responded to a political debate which focused increasingly on the lack of effectiveness and emphasised that asylum applications will not be necessarily reduced by the amendment.

Table 4.3 Public support of the constitutional change between 1990 and 1992

Year	East/West	Support of change of asylum law
1990	East West	52% 60%
1991	East West	64% 69%
1992	East West	50% 55%

Source: *Allensbacher Institut 1993*

The *Allensbacher Institut* stated that the opinion on changing the asylum law did not correlate with a specific age or social group. However, they noticed an affiliation with party membership whereby in May 1992 the majority of the CDU/CSU and the FDP

voters were in favour of a constitutional change (67 per cent and 56 per cent respectively). Not a majority but, nevertheless, a high percentage of voters from the SPD and the Greens supported the change by May 1992 (43 per cent and 39 per cent respectively). The number of people who were explicitly against a constitutional change was relatively small for all parties at the same time: 7 per cent for the CDU/CSU, 20 per cent for the FDP, 20 per cent for the SPD and 29 per cent for the Greens. Instead, a large number of voters was undecided or did not know (26 per cent for the CDU/CSU, 24 per cent for the FDP, 37 per cent for the SPD, 32 per cent for the Greens and even 45 per cent for PDS voters) (see *Allensbacher Berichte* 1992).

The *Politbarometer* also carried out a survey on the change of the constitution and found for 1992 that 68 per cent of the population in the West and 75 per cent in the East believed that a constitutional change was necessary to stop the asylum misuse; the number of persons who were undecided were 3 per cent and 4 per cent respectively. Thus, it found a much higher support for the constitutional change and a much lower rate of ambiguity than the Allensbacher survey.

The following compares the findings of the Allensbacher study (1992) regarding a constitutional change with findings of the *Politbarometer* which differ to a large extent from the former. This difference in findings might be due to the different ways questions were formulated. The *Politbarometer* survey in 1992 linked its question regarding the change of the constitution to the aim of reducing asylum misuse ('what do you think: to avoid asylum misuse does the constitution need to be changed or does it not to be changed?'). The reference to asylum misuse produced much clearer alliances and a higher support of the change than the question by the *Allensbacher Institut* which purely referred to the asylum law ('are you for or against the change of the constitutional article?'). This indicates that the public was familiar with the topic of asylum misuse which was well covered by the media, while it had less knowledge about legal issues

which were rarely discussed by the media (see the previous section on the media portrayal of asylum seekers). With regard to party affiliation CDU/CSU supporters (79 per cent) and SPD supporters (66 per cent) were more likely to favour a change than FDP supporters (57 per cent). The party affiliation contradicts findings of the *Allensbacher Institut* whereby SPD supporters appeared less keen to support a change. Again the incorporation of asylum misuse into the question may have influenced a higher support amongst SPD voters. Although the general public was in 1992 supportive of the change its effectiveness was increasingly questioned by politicians and by January 1993 only 30 per cent of Germans believed that a constitutional change could counter effectively the asylum misuse (*Politbarometer* 1993). Especially, supporters of the SPD, the FDP and the Greens were critical regarding the effectiveness of the change (67 per cent, 63 per cent and 62 per cent respectively); and even half of CDU/CSU supporters had their doubts about the effectiveness. This reflected a general panic amongst the population whereby 27 per cent of all respondents in the West believed that the asylum problem could no longer be controlled using legal measures (*Politbarometer* 1993). The following examines in more detail the public opinion on the issue of asylum misuse.

As mentioned above asylum misuse had been a dominant topic in the media and the political debate throughout 1991, 1992 and 1993. In 1992 two-thirds of the population believed that the right of asylum was misused by *most* of the asylum seekers (*Politbarometer* 1992). However, party affiliation, age and educational background influenced the view on asylum misuse. The further to the left, the younger and the more educated a person was, the less likely did he or she believe that most asylum seekers misused the system; the above factors had a greater effect in the West than the East of Germany (*Politbarometer* 1992). On the other hand, the majority of the population (74 per cent in the West and 84 per cent in the East) was in favour of offering the right of asylum to foreigners who were politically persecuted. This right of asylum was equally

supported by voters from the main political parties. With regard to fringe parties affiliation with the Greens/Bündnis 90 and the PDS led to a higher support, while those who voted *Republikaner* were the least supportive. Although the majority of the population was in favour of the right to ask for asylum it felt that a limitation of admission even for those who were politically persecuted was necessary: 64 per cent of the population felt that only a limited a number of persons who were politically persecuted should be accepted while only 28 per cent said that every persecuted person should be admitted. Interestingly, especially supporters from the FDP in the East (71 per cent) held the opinion that a limitation of admission even for those who were persecuted was necessary, while FDP voters in the West were slightly more liberal (60 per cent) (see *Politbarometer* 1992).

With regard to deportation measures the majority of the population was reluctant to return rejected asylum seekers to their country-of-origin; 57 per cent in the West and 61 per cent in the East supported a deportation only if the person was not in danger. On the other hand, a large number of interviewees said that rejected asylum seekers should be returned to their country-of-origin irrespective of possible consequences (see *Politbarometer* 1992).

To sum up, opinion polls reflected an ambiguous attitude towards asylum seekers. While humanitarian principles and the protection of asylum seekers were supported in principle, they were limited in practice when they were discussed in the context of asylum misuse and overload. Therefore, the extended media coverage of the asylum problem in general and asylum misuse and overload in particular were reflected in the general perception of asylum seekers as being covert labour migrants. Although humanitarianism was adhered to in principle, in practice the themes of misuse and overload limited this principle and turned it into a 'weak' form of humanitarianism (see chapter six). Therefore, public opinion polls reflected very well the overall emphasis

upon the asylum problem across the media and the political debate. However, age and education had an influence upon the attitude towards asylum seekers, whereby the younger and more educated persons were more likely to prioritise principles of humanitarianism over topical themes such as misuse and overload. This link between education and tolerance reflects findings from other studies regarding the attitudes towards migrants in general (see, for example, Case *et al.* 1989, Chandler and Yung-Mei 2001 and Palmer 1996). To what extent did politicians base their justifications upon a correct reflection of public opinion? Politicians emphasised the angst, frustration and demand for a constitutional change amongst the general public in the context of asylum seekers. Although the general public was concerned about the assumed asylum misuse the above findings indicate that their support of the amendment was volatile and especially by 1993 they were less convinced that the amendment could deal with the assumed asylum misuse.

The findings reflect in general a link between the political debate on immigration and the public opinion on immigration, confirming similar findings by Freeman (1979) and Studlar (1978). In my case, a negative political debate encouraged a negative portrayal of asylum seekers amongst the general public. However, the above relationship can also work in a positive context. Studlar (1975) highlighted how the British Labour Party improved the attitude towards Commonwealth immigrants after a strong campaign against the government. While the FDP and the SPD emphasised the way the CDU/CSU had influenced the public opinion on asylum seekers, they failed to notice that they could have challenged this negative portrayal by emphasising positive factors with regard to asylum policy. All in all the complexity of the political debate is not reflected in the public opinion polls. I argue, therefore, that there was a strong reciprocal relationship between the media and the general public while the political debate takes a peripheral position. The political debate was only partially linked to the media and the

public debate because only certain themes in the political debate such as asylum misuse and asylum numbers were affected by or affecting the media and the public opinion. Nevertheless, above conclusions need to be treated with caution due to methodological limitations of public opinion polls which were outlined above.

#### **4.8 Conclusion**

This chapter examined factors in the wider environment which could potentially influence the decision-making process of politicians. The beginning of the 1990s was characterised by an increase of asylum applications, developments regarding the European harmonisation process and a range of social and political problems following reunification such as an increase in unemployment, a growing number of attacks against asylum seekers and foreigners and electoral gains of the far right. When I compared these factors with politicians' justifications I found an exaggeration and misconception of the situation. This applies especially to the asylum problem which was characterised by misuse and overload: misuse was mainly interpreted by politicians with reference to low recognition rates and the objective analysis showed that these rates could not be used as indicators for misuse as they have methodological, conceptual and empirical shortcomings. With regard to the European harmonisation process, the analysis showed that there were a number of signs that indicated that a European asylum policy would not be achieved in the near future. Nevertheless, politicians especially from the FDP and the SPD were keen to discuss the constitutional change in the context of European asylum law at the end of 1991. Once the unlikeness of such a EU measure was acknowledged, in the context of the problems surrounding the Maastricht Treaty, they dropped the European agenda but, surprisingly, held on to the constitutional change. Thus, via the topic of an EU asylum law politicians moved their position closer towards the constitutional change. With regard to the various social-economic and political

problems the analysis highlighted that economic problems on a national level such as unemployment were not discussed in the context of asylum. Instead, economic concerns were attached to the local level and had a large impact, in particular, upon SPD representatives of towns and municipalities who were the first to support a constitutional change within the SPD.

The xenophobic attacks in the early 1990s and the electoral successes of the far right in spring 1992 were used to justify the constitutional amendment. While the concerns of politicians about the increase in xenophobic attacks were substantiated in my analysis by the significant increase of xenophobic violence, politicians' worries about the far right were exaggerated in the political debate. Possibly even more influential for the decision-making process of politicians were the *explanatory* schemes of xenophobia and the far right. Here, a large discrepancy was found between politicians' explanatory schemes and those of social scientists. The former focused upon the asylum problem and the asylum debate while the latter emphasised socio-psychological problems following reunification. With regard to the far right, politicians from all parties except the Far Left referred to political frustration as the main factor for the electoral success of the far right and the actual or potential destabilisation of national cohesion. However, findings from opinion polls and existing studies on political frustration suggest that it is a widespread and possibly necessary feature of democracies in general. The large majority of persons in democracies show signs of political frustration, e.g. discontent with established parties. As a consequence they may support fringe parties across the political spectrum or carry on to support the established parties or abstain. I concluded, therefore, that not political frustration as such but the motives of xenophobia and racism attracted persons to vote for the far right. I argued further that these motives were enhanced and legitimised by the exclusive nationalistic debate surrounding reunification. The above discussion has shown a wide discrepancy between

a more objective analysis of the wider environment and the perception and representation of this environment by politicians. As mentioned before, reasons for this discrepancy may lie in a lack of information or in more strategic motives of politicians. As any conclusions on the motives of politicians would be highly speculative I will not elaborate further this issue.

The final section of this chapter looked into the link between the political debate, the media and public opinion. The representation of the asylum issue in the media was studied via a newspaper analysis carried out for 1991, 1992 and 1993. Findings showed that the media represented the asylum issue in a negative and simplistic way mainly focusing upon the asylum problem. The complex and changing justifications which characterised the general political debate between 1991 and 1993 were not reflected in the media. It is, therefore, not surprising that public opinion was emphasising the asylum misuse and overload which were topical themes in the media. Especially the older and less educated members of the population prioritised measures which dealt with asylum misuse and 'overload' over humanitarian concerns. In this respect the media and public opinion reflected a simplified version of the general political debate which was dominated by topics initiated by the CDU/CSU (see chapter five). Politicians who were referring in their justifications to the 'angst' and 'anger' amongst the population regarding misuse and overload were correct although this angst was mainly produced by the media coverage and the political debate itself which exaggerated and misinterpreted data concerned with the asylum movement. This was further enforced by the fact that the majority of the population did not have first-hand experience with asylum seekers. Surveys have shown that those persons who had first-hand experience with asylum seekers were more tolerant and understanding towards them than those who had not (*Politbarometer* 1993).



<sup>29</sup> Although it remains questionable whether Germany would have to deal with much less applications considering its size of the population and GDP which are likely to be taken into account if one develops a European-wide system of burden-sharing.

<sup>30</sup> Refugee organisations are rightfully dubious about a harmonised interpretation of the Geneva Convention as it may be harmonisation on the lowest common denominator.

<sup>31</sup> The questionnaire was developed during a three-month internship with the UNHCR in Geneva following consultations with legal experts in refugee matters.

<sup>32</sup> Findings between immigration and economic performance were not clear-cut in the context of labour migration, and classic studies by Mishan and Needleman (1970) and Kindleberger (1965) represent respectively the 'immigration is bad for the economy' and the 'immigration is good for the economy' positions.

<sup>33</sup> My use of the concept of xenophobia (*Fremden- or Ausländerfeindlichkeit*) does not only relate to hostile beliefs, feelings and actions towards foreigners which are associated with cultural threat and material competition (see Heitmeyer 2005) but also encompasses those which refer to racial ideology. Authors vary with regard to the definitional distinction between xenophobia and racism. Heitmeyer (2005), for example, distinguishes the concepts via the motives which are associated with the hostile feeling towards foreigners. He argues that xenophobia is caused by material competition and cultural threat while racism is linked to motives reflecting the belief in racial hierarchies (Heitmeyer 2005: 15). However, distinctions between the above motives are not clear cut. For example, the feeling of a cultural threat can explicitly or implicitly overlap with racist ideology. The following definition of xenophobia by Bullock (1988) is therefore a better reflection of my application of the concept as it provides a more general focus: 'The condition of disliking individuals or groups thought of as foreign...the dislike can range from a normally controlled awareness of preferences to an abnormal state of pathological fear and anxiety.' Although Bullock (1988) argues that xenophobia 'takes normally an ethnic form', he leaves space for other motives as well. The attacks against asylum seekers and foreigners during the beginning of the 1990s were generally referred to in the public debate as *Fremden- or Ausländerfeindlichkeit* (xenophobia) rather than *Rassismus* (racism) (see Prantl 1997). This may have different reasons: victims were not representing a uniform group and 'the significance of biological characteristics to identify collectivity' (one of the indicators for racism listed by Miles 1989: 79-80) did not necessarily apply. Secondly, violence and hostile feelings towards foreigners amongst the general population were explained by motives of material threat rather than a specific racist ideology (see Starke 1993 and Heitmeyer *et al.* 1992). However, one should not ignore the involvement of individuals and groups with a specific racial agenda (such as the Neo-Nazis who organised the attacks in Rostock-Lichterhagen) and a significant belief in racial ideology especially amongst young people in the East (see 4.5.1 and 4.5.2). When I use the term xenophobic violence I, therefore, refer to violence against foreigners which may be based upon material, cultural and/or racist motives.

<sup>34</sup> Although I will highlight methodological limitations of surveys carried out by the Allensbacher Institute I will incorporate its findings into my study for the following reason: (1) It is one of the major opinion polls in Germany and is based upon a fairly large sample of around 2000 persons providing good external validity and a general overview of changes in public opinion. (2) The Allensbacher Institute is influential in the formulation of public opinion especially considering that it publishes in the broad sheet *Frankfurter Allgemeine* and cannot be ignored when one investigates the relationship between public opinion, media and politics (see section 4.7). In general the analysis of the surveys carried out by the Allensbacher Institute highlight the following areas of further research: (i) the limitations of public opinion polls in representing public opinion, (ii) the influence of the political debate on the formulation of public opinion polls and (iii) the impact of opinion polls upon the political debate and public opinion (especially if they are regularly published in major newspapers).

<sup>35</sup> The annual youth survey, the Shell Study, failed to deal with xenophobia in its 1992 publication although xenophobia amongst young people was a topical issue in the public debate.

<sup>36</sup> The *Allensbacher Institut* surveyed in 1991 the satisfaction with the government whereby they found that 48 per cent of the population showed often or very often concerns that the government was too weak and 74 per cent were often or very often concerned that politicians were not able to solve urgent problems. Due to the fact that questions were formulated vaguely it is difficult to draw any concise conclusions as the data failed to give any information regarding the areas in which they thought the government was weak and which problems they thought politicians would not solve. *Forschungsgruppe Wahlen* found that the contentment with the government decreased between 1991 and 1993 and reached the average value of -1 using a scale between +/-5. In contrast the opposition party SPD remained fairly stable with + 0.5 in January 1991 and 1993. This contradicts the findings of the Allensbacher Institute which stated that 'principally the population, has more trusts in the Union [CDU/CSU] than in SPD to solve economic problems' (Köcher 1992). Instead the *Politbarometer* (1993) found that trust in the economic competence of the government decreased during 1993 to 30 per cent while trust in the SPD concerning this competence increased to 40 per cent by the end of 1993 (*Politbarometer* 1993). In 1993 the majority of

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the population (63 per cent) stated that the government did its work badly (63 per cent) rather than well (32 per cent). However, the majority believed that the SPD would not be different (59 per cent); 26 per cent thought that the SPD would do the work better and 12 per cent worse (*Politbarometer* 1993).

<sup>37</sup> The theme of demonstration is particular to the newspaper analysis and refers to the demonstration of opponents of the asylum compromise which took place on the day of the parliamentary debate (26.5.1993). The percentage refers to the total number of articles of the one-day analysis surrounding the parliamentary debate while the other percentages refer to the overall number of articles selected in 1993.

## **Chapter 5 The closer political environment of the asylum debate between 1991 and 1993**

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### **5.1 Introduction**

This chapter deals with the second layer of the conceptual framework and represents the beginning of the case study on the amendment of Art. 16 (2) of the German constitution in 1993. It investigates the closer political environment between 1991 and 1993 during which the majority of politicians from the SPD and the FDP moved from a rejection of a change of Art. 16 (2) of the constitution to a support of the former.<sup>38</sup> I will utilise Archer's (1995) 'morphogenetic sequence' to analyse the interplay between political structures and actors dealing with the asylum issue (see chapter three for a wider discussion and justification of this approach). It should be emphasised that Archer's (1995) approach is used in a pragmatic sense to structure and co-ordinate the

investigation of empirical data rather than as part of a wider theoretical discourse. The morphogenetic sequence offers a chronological investigation of the interplay between structures and actors; put in a simplistic way it looks first of all at established structures at a certain moment in time, followed by an analysis as to how actors changed or maintained these structures in a specified time period.

Following from above I will, therefore, start the chapter by outlining the structures which were in place in early 1991. Structures refer both to social games (interactive structures of collectivities) and institutional rules (normative structures) (see Mouzelis 1995). Normative structures are in the context of my research understood as structures which relate to parties' positions on asylum policy and related agendas and justifications which were established to substantiate these policies. Social games or interactive structures relate to frameworks of communication such as the occurrence of meetings, dialogues or alliances within and between parties. The overview of established structures in 1991 leads on to an analysis of how these structures were elaborated (i.e. maintained or changed) by politicians between 1991 and 1993. Regarding the elaboration of these structures I am especially interested in social hierarchies, i.e. which hierarchical positions within the individual parties and the overall party system were influential in the elaboration of structures. Thus, the following questions are central to my investigation of the political context surrounding the change of Art. 16 (2): Which positions on asylum policy, related agendas and communicative processes existed at the beginning of 1991? How did parties deal with these normative and interactive structures between 1991 and 1993, i.e. did they maintain or change them? To what extent were particular social hierarchies engaged in the elaboration (i.e. maintenance or change) of these structures and which structures existed by May 1993?

## 5.2 The political structures at the beginning of 1991

At the beginning of 1991 a coalition government between the CDU/CSU and the FDP was governing Germany which had been headed by Chancellor Kohl since 1982. The SPD and the Far Left (defined as the PDS/*Linke Liste* and *Die Grünen/Bündnis 90*) were in opposition although the latter were not able to form a parliamentary faction; instead, they were given the status of a 'group' so that they could participate in the political decision-making process of the *Bundestag* (Holzapfel 1993).

At the beginning of 1991 the CDU/CSU advocated intensively a change of Art. 16 (2) while the Far Left, the SPD and the FDP were vehemently opposed to such a measure. The change of Art. 16 (2) had been mentioned sporadically by CDU and CSU politicians since the mid-1970s when the asylum issue appeared on the political arena in the context of refugees arriving from Eastern Europe (Köfner 1983).<sup>39</sup> However, until the late 1980s the CDU/CSU mainly focused upon shorter and more restrictive procedures rather than a constitutional change. As a consequence, six laws on asylum procedure (*Asylverfahrensgesetze*) were implemented between 1978 and 1989. Yet these laws were increasingly viewed as ineffective by the CDU/CSU and the far right *Republikaner* and by the mid-1980s the change of Art. 16 (2) was demanded by the CSU and the right wing of the CDU represented by politicians such as Dregger (Chairman of the Parliamentary Faction of the CDU/CSU), Lummer (CDU, Minister for the Interior of Berlin), Strauss (Leader of the CSU) and Zimmermann (CSU, Home Secretary until April 1989) (see for an overview of party positions during the mid-1980s the publication by the Friedrich-Naumann-Stiftung 1986; see also Stöber 1990, Thränhardt and Wolken 1988, Wolken 1988). From the late 1980s onwards the majority of politicians from the federal states of Bavaria (CSU-governed) and Baden-Württemberg (CDU-governed) had asked for a change of Art. 16 (2) and succeeded in convincing the party leaderships in Bonn to adopt the same strategy by 1989 (see Münch 1992). The leadership of the CDU

and especially Chancellor Kohl were reluctant to comment on the change and still in November 1988 Kohl made a speech which was interpreted by the *SZ* as being opposed to a constitutional amendment (see Husbands 1994).

Thus by 1991 the change of Art. 16 (2) had been a well-established topic of the political debate. Themes such as asylum misuse, traffickers and overload (e.g. relating to 'influx' of asylum seekers and burden on communities), which had been used by the CDU/CSU and the far right since the mid-1970s, were utilised to justify morally the exclusion of asylum seekers (Stöber 1990, Thränhardt and Wolken 1988). Therefore, the political strategy by the government was to counter a perceived asylum problem via more restrictive procedures to reduce the asylum numbers rather than with changes in the asylum system which enabled the administration of larger number of applications. Münch (1992) observed that every time new asylum figures were published CDU/CSU took the opportunity to portray the asylum movement as a 'flood' and announced more restrictive measures for the reduction of asylum seekers; irrespective whether the increase in numbers was significant or not, short-term or long-term and relative small or large in the context of national, European and international refugee movements.

The former section shows that the CDU/CSU had dominated the asylum debate (with regard to political measures and related agendas) since the mid-1970s and were well positioned when they started to demand a constitutional change at the beginning of the 1990s. In contrast, the SPD, the FDP and the Far Left were socialised into a defensive position throughout the 1980s. Consequently, they entered the debate surrounding the change of Art. 16 (2) with a significant strategic disadvantage.

Communication structures centred around the CDU and the CSU who were in a confrontational dialogue with the FDP and the SPD. There seems to have been a lack of communication (at least in the form of official meetings) between the SPD and the FDP to discuss their asylum positions and related agendas although both parties followed

very similar positions and agendas (based on a newspaper analysis of the *Süddeutsche Zeitung*, and the *Frankfurter Allgemeine Zeitung* between 1991 and 1993).<sup>40</sup> However, structural barriers existed between both parties and hindered collaboration between both parties. First, the SPD was still reluctant to engage in common action with the FDP due to fact that the FDP entered in 1982 a coalition government with the CDU and broke its traditional bond with the SPD. A further obstacle was that the FDP was part of the government while the SPD was in opposition.

### **5.3 The elaboration of structures between 1991 and 1993**

The following investigates the political developments which led to a change of Art. 16 (2) of the constitution. Emphasis should lie on the change or maintenance of interactive and normative structures which governed the asylum debate. The following discussion is structured around the three party compromises which dominated asylum policy between 1991 and 1993: the first compromise dealt with restrictive measures which were intended to accelerate the asylum procedure while the other two compromises related to the change of Art. 16 (2).

#### **5.3.1 The lead-up to the first party compromise on accelerating procedures in**

##### **October 1991: an abundance of party positions and agendas**

The previous section has highlighted that the asylum debate at the beginning of 1991 was dominated by the proposal from the CDU/CSU to change Art. 16 (2) of the constitution. At that time representatives from the Far Left, the SPD and the FDP were still opposed to a change of Art. 16 (2) (see *SZ* 5.8.1991, 16.9.1991, *Die Zeit* 16.8.1991). The following demonstrates that the first nine months of 1991 were marked by an abundance of party positions and agendas.

### 5.3.1.1 The Far Left

Throughout 1991 the Far Left rejected the constitution. However, this did not mean that they did not support a change of asylum policy. By September 1991 the Green party demanded in its highest political board (*Länderrat*) the implementation of an immigration law which they defined as a 'third way' to enter Germany; the other 'two ways' related to access via Art. 16 (2) and via procedures applying to so-called *Kontingent* refugees under temporary protection programmes (*SZ* 13.9.1991). Thus, the Green party offered an alternative measure to the constitutional change which reflected indirectly an agreement with the CDU/CSU that an asylum problem existed and that Art. 16 (2) was used by immigrants who were not politically persecuted. Although the Greens did not emphasise explicitly the theme of an asylum problem they did not openly reject it either (*SZ* 12/13.10.1991, *Deutscher Bundestag* 18.10.1991). The PDS defended in general a liberal policy on immigration, supporting the principle of immigration, open borders and the position that Germany is an 'immigration country'. Members of the PDS rejected explicitly the idea of 'deserving' and undeserving immigrants and criticised vehemently the way the political and the media debate were conducted. They advocated human rights and developmental aid to improve the situation for refugees (*Deutscher Bundestag* 18.10.1991). In general the Far Left focused on the asylum problem and combined it with an explicit agenda of humanitarianism, i.e. an increase in developmental aid, a general reduction of causes of flight and solidarity with refugees and a critique of the media and politicians to misuse asylum for their own political and financial gains.

### 5.3.1.2 The SPD

Throughout 1991 the majority of SPD politicians still rejected the change of Art. 16 (2) of the constitution. Similar to the Far Left, they nevertheless proposed changes to the



current asylum regulations. Yet, in distinction from the Far Left, these changes were much more varied and some of them were moving closer to a change of Art. 16 (2). SPD politicians discussed the asylum problem in a much more explicit way than the Far Left. Proposals of SPD politicians in the first nine months of 1991 referred to (1) different quota systems, (2) a change of Art. 116 of the constitution (relating to the unlimited settlement of *Aussiedler* within Germany)<sup>41</sup>, (3) a change of Art. 19 of the constitution which guaranteed access to legal representation for asylum seekers, (4) a more or less explicit support of a change of Art. 16 (2) and (5) an acceleration of asylum procedures.

(1) A variety of proposals concerning some form of a quota system were presented by SPD politicians. For example, the Minister of the Interior of Saarland, Läßle, proposed a quota system for refugees from war and catastrophe zones; politically persecuted persons should be, however, excluded from this system (SZ 5.8.1991). A more restrictive proposal on quotas was made by Däubler-Gmelin (Deputy Chairman of the Parliamentary Faction of the SPD) who suggested distinguishing between three groups of refugees: first, those who were accepted under Art. 16 (2), secondly, those who complied with the Geneva Convention and thirdly, immigrants who failed to be accepted under Art. 16 (2) and the Geneva Convention, and who should consequently be refused entry. Further, she demanded quotas for refugees who were recognised under the Geneva Convention and quotas for *Aussiedler*. The above policies on quotas reflected on the one hand concerns about refugees who ended up in a lengthy asylum procedure although their need for protection was obvious (e.g. civil war refugees); on the other hand, politicians such as Däubler-Gmelin from the SPD also started to target so-called 'non-genuine asylum seekers' by refusing entry to those who had been not accepted under Art. 16 (2); this was a highly dubious classification as there are a number of reasons why asylum seekers who had been refused under Art. 16 could still have had genuine reasons for protection (see chapter four for a further discussion of

the interpretation of the Geneva Convention and the variables which influence recognition rates).

(2) An abolition of Art. 116 of the constitution was demanded by the mayor of Bremen, Wedemeier (SPD). During the early 1990s a similar number of *Aussiedler* and asylum seekers settled in Germany and increasingly voices from the political left suggested limiting the free entry of *Aussiedler* (SZ 5.8.1991 and 8.8.1991).<sup>42</sup> The CDU/CSU were, as expected, opposed to an exclusion of *Aussiedler* as the intake of this migrant group reflected their support of a principle of citizenship which was based upon *ius sanguinis*. Both Däubler-Gmelin's proposal of quotas for *Aussiedler* and Wedemeier's criticism of Art. 116 of the constitution reflect that several SPD politicians were not, in principle, against a change of constitutional articles relating to immigration, although, they were still reluctant to change Art. 16 (2).

(3) Another constitutional article which was debated during 1991 was Art. 19 (4) which guaranteed legal protection for asylum seekers. Several SPD politicians from municipalities and federal states (e.g. the mayor of Bremen, Wedemeier, and the Governor of Saarland, Lafontaine) discussed the change of this article which is as relevant for the protection of asylum seekers as Art. 16 (2). Without being able to access legal representation the majority of asylum seekers would not stand a chance to represent their case successfully due to a lack of knowledge regarding areas such as the German legal system, the interpretation of the Geneva Convention, administrative deadlines etc.<sup>43</sup>

(4) It is not surprising that Lafontaine who already suggested a change of Art. 19 was one of the first SPD politicians who mentioned a possible support of a change of Art. 16 (2). However, leading SPD politicians such as the Chairman of the Parliamentary Faction, Vogel, and the SPD leader, Engholm, opposed vehemently throughout the first nine months of 1991 such a change. A contradictory strategy was

presented by Wedemeier who announced his disapproval with a change of Art. 16 (2) although, in practice, he already rejected applicants from Poland and Rumania on the grounds that they were safe countries (which was the central theme of the constitutional change) (SZ 5.8.1991 and 8.8.1991).

(5) The measure which most SPD politicians and especially the leading figures of the party demanded by mid-1991 was an acceleration of procedures (SZ 8.8.1991, *Die Zeit* 16.8.1991). Such an acceleration was the dominant measure which was set against a constitutional change. Faster procedures were thought to be achieved via shortened procedures for unfounded cases, more effective deportation measures and restrictions in the appeal system. Topics surrounding such an acceleration dominated the asylum debate during the summer and autumn of 1991 and Däubler-Gmelin was heading a commission that dealt with a formulation of a new asylum law. By mid- October and after a number of meetings between the CDU/CSU and the FDP a compromise was achieved across parties to speed up procedures. The next section on the FDP and the CDU/CSU demonstrates that the acceleration of procedures was viewed in different lights: while the SPD and the FDP saw it at that point of time as an alternative measure to the constitutional change, the CDU/CSU understood it as a complementary initiative and carried on with their demand of a constitutional change.

Although the acceleration of procedures became the main discourse within the SPD during autumn 1991, there was also increasing support of a change of Art. 16 (2) amongst the SPD politicians from municipalities (e.g. Munich and Bremen) and federal states by mid-September. Proposals were mentioned for a legal reservation (*Gestzesvorbehalt*) which should be added to Art. 16 (2) such as 'details are further defined in a law' (SZ 17.9.1991). At the beginning of October a few politicians from Bonn such as Bernrath (SPD) also announced that a change of Art. 16 (2) should be considered (SZ 2/3.10.1991).

With regard to agendas SPD politicians focused during the first nine months of 1991 upon the asylum problem, the condemnation of increasing xenophobia and a critique of the CDU/CSU concerning the fostering of xenophobia through their asylum debate. A clear distinction could be detected between the discourse formulated by the politicians from municipalities and federal states and those who represented the party in Bonn. The former stressed the exhaustion of capacities regarding the accommodation of asylum seekers while leading politicians from SPD in Bonn such as Däubler-Gmelin, Engholm and Vogel focused upon the critique of the CDU/CSU regarding their conduct of the asylum debate (*Deutscher Bundestag* 18.10.1991).

In summary, by September 1991 the SPD presented a variety of sometimes contradictory positions regarding asylum policy, yet the majority of politicians from the SPD was still united in their opposition regarding a change of Art. 16 (2) although there was some indication that a few SPD politicians representing municipalities moved towards a support of a constitutional change. They justified their position with reference to the asylum situation in their constituencies which they perceived as problematic. Thus, lower federal hierarchies of the SPD did not only start changing their position on asylum policy but also adopted justifications from the CDU/CSU. Thus the concept of social hierarchies becomes relevant for the analysis of the SPD. By autumn 1991 a division exists between the lower and higher hierarchies of the SPD with regard to their position on Art. 16 (2) and their justification schemes: the leadership continued to reject a constitutional change and focused upon the acceleration of procedures; while the rank and file rejected the acceleration as ineffective and increasingly demanded a change of Art. 16 (2). Further, the representatives of towns and municipalities used the asylum problem as a concrete justification for supporting a change of Art. 16 (2) while the leadership of the SPD failed to articulate any concrete reasons for their rejection of a

constitutional change except that the political debate surrounding the change encouraged xenophobia.

The above indicates that SPD politicians changed considerably their position on asylum policy within the first nine months of 1991. While SPD politicians were strongly opposed to the change of Art. 16 (2) at the beginning of 1991, by autumn representatives from municipalities and towns increasingly demanded a change. Although the representatives initiated a change within the SPD they did not act independently. Instead, they adopted and were influenced by the overall discourse of the early 1990s which was initiated and dominated by the CDU/CSU.

Communicative structures also changed considerably between the beginning of 1991 and autumn 1991. While at the beginning SPD represented a relatively united position regarding the constitutional change, nine months later the party was divided on this issue and alliances occurred between hierarchies lower down in the federal system and CDU/CSU. These alliances were reflected in dialogues and approval of opinions rather than official meetings between parties.

### 5.3.1.3 The FDP

By autumn 1991 the majority of politicians from the FDP was still opposed to a change of Art. 16 (2). Similar to the SPD, the FDP politicians were keen to propose changes to the current asylum system agreeing explicitly that there was an asylum problem. Yet, in distinction to the SPD, the FDP displayed a more unified position on asylum and a split between lower and higher ranks within the parties was absent.

Although the FDP's overall message during the summer of 1991 was to reject a constitutional change, Genscher (Minister of Foreign Affairs) and Kinkel (Minister of Justice) demanded the immediate *refoulement* of asylum seekers who arrived from Poland, Hungary, Bulgaria, the Czech Republic and Rumania (SZ 8.8.1991); in effect

suggesting safe country lists which contradicted the individual right of asylum established in Art. 16 (2) of the constitution. Nevertheless, FDP politicians who supported such lists persisted in rejecting a constitutional change and announced instead further procedural laws. In this sense, the issue of changing the constitution was much more an issue of principle for FDP politicians than for SPD politicians. With regard to changes to the procedural laws the FDP was the first party which formulated a concrete proposal demanding measures such as faster decision-making, central reception centres (*Sammellager*), faster deportation measures, the involvement of one court only in the appeal's procedure, the rejection of delayed appeals and stricter punishment of traffickers (*SZ* 27.8.1991).

The discourse within the FDP focused upon the asylum problem and asylum misuse in particular. However, a large emphasis was also placed upon a European asylum law. In this context Solms, the chairman of the parliamentary faction of the FDP, was one of the first FDP politicians to suggest that a constitutional change regarding Art. 16 (2), 19 and 116 might be possible as part of the European harmonisation process (*Der Spiegel*, 37/1991 and *SZ* 14/15.9.1991)). However, Solms' position was rather ambiguous and by the end of September 1991 he proclaimed that a rejection of Art. 16 (2) was definitely not acceptable (*SZ* 26.9.1991). In the context of accelerating procedures the FDP emphasised the asylum problem and asylum misuse in particular, while they discussed the change of the constitution in the context of European harmonisation. By the end of September the initially unified position of the FDP started to show cracks amongst the leadership: while Lambsdorff suggested that Art. 16 (2) may be changed *after* a common European asylum law Solms announced that he could imagine a change *before* an European law.

To sum up, by autumn 1991 the majority of the FDP maintained their position on rejecting a constitutional change. However, they changed their position concerning

the support of more restrictive procedures which they had opposed at the beginning of 1991, e.g. the use of collective reception centres (*Sammellager*) and the limitation of appeal's rights. Such policies were proposed and partly implemented by the federal states of Bavaria and Baden-Württemberg which had the reputation for being hard-liners in matters of asylum. Thus, by threatening the SPD and the FDP with a constitutional change, CDU/CSU managed to gain support for asylum measures which were formerly perceived as violating the rights of asylum seekers.

With regard to agendas FDP politicians adopted the CDU/CSU themes of misuse to substantiate their support of more restrictive measures. Independent from the CDU/CSU they introduced the topic of European harmonisation into the asylum debate and placed the discussion of changing Art. 16 (2) into this context. Thus, FDP politicians applied the agenda of misuse and Europe in different contexts; while Europe was utilised as a justification for rejecting or delaying a constitutional change, the topic of misuse justified the change of procedural laws, reflecting the opinion that a constitutional change would not counter the misuse.

Looking at the number of official meetings regarding the asylum issue I found that FDP politicians had been not engaged in any formalised communication with the SPD although they often represented similar positions on asylum such as in the case of quotas or an immigration law. Within the party there was no obvious rift within different hierarchies of the organisations as was the case amongst the SPD leadership and representatives of towns and municipalities. However, divisions became apparent within the FDP leadership in the context of the still sporadic and peripheral discussions of changing Art. 16 (2), being divided on the issue whether a change should occur before, during or after the European harmonisation process. Therefore, in contrast to the SPD, first moves towards a change of Art. 16 (2) were initiated from the leadership rather than lower positions within the federal system. The overall motor for new

initiatives and agendas on asylum was clearly situated within the leadership of the FDP while the rank and file were fairly absent from the debate during 1991.

The above indicates that normative structures regarding both position on asylum and related agendas were changed by FDP politicians during 1991 while communication structures (with regard to official meetings) within and between parties were maintained. Within the party the leadership of the FDP remained influential in changing or maintaining the above structures while hierarchies lower down were less noticeable. Although the FDP leadership developed its own discourse on Europe and a critique of a constitutional change, it was influenced by the established structures from the CDU and CSU regarding the acceleration of procedures and the emphasis upon asylum misuse.

#### **5.3.1.4 The CDU and CSU<sup>44</sup>**

The CDU and CSU continued to emphasise the need for a constitutional change in the first nine months of 1991. Yet, in distinction to the previous year politicians started to make more concrete suggestions regarding this change. For example, Stoiber (Minister of the Interior in Bavaria) demanded the change of a constitutional guarantee into a 'right of mercy' (*Gnadenrecht*) and Glück (Minister of Social Affairs in Bavaria) proposed that some asylum seekers should apply from their country-of-origin. Further, Teufel (Governor of Baden-Württemberg) supported safe country lists on the basis of which asylum seekers could be immediately rejected (*SZ* 27.8.1991). Chancellor Kohl (CDU) suggested an introductory sentence to Art. 16 (2) which outlined that details are defined further in one or several asylum laws and a change to or abolition of Art. 19 of the constitution (*Die Zeit* 16.8.1991). Kohl and Schäuble (Minister of the Interior between April 1989 and November 1991) went so far to suggest safe country lists without a constitutional change even if they risked a complaint procedure by the constitutional court (*Die Zeit* 16.8.1991 and *SZ* 8.8.1991). Although the CDU and the



CSU were both in favour of changing Art. 16 (2), discrepancies existed concerning the change of Art. 19 and the safe-third-country ruling. Consequently, by autumn 1991 it was still open to what extent the CDU and the CSU would follow a common initiative to amend the constitution.

The change of Art. 16 (2) was mainly justified by referring to the classic topics which had been already on the public agenda throughout the 1980s such as low recognition rates, misuse and the general burden of asylum seekers. However, increasing emphasis was also placed upon the need to reduce racist attacks against foreigners and especially asylum seekers in Germany. Although the CDU and CSU displayed in general a united position regarding the constitutional change, it was discussed in quite different contexts. On the one hand politicians from the CSU claimed that Germany was definitely not an immigration country and that it was, in fact, inhumane to attract immigrants from countries where they were needed to establish economic and political stability; and politicians at the right spectrum of the coalition such as a Bavarian MP were also keen to associate asylum seekers with typhoid or Aids (*SZ* 18.9.1991). On the other hand CDU politicians such as Geissler (Deputy Head of Parliamentary Faction of the CDU) demanded humanitarian policies for refugees and proclaimed that Germany was an immigration country which needed an immigration law (*SZ* 15.7.1991 and 7.10.1991 and *ASB Magazin* December 1991). Another more moderate politician within the CDU was President Weizsäcker who still rejected altogether a constitutional change (*SZ* 7.10.1991).

During 1991 the CDU and CSU utilised extensively threat and blackmail as part of their communicative strategies with the SPD. For example, the government of Bavaria announced that it would deport asylum seekers into countries-of-origin if there was no common initiative with the SPD to change the constitution (*SZ* 13.9.1991). Further, Huber (General Secretary of the CSU) threatened to stop the admissions of

asylum seekers in federal states governed by the CDU and CSU if the SPD did not support the constitutional change (SZ 23.9.1991). The political strategy by the CDU/CSU to put the SPD under pressure to accept a constitutional change was most openly reflected in a country-wide initiative by Rühle (General Secretary of the CDU) who informed the rank and file of the CDU to intensify the political debate with the SPD regarding Art. 16 (2) (SZ 16.9.1991).

To sum up, politicians from the CDU and the CSU supported a constitutional change although discrepancies still existed regarding more concrete ideas about such a change. Their discourse focused mainly upon asylum misuse. The communicative structures within the coalition of the CDU and the CSU were maintained whereby the leadership of the CDU and the CSU were influenced by initiatives from hierarchies lower down in the federal system; the federal governments of Bavaria and Baden-Württemberg were here especially influential and took the role of think tanks. Therefore, normative and interactive structures were overall maintained between January 1991 and October 1991 although an intensification regarding the position on asylum, agendas and communicative structures took place at that time.

#### **5.3.1.5 Summary**

Overall the parties maintained their positions regarding the change of Art. 16 (2) between January and October 1991: the Far Left and the majority of FDP and SPD politicians condemned the constitutional change while CDU/CSU carried on to advocate such a change. However, during the first nine months of 1991 a minority amongst SPD politicians representing municipalities such as Munich and Bremen and federal states (e.g. Nordrhein-Westphalen) began to divert from the official party position and announced a possible support of a constitutional change. This move indicated a start of a split within the SPD which would become more prominent in the next two years. The

change of position by SPD politicians lower down in the federal hierarchy was triggered by increasing problems to accommodate asylum seekers in municipalities and towns. Although the precarious situation with regard to housing and social costs was influenced by governmental measures such as distribution quotas for asylum seekers (where especially SPD-governed municipalities and federal states were allocated large numbers of asylum seekers, see Münch 1992), failed housing policies and reduced resources for municipalities, SPD politicians initially thought that the amendment may reduce the number of asylum seekers and, therefore, improve the situation in their municipalities. (SPD politicians realised in the next months that this will not be the case).

FDP politicians were much more reluctant than those from the SPD to move over to a constitutional change although by October 1991 they discussed a possible change *after* the establishment of a European asylum law. There was less pressure on FDP politicians lower down the federal hierarchy (with regard to providing accommodation and other provisions for asylum seekers) as they were less likely than SPD politicians to govern municipalities (see Münch 1992). FDP politicians were emphasising much more than SPD politicians that the constitution was *unantastbar* (sacrosanct) which may be explained by their position of being the 'liberal' party in Germany emphasising the protection of rights. While the majority of SPD and FDP politicians were still rejecting a constitutional amendment, they had agreed by autumn 1991 to support an acceleration of procedures via more restrictive legislation which they had condemned a year earlier. Increasing pressure from the CDU/CSU to show political action and numerous xenophobic attacks throughout 1991 (see chapter four for a more detailed analysis of these attacks) led to a change of position by the SPD and the FDP. The support of more restrictive measures was also seen as a 'first' compromise hoping that a move towards more restrictive measures ('below' a constitutional change) would end the debate by CDU/CSU to demand a constitutional change. The next section will

show that this was not the case and, instead, SPD and FDP were moving towards the acceptance of a constitutional change before the measure on accelerated procedures was even implemented.

### **5.3.2 The fast track to a compromise on changing Art. 16 (2)**

This section discusses how the leadership of the SPD and the FDP moved from an agreement of accelerating procedures to a support of changing Art. 16 (2) between October 1991 and December 1992. The phase between autumn 1991 and winter 1992 was marked by an increased communication between parties concerning different agendas of asylum policy and a move towards common party policy from autumn 1991 onwards. As a consequence the following section will be structured along agendas rather than party affiliations which was the basis for the previous section.

#### **5.3.2.1 The compromise on accelerating procedures**

After a number of meetings between the SPD and the government that did not result in any common proposal on asylum policy, the parties finally agreed on 10 October 1991 to shorten asylum procedures to six weeks via more restrictive measures. The SPD, the FDP and the CDU/CSU agreed on measures such as centralised reception centres (*Sammellager*) where federal decision-makers should identify ‘obviously unfounded’ claims. They also decided that appeal procedures for those claims would be restricted to one court only and if the appeal was unsuccessful the authorities would be able to deport the asylum-seeker immediately. However, the agreement was rather short-lived and already one day after the agreement the CSU leader Stoiber viewed it as unrealistic and Schäuble presented his first concrete proposal regarding a constitutional change.

In November the new Home Secretary, Seiters, presented a proposal of a new asylum law on accelerating procedures. The following months were characterised by a

dispute amongst parties (*Parteienstreit*): the federal states demanded from the federation (*Bund*) the free disposition of empty military barracks which they could utilise as reception centres; however, the federation refused to offer the barracks free of charge. As the majority of the federal states were governed by the SPD, this refusal was interpreted as a governmental attempt to hinder the success of accelerating procedures. However, disagreement concerning the 'compromise' also existed between the leaders of the SPD and the SPD representatives from federal states who viewed the acceleration as being unrealistic (SZ 14.10.1991). A further issue of concern for the SPD was the shortage of personnel dealing with asylum claims (*Deutscher Bundestag* 18.10.1991). The SPD criticised the government for intentionally not filling 120 positions within the Federal Office for the Recognition of Refugees (SZ 10.10.1991 and 30.10.1991). However, the government justified the shortage of employees for the Federal Office with a shortage of lawyers; arguing that they employed previously unemployed lawyers and/or graduates with bad marks and that this supply was saturated (SZ 10.1.1991). Due to the above disputes the implementation of the 'compromise' on accelerating procedures did not take place (as planned) in January 1992 but was postponed to March 1992.

### **5.3.2.2 Bringing the change of Art. 16 (2) back on the agenda**

By November 1991 the acceleration of procedures had disappeared from the political agenda and the CDU/CSU concentrated upon the constitutional change. Therefore, the hope by the SPD and the FDP that an acceleration of procedures would remove the constitutional change from the political agenda did not materialise. Schäuble presented a proposal to change Art. 16 (2) which mainly centred around the introduction of safe-country-lists. The lists were rejected by the leadership of the SPD and the FDP although both parties felt increasing pressure from municipalities and town halls to consider a

change of Art. 16 (2). By January 1992 the CDU and the CSU planned to formulate a new proposal regarding the change of Art. 16 (2) by April 1992. It became obvious that the CDU/CSU used the proposal as an election strategy as the federal elections in the states of Baden-Württemberg and Schleswig-Holstein were also taking place in April. The asylum issue was a powerful election agenda for CDU which was desperate to regain or hold on to power on the federal level that was dominated by the opposition (*SZ* 21.10.1991 and *SZ* 24.1.1992).

At the beginning of 1992 the new political agenda relating to the ratification of the Schengen Agreement placed the constitutional change into a different context of justification (*Deutscher Bundestag*, 12.2.1992). The CDU/CSU demanded from the SPD to agree to the change of Art. 16 (2) for the sake of a European solution although legal experts had argued that the Schengen agreement was compatible with Art. 16 (2) due to a specific national reservation that had been incorporated for Germany. Politicians from the SPD immediately incorporated the agenda into their discourse although not uniformly. On the one hand, the Chairman of the Parliamentary Faction of the SPD, Klose, asserted that he would not limit the individual right of asylum as stated in Art. 16 (2) unless there was a European asylum law which incorporated the Geneva Convention and guaranteed such an individual right (*SZ* 27.1.1992). On the other hand, representatives from municipalities such as the mayor of Munich, Kronawitter (SPD), emphasised increasingly their demand for a constitutional change *without* a European law. Similar to the SPD leadership, the FDP politicians Solms and Hirsch supported a change of Art. 16 (2) as part of the European harmonisation process. All in all the SPD and the FDP preferred to discuss the constitutional change in the context of Europe rather than in the national context of an asylum problem. Nevertheless, the dominant position of the leading politicians from the SPD and the FDP was that Schengen could

be ratified without a constitutional change due to the national reservation which was formulated for Germany.<sup>45</sup>

### **5.3.2.3 The implementation of accelerating procedures: a U-turn for the SPD and the FDP, a farce for the CDU/CSU**

During the end of February the *Bundestag* supported a proposal for the acceleration of procedures although the CDU/CSU continued to demand a constitutional change. The new asylum law contained the following measures: reception centres, fast procedures for 'unfounded cases', restriction of appeal rights for all asylum seekers and more effective deportation measures. Thus the SPD and the FDP agreed to severe limitations of legal protection which they would have not supported before. However, the CDU/CSU did not regard the acceleration as sufficient and it is generally doubtful to what extent the Conservative parties intended to better the asylum situation. For example, the new law failed to address the lack of staff within the Federal Office for the Recognition of Refugees which was the main factor in causing a backlog of 400 000 applications. The lack of seriousness in dealing with the perceived asylum problem was also reflected in the fact that the CDU/CSU planned to apply for a constitutional change at the *Bundestag* by the end of February, i.e. before the new law was even implemented. Legal experts continued to criticise the proposal of accelerating procedures as being unrealistic and constitutionally very doubtful as the short time limits regarding the appeal made a legal representation impossible (SZ 19.3.1992). A first reading of the law was nevertheless scheduled for 30 April together with a proposal by the CDU/CSU to change Art. 16 (2). The law was finally implemented in July 1992.

#### 5.3.2.4 FDP and SPD leadership move towards a change of the constitution

During the elections in Schleswig-Holstein and Baden-Württemberg in April 1991 the far right gained significant support: the DVU (*Deutsche Volks Union*) received 6.3 per cent of the votes in Schleswig-Holstein and six of their representatives entered the regional government in Kiel. In Baden-Württemberg the *Republikaner* gained 10.9 per cent of the votes and 15 of their representatives moved into the regional government in Stuttgart (SZ 7.4.1992). As a consequence the SPD reinforced their demands of quotas for immigrants and an immigration law. Kanther (Chairman of the Parliamentary Faction of the CDU/CSU) offered a deal whereby the government would support quotas and an immigration law if the SPD agreed to change Art. 16 (2) (SZ 9.4.1992). However, discrepancies between the CDU and the CSU became apparent when the CSU rejected Kanther's 'deal' and demanded instead the change of Art. 19 (4), sentence 4. Nevertheless, the two chairmen of the CDU and the SPD, Schäuble and Klose, met at the end of April and agreed to formulate a common initiative regarding asylum. For the first time Klose announced that the SPD would discuss a change of Art. 16 (2) in the context of a European solution (see also *Deutscher Bundestag* 30.4.1992). This sudden change of strategy by Klose (without consultation with the rest of the party) created a major dispute between leading figures of the SPD. Interestingly, at a time when the leadership of the SPD started debating the possibility of a constitutional change, the SPD governed federal states distanced themselves from a change and worked on a proposal of an immigration law as an alternative to a constitutional change (SZ 30.4/1.5.1992).

By mid-May the leadership of the SPD and the FDP had moved significantly closer to a change of Art. 16 (2) under the conditions of incorporating the Geneva Convention and a European asylum law. Thus, the SPD and the FDP had given up on fighting the constitutional change and, instead, tried to make the best out of an



amendment. To pressurise the SPD and the FDP further Schäuble threatened to boycott the ratification of Schengen in June if Art. 16 (2) was not changed (SZ 19.5.1992). Stoiber (CSU) also announced that he would only accept refugees from Bosnia-Herzegovina if Art. 16 (2) was changed. As response the Bavarian SPD under Schily and Hahnzog formulated a group which discussed the change of Art. 16 (2) and 116 but refused the change of Art. 19 (SZ 19.5.1992). In June the FDP leader, Lambsdorff, also suddenly announced an agreement to coalition talks with the CDU/CSU and its support of a change of Art. 16 (2) *before* a European solution. He justified his move with the success of the far right in both federal states elections of Baden-Württemberg and Schleswig-Holstein. Further, due to problems with the ratification of Schengen and Maastricht across Europe, the FDP had become more doubtful to what extent a European asylum law can be realised. Lüder (FDP) went so far to demand the abolition of Art. 16 (2) altogether arguing that all countries (except Ireland) acknowledged the individual investigation of asylum cases and guaranteed an appeal's procedure (SZ 26.6.1992). Thus before the acceleration law was even implemented on 1 July it was already outdated and overruled by the preparations for a constitutional change.

### **5.3.2.5 Divisions within the SPD: the dispute over safe country lists**

At the SPD conference in Petersberg at the end of August, the Leader of the SPD, Engholm, surprisingly agreed to incorporate safe country lists into Art. 16 (2) (SZ 24.8.1992). SPD representatives from municipalities and federal states praised Engholm's proposal for a change of Art. 16 (2). However, a number of leading figures such as Vogel (Deputy Chairman of the Parliamentary Faction of the SPD), Schröder (Governor of Niedersachsen), Däubler-Gmelin (Deputy Chairman of Parliamentary Faction of SPD) and Schnoor (Governor of Nordrhein-Westfalen) were still opposed to safe country lists and criticised the Petersberger Resolution for abolishing the individual

right of asylum. Due to these party divisions it was agreed to formulate the final proposal at the special party conference on 16/17 November. A working group comprising ten SPD politicians (supporters and rejecters of the constitutional change) was founded to draw up a report for November. A further rift emerged between SPD leadership and lower federal hierarchies: while middle hierarchies agreed with Engholm's decision on safe countries, lower hierarchies representing SPD districts (*Bezirksparteitagen*) started opposing openly the Petersberger Resolution during October 1992. While a major dispute developed between SPD districts and leadership of the SPD regarding the decision-making and the formulation of the Petersberger Resolution, the CDU/CSU and the FDP supported a common resolution regarding safe countries (*Entschliessungsantrag*). This proposal suggested shorter asylum procedures for asylum seekers from safe countries, faster deportation procedures and the exclusion of civil war refugees from the asylum process. The SPD abstained from the vote on the above proposal on safe country lists as their position was not clarified at that time (*SZ* 14.10.1992). Shortly before the special party conference in mid-November discrepancies within SPD were overcome and even a left-wing influential group of the SPD (*Parlamentarische Linke*) voted for a change of Art. 16 (2), although it rejected the Petersberger Resolution (*SZ* 17/18.10.1992). Leading party figures such as Vogel and Engholm also compromised and a proposal by Schröder became the basis of discussion for the special party conference on asylum in November. Schröder's proposal amended Art. 16 (2) with the following three sentences: the Geneva Convention should be incorporated into the basic law, the asylum decisions of other European states should be recognised and civil war refugees ought to be excluded from the asylum procedure. Due to the incorporation of the Geneva Convention Schröder's document safeguarded, in distinction to the Petersberger Resolution, the individual right of asylum and protected the legal rights of asylum seekers. Yet, the proposal was criticised by CDU/CSU and by

a few SPD politicians for ignoring the issue of safe country lists (SZ 17/18.10.92). Following the new proposal divisions within the SPD re-emerged: While leading figures such as Vogel, Däubler-Gmelin and Schröder were still opposed to safe country lists, Engholm, Lafontaine and Schnoor supported them. Further, the Bavarian SPD still rejected a change of Art. 16 (2) altogether although leading figures within the Bavarian SPD such as Schmidt, Schily and Glotz were in favour of a change. Due to the ongoing disputes the leadership of the SPD distanced itself from the proposal of safe country lists by the beginning of November, however supported the constitutional change in general terms (SZ 4.11.92). Consequently, Engholm announced a third proposal with the following content: the original sentence of Art. 16 (2) would remain but a further sentence would be added; the Geneva Convention would be the basis for all asylum procedures; decisions on asylum claims made in other EU states would be accepted by Germany, i.e. asylum seekers would have no right to a further procedure; the same would apply to persons who had stayed a certain time in a safe-third-country; fast procedures would be implemented for asylum seekers who arrived from safe countries, for asylum seekers who gave wrong information or committed a crime in Germany (SZ 7/8.11.1992). Engholm pushed the party towards unity when he threatened that he would no longer stand as the candidate for chancellor at the next election if the delegates rejected a change of Art. 16 (2) at the special conference in November. Schröder and Vogel verified the proposal and an overall consensus within the SPD was finally reached.

### **5.3.2.6 Parties finalise their 'compromise' on changing Art. 16 (2)**

On 15/16 November 90 per cent of SPD delegates supported Engholm's proposal which safeguarded the individual right of asylum and legal protection (SZ 17/18.11.1992). The three topics which were discussed at the meeting related to a critique of the government

regarding the cover up of its mistakes following reunification and its creation of an unbearable situation at the Federal Office for the Recognition of Refugees which had caused a backlog of 400 000 applications. Further, delegates discussed that the SPD needed to support Europe after the end of communism and that it needed to recognise that the north exploited the south. Thus although the SPD moved to more restrictive strategies on asylum its discourse focused upon the assertion of protecting asylum seekers and on explanations of the current asylum situation which were not blaming asylum seekers but governmental shortcomings.

CDU/CSU rejected Engholm's proposal while the FDP accepted it. For the first time during the asylum debate FDP and SPD politicians openly supported each other and the leader of the FDP, Schwätzer, suggested that both parties should formulate a common proposal if the CDU/CSU refused to compromise (*SZ* 20.11.1992). At a meeting of leading figures from the SPD, the FDP and the CDU/CSU divisions became obvious within the CDU whereby Geissler (Deputy Leader of CDU), Süßmuth (President of the *Bundestag*) and Pflüger (CDU member of the *Bundestag*) supported the SPD proposal. Although Kohl and Engholm stated on 24 November to co-operate in asylum matters, the dispute over safe country lists and the abolishing of the individual right of asylum continued throughout November. However, by 6 December 17 politicians from governing parties and the SPD agreed on a second asylum compromise. They defined countries such as Poland, the Czech Republic and Slovakia as 'safe' and demanded bi-lateral agreements between Germany and those countries to give financial support for the establishment of asylum procedures. The individual right of asylum was maintained as asylum seekers who were rejected on the basis of the safe country list had a right to appeal (*SZ* 7.12.1992). Other issues which were incorporated in the compromise dealt with accelerated procedures for 'old cases', easier naturalisation processes, a limitation of immigration of *Aussiedler* and a limitation of 'contract labour

migrants' (*Werkvertragsarbeiter*) to 100 000. The Far Left and a few SPD and FDP politicians rejected the compromise as Eastern European countries had been defined as being safe before bilateral agreement with these countries had been accomplished. However, the SPD Council (*Parteirat*) and SPD delegates within the Bundestag (*Bundestagsfraktion*) supported the compromise under the condition that the agreements with Eastern Europe were completed before the change of Art. 16 (2).

### **5.3.2.7 Last minute disagreements and final acceptance of the constitutional amendment**

The above mentioned compromise from December 1992 became the basis for the final proposal in May 1993 (third compromise). Seiters translated the compromise from 6 December into a law proposal which was sharply criticised by Schröder as it failed to correspond with the agreement from December regarding issues such as the status of civil war refugees and the application of administrative procedures. In January Schröder suggested rejecting of Seiter's proposal if he failed to amend it in accordance to the December agreement. By the beginning of February the legal experts from all parties had formulated a common proposal for the new asylum law which allowed the removal of asylum seekers from safe countries during an appeal procedure. Bulgaria and Rumania were defined as safe countries while further countries were defined through legal procedures (SZ 4.2.1992). However, Poland announced its criticism of the new German asylum law and the Polish President argued that his country was administratively and financially not prepared to take back thousands of asylum seekers who had been accessing Germany via Poland (SZ 1.3.1993).<sup>46</sup> Several members of the SPD rejected the asylum compromise just before its first reading on 4 March 1993 (SZ 1.3.1993). Apart from continuous and re-emerging divisions within the SPD during spring 1993, the SPD also encountered severe problems within its leadership: the leader

of the SPD, Engholm, was investigated in the context of the 'Barschel Affair' and resigned, as a consequence, on 3 May. Further, at the same time the parliamentary chairman, Klose, lost the support from the SPD delegates at an election (SZ 13.5.1993). Thus it was not clear until a few days before the third reading of the change of Art. 16 (2) whether the majority of the SPD would vote for a change of Art. 16 (2). Kohl and Klose discussed the compromise a week before the final reading whereby the latter demanded that asylum seekers from safe countries should be allowed to ask for legal protection in exceptional cases (SZ 21.5.1993). Nevertheless, Klose warned the SPD that they would not have a chance of being elected if they rejected the change of Art. 16 (2) (SZ 22/23.5.1993). Although there was still disagreement regarding the safe country rule, the majority of SPD politicians agreed to change Art. 16 (2) on 26 May with 133 supporting it, 96 rejecting it and 2 abstaining. Overall the proposal of changing Art. 16 (2) was accepted by 551 delegates while 132 rejected it. Thus the necessary two-third majority for a change of the constitution was achieved (SZ 26.5.1993); followed by the approval from the *Bundesrat* on 28 May whereby 51 of 68 politicians supported the change.

### **5.3.2.8 Summary**

Between autumn 1991 and December 1992 the CDU/CSU maintained their demand to change Art. 16 (2), irrespective of the discussion and implementation of an acceleration law. The two parties were generally united on the topic although minor discrepancies occurred between them regarding the abolishment of the individual right of asylum, an immigration law and Art. 19. The FDP and the SPD maintained their position on changing Art. 16 (2) as part of the European harmonisation process until the success of the far right in the federal elections of April 1992. As a consequence both the SPD and the FDP moved over to an acceptance of the constitutional change before the existence

of a European asylum law. From then onwards it was only a question of agreeing on the context of the new Art. 16 (2). The FDP maintained its protection of the individual right of asylum while the SPD leader Klose adopted immediately the CDU/CSU position on safe country lists (Petersberger Resolution). However, due to criticism from the party regarding his non-democratic manner of decision-making Klose had to withdraw from the initial acceptance of safe country lists. Instead, SPD delegates formulated a common proposal which safeguarded the individual right of asylum within a constitutional amendment in November 1992. During 1992 the party leadership of the SPD became much more influential in activating the debate within the party. 1991 was characterised by influences from the lower hierarchies within the party which reflected a much more restrictive asylum policy than the party leadership. However, when members of the leadership changed their position and supported fully the CDU/CSU, the lower hierarchies within the SPD stopped them and were less restrictive than anticipated.

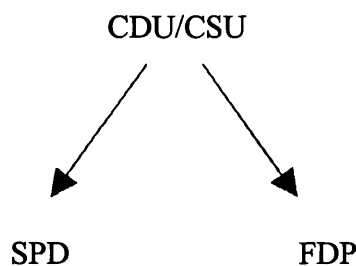
All parties changed their positions more or less radically following the party compromise on 6 December, i.e. the CDU/CSU accepted an immigration law and the SPD and the FDP supported safe country lists for eastern European on the basis of bilateral agreements. However, overall the compromise was mainly reflecting proposals by the CDU/CSU while the SPD and the FDP had given up most of their initial ideas.

With regard to agendas asylum policy was mainly debated in the context of the asylum problem during 1991. In the context of the Schengen Agreement and the FDP agenda of European harmonisation the asylum debate experienced a shift over to the European context in early 1992. Yet, from April 1992 onwards, the asylum debate dealt with the far right and national stability in the context of the asylum issue. The electoral success of the far right in Baden-Württemberg and Schleswig-Holstein had triggered off the discourse from 1991 whereby the CDU/CSU had established a direct causal link between an objective asylum problem and an increase in xenophobia. Finally, the SPD

and the FDP adopted the above causality to justify their support of a constitutional change, although they considered the way the CDU/CSU had conducted the asylum debate as a vital intermediate factor between the asylum problem and xenophobia.

With regard to communication processes the CDU/CSU and the FDP and the SPD interacted in a more established and explicit way during 1992 by substantiating communication in a few formal meetings. Yet the CDU/CSU remained the overall axis and initiator of communication while the communication between the FDP and the SPD carried on to be absent or sporadic (see figure 5.1).

Figure 5.1 Patterns of communication between parties between 1991 and 1993



Once the leadership of the FDP and the SPD had accepted a change of Art. 16 (2) the communication within parties became more established and the SPD and the FDP formed groups to discuss the content of a constitutional change. Concerning decision-making a top-down approach was attempted by Klose (SPD) at the Petersberger Conference which changed to a more democratic and compromising process following inner-party criticism. It was not until the final phase when the CDU/CSU demanded safe country lists within the constitutional change that the SPD and the FDP formalised their communication and used it to put pressure on the CDU/CSU.

Thus the CDU/CSU influenced the SPD and the FDP to move towards an acceptance of more restrictive measures and finally a change of Art. 16 (2) which included safe country lists. From the electoral success of the far right onwards the SPD



adopted the CDU/CSU position on asylum. Only via pressure from leading figures and lower hierarchies did the SPD distance itself from the CDU/CSU. The FDP acted initially more independently from the CDU/CSU. However, the second compromise in December 1992 limited the individual right of asylum to a large extent and the FDP adopted the position of its coalition partners. Therefore, the CDU/CSU held on to the position which it had established throughout the 1980s and carried on determining asylum policy during the early 1990s.

### 5.3.3 Conclusion

The findings of the analysis have shown that the overall party positions on the constitutional amendment changed from a minority to a majority support within the *Bundestag* and the *Bundesrat* between 1991 and 1993. The following will summarise the major political developments with special emphasis upon the role of lower federal hierarchies in the elaboration of normative and communicative structures. By 1991 the CDU and the CSU were united in demanding a constitutional change whereby the other parties rejected such a change. However, SPD politicians representing municipalities and federal states started increasingly to support a constitutional change while the SPD and the FDP leadership remained opposed to it. The above situation reflects what Münch (1992) observed in her study on asylum policy during the 1980s, arguing that the hierarchical position of politicians within the federal system is more influential in the attitude towards asylum policy (i.e. restrictive or more liberal) than their party affiliation. Thus politicians become more restrictive the lower down they are placed in the federal system. Although Münch's (1992) assumption fits the SPD scenario in 1991 it cannot be generalised as lower hierarchies within the FDP were not visible or influential in the same way as SPD politicians were and developments within the SPD in 1992 divert further from Münch's suggestion.

In April 1992 the far right experienced a significant increase of votes in the federal elections of Baden-Württemberg and Schleswig-Holstein and, as a consequence, the leadership of the SPD and the FDP moved towards a support of the constitutional change. The move went relatively smoothly within the FDP while the SPD experienced major divisions within and between its leadership lower hierarchies: while parts of the leadership immediately adopted a very restrictive position accepting safe country lists, the majority of the lower hierarchies (especially council districts) were vehemently opposed to such a measure. Thus developments within SPD in the early 1990s do no longer correspond with Münch's (1992) observation of the 1980s: although politicians on lower hierarchical positions initiated moves towards more restrictive measures in 1991, they opposed later on proposals by the SPD leadership regarding the safe country rule for being too restrictive. The role of lower political hierarchies in understanding immigration politics has been also mentioned by authors such as Perlmutter (1996) and Kaye (1994). Similar to Münch (1992) they assume that these lower hierarchies place pressure upon the political elite to make immigration a political agenda which the leadership would have avoided otherwise. Yet the role of political hierarchies in the process of immigration policy is not as clear-cut as presumed by the above authors. My findings indicate that the role of lower hierarchies varied between parties and over time. Further, the assumption that the leadership of parties was reluctant to take on the immigration agenda is also questioned when we look at CDU and CSU.

The following analyses more thoroughly how existing political structures were elaborated by politicians between 1991 and 1993. Overall, the normative and communicative structures which had been established by the CDU/CSU throughout the 1980s influenced or better limited the political action of the Far Left, the SPD and the FDP in the early 1990s. Actions by these parties were mainly *re*-actions to the narrowly defined asylum discourse which centred around Art. 16 (2) and the asylum problem;

space for manoeuvre and the development of a new discourse on asylum policy hardly existed due to the well-established dominance of the CDU/CSU with regard to normative and communicative structures. When one looks at the developments from an agenda-setting perspective, the SPD and the FDP entered the agenda-setting process much later than did the CDU/CSU and were therefore at a significant disadvantage (see Cobb and Ross 1997 and Kaye 1994 for discussion on agenda setting). The CDU/CSU were already engaged in the formal agenda setting within their own parties while the SPD and the FDP were still dealing with the asylum issue on the public agenda. Thus it is fair to say that both parties were confronted with a politically restrictive rather than enhancing environment. However, their failure to communicate with each other and to make serious attempts to formulate a counter debate in asylum strengthened the position of the CDU and the CSU. In this sense the concept of agenda avoidance reflects well the actions or better lack of actions by SPD and FDP. Rather than developing concrete strategies party leaders avoided the issue until they were forced to join the debate following the high numbers of asylum applications in 1992. Cobb and Ross' (1997) list of explanations for avoiding issues fits well into the context of the SPD and the FDP: fear of conflict, ideology, avoidance of election issue and pressure to take on new knowledge.

Further, the SPD and the FDP failed to develop a strategy to incorporate the asylum agenda into a new or an existing discourse which would have disconnected the issue from the constitutional change. Some left-wing parties have managed in the past to do so in the context of immigration debates which were initiated by right-wing parties. For example, Kaye (1994) argues that the British Labour Party incorporated their asylum and refugee agenda in the late 1980s into an anti-racist discourse. Or Freeman (1979) shows that the political left in France in the 1970s focused upon the exploitation of immigrants in a capitalist system, building an explicit alliance with the immigrants.

In contrast, the SPD and the FDP during the early 1990s failed to create their own agenda on asylum and joined, instead, that of the CDU/CSU. Some comparison can be made between the lack of strategic action by the SPD in the early 1990s and the British Labour Party in the 1970s which is described by Freeman as moving from a position of 'nostalgia, sentiment and ideology' over to strict limitations on immigration and finally to the position of the right (see Freeman 1979: 239). If one substitutes the terms 'migrant worker', 'British' and 'Labour Party' with 'asylum seeker', 'German' and 'SPD' the following quote could describe the political scenario in Germany in the early 1990s.

(T)he party completely forfeited the opportunity to integrate the injustices and indignities being heaped on the migrant worker into a more systematic policy for the reform (moderate or otherwise) of British society. The Labour Party consciously disavowed the legitimacy of pursuing a political strategy and its basic commitment to the main contours of the British system caused it to see immigrants as a threat to the social peace.

Freeman 1979: 242

The above quote mentions the perception of immigrants as a 'threat to the social peace' which refers to another important element in the German asylum debate. The asylum issue was defined by the CDU/CSU since the beginning of the 1980s in the contexts of 'misuse', flood and uncontrolled immigration. Douglas and Wildavsky 1982, cited in Cob and Ross 1997) argue that notions of threat and risk are important elements for agenda-setting processes.

Political problems are not just associated with objective conditions; rather, issue definition is associated with cultural dynamics related to proponents' ability to connect a problem to cultural assumptions about threats, risk, and humans' ability to control their physical and social environments.

Douglas and Wildavsky 1982, cited in Cob and Ross 1997

In this sense 'moral panic' was used initially by the CDU/CSU and later on by the SPD and FDP to place the asylum issue on to the political agenda and to maintain it there.

Further, the situation of reunification and increased numbers of asylum seekers following the conflict in Yugoslavia provided what Kingdon (1994) describes as a 'policy window'. In this context the CDU/CSU were able to enforce their campaign for the amendment. To sum up, the following factors characterised the closer political context which was influential for the amendment of the German constitution: an established political structure which was enhancing the situation for the CDU/CSU and restricting actions for the SPD and the FDP, lower federal hierarchies from the SPD which placed pressure on the leadership from the SPD to change their position, an issue avoidance strategy by the leadership from the SPD and the FDP and a tactical use of 'moral panic' and 'policy windows' by the CDU/CSU. In this sense, political structures which existed in 1991 were in favour of a constitutional change and were not only actively enhanced by the CDU/CSU but also by the SPD and the FDP, even if the latter two parties did not intend to do so.

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## Notes

<sup>38</sup> The investigation of the political environment has been based upon a complete selection of newspaper articles of *SZ* dealing with the asylum issue and a complete selection of asylum debates within the *Bundestag* and the *Bundesrat* between 1991 and 1993. Using the media as a source of evidence is in many ways problematic due to their political stance, selection processes of news coverage, economic and political influence of the media etc. (see e.g. van Dijk 1985). The protocols from the *Bundestag* and the *Bundesrat* may also not be a perfect (i.e. truthful and complete) reflection of agendas and interactions of politicians. However, the above sources are sufficient for the analysis of the closer political environment as they provide information about formalised communication structures within and between parties and political positions and agendas as they were presented to the public. The way the media commented on these positions and agendas and the relationship between the media and public opinion towards asylum seekers will be examined in chapter six.

<sup>39</sup> By the mid-1970s the number of incoming refugees arriving from Eastern Europe had increased to over 9 000 per year (see Bundesamt für die Anerkennung ausländischer Flüchtlinge 1976).

<sup>40</sup> The observation of communicative structures is difficult and methodologically my analysis is limited to such meetings which were officially reported; therefore, my assumptions do not include meetings and discussions which have been held in a less public and formal way.

<sup>41</sup> The term *Aussiedler* relates to descendants of German emigrants to Eastern Europe.

<sup>42</sup> 256 112 asylum seekers entered Germany during 1991 (see Liebaut and Hughes 1997).

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<sup>43</sup> Art. 19, sentence 4: Somebody who is violated in his [*sic*] rights by the public authority has access to legal protection ('Wird jemand durch die öffentliche Gewalt in seinen Rechten verletzt, so steht ihm der Rechtsschutz offen').

<sup>44</sup> I will treat CDU and CSU together in this section as they are so-called 'sister parties' with CSU representing the federal states of Bavaria while CDU representing the remaining federal states in Germany. This does not mean that CDU and CSU reflect always a common agenda and generally CSU is classified as being further to the right in the political spectrum than the CDU.

<sup>45</sup> The *Bundesrat* and the *Bundestag* ratified the Schengen Agreement in April and June 1991 respectively.

<sup>46</sup> The Polish Office for Migration and Refugee Concerns had been expanded from 19 to 36 members which was not sufficient to deal with the 1 500 applications which were made during 1993 (SZ 1.3.1993).

## **Chapter 6 Politicians' justification schemes**

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- 6.2 Findings in the open coding phase
  - 6.2.1 The coding framework
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    - 6.2.1.2 Normative principles
    - 6.2.1.3 Perception of environment
  - 6.2.2 The statistical findings
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### **6.1 Introduction**

The objective of chapter six is to present the methodology and findings for the analysis of politicians' justification schemes which constitute the third layer of the conceptual framework outlined in chapter three. The analysis deals primarily with the final debate relating to the amendment of the constitution in Germany in 1993 (Deutscher Bundestag 26.5.1993). The 1993 debate is contrasted with an earlier debate which was held in 1991 (Deutscher Bundestag 18.10.1991).<sup>47</sup> For the former debate I analysed the contributions of all 142 politicians who participated in the debate representing six different political positions: 8 politicians from the PDS, 4 politicians from Grünen and Bündnis 90, 82 from the SPD, 18 from the FDP, 25 from the CDU, 5 from the CSU; politicians from

the PDS and Grünen and Bündnis 90 have been grouped together under the heading of the 'Far Left'; equally politicians from the CDU and the CSU have been classified as one group. Of the 142 politicians who were analysed, 71 voted for the constitutional amendment while the other half voted against it. The SPD had the highest number of contributions in the debate. This may be explained by the fact that SPD politicians felt particularly strongly to justify their position; both those who moved from rejecting a constitutional amendment to supporting it and those who carried on rejecting it against the wider SPD majority and leadership had strong reason to justify their position in front of their fellow party members and voters.<sup>48</sup> The analysis of politicians' justifications is based upon the grounded theory approach which has been discussed in detail in chapter two. The following will present the findings of the different coding phases.

## **6.2 Findings in the open coding phase**

This chapter presents the findings of the open coding phase. It will outline the coding framework and display some descriptive and inferential statistics; dealing with the frequency with which themes occurred and correlations between the application of themes, party membership and voting behaviour on the constitutional amendment.

An initial coding framework had been formulated in 1996 which was based upon a line-by-line analysis which generated the themes of national stability, exclusion and humanitarianism as dominant elements of the justification schemes. The framework was used for a numerical analysis researching the link between political parties and the use of these themes.<sup>49</sup> However, the analysis highlighted a number of shortcomings: for example, it was not clear to what extent the themes had been used to describe a perception of a situation or to what extent themes had been used explicitly to justify the support or rejection of the constitutional amendment. Or, the initial analysis did not differentiate the use of themes far enough. For example, a distinction had to be made



between different types of humanitarianism such as one which was demanded within Germany and one which was directed towards other countries (such as the proposal to increase developmental aid in countries-of-origin); or, the advocating of humanitarianism and the mere assertion that humanitarianism exists. By recognising the different contexts in which humanitarianism is applied it became obvious that politicians who supported the amendment could use the theme of humanitarianism as much as politicians who rejected the amendment to justify their decision. Further, the coding framework failed to differentiate between text passages which related themes to the context of immigration and those which discussed the themes in another context. Politicians who link themes such as xenophobia, housing shortage etc. to immigration are more likely to perceive a constitutional change as dealing with such problems; while politicians who discuss problems in a different causal context are less likely to support the amendment as it will not solve the perceived problems. After researching the literature on decision-making by Sen (1982) and Simon (1985), it also became clear that a distinction needs to be made between goals, normative principles and perception of environment (see my discussion in chapter three). These concepts were identified as *meta* categories for the overall analysis. The following will outline further why these *meta* categories are relevant for an analysis of justifications (see also chapter three for a definitional discussion of these categories).

What do we gain empirically and analytically from associating the substantive issues found within the political debates with the categories of goals, normative principles and perception of environment? An analytical distinction between a perception of the environment, a goal and a normative principle will be vital to understand the decision-making of politicians: first, one needs to distinguish between those text passages which reflect that a situation is perceived (perception of environment) and those which are used to justify a political measure (goals). Secondly,

value schemes which are less changeable in a political context (normative principles) have to be differentiated from those which are more easily affected by the external context. Goals and normative principles differ with regard to their vulnerability towards the outside environment. In other words agents' goals are more prone to change over time than their normative principles such as humanitarianism, Christianity etc. Therefore, normative principles such as humanitarianism and nationalism represent the agent better than a goal such as the implementation of a bilateral agreement which is relatively short-lived. Therefore, the change or maintenance of normative principles is a good indicator for the extent to which the surrounding political structure had an impact upon the individual decision-making process or vice versa. This information is important if we want to identify the relationship between structures and agents, which is the main objective of this thesis.

The above shortcomings are acknowledged in my new coding framework, which is presented in chapter six, representing Strauss and Corbin's (1998) open coding phase. A second line-by-line analysis of the parliamentary debates in 1991 and 1993 was carried out to accomplish the final coding framework. The coding framework which is presented in chapter six is, therefore, the outcome of a long circular process of conceptualising data within the text, generalising these data in form of categories and dimensions using deduction and readjusting these categories in the context of the actual text.

The following will outline the coding framework for the analysis of the asylum debates held in 1991 and 1993 (see appendix 6.1).<sup>50</sup> The framework is structured along the categories of (1) goals, (2) normative principles and (3) perception of environment. The *meta* categories of goals, normative principles and perception of environment have been adapted from literature on decision-making processes of individuals (see chapter three for further discussion). The concrete sub-categories (relating to the asylum

context) for these *meta* categories have been identified via induction and deduction utilising Strauss and Corbin's (1998) guidelines for the open coding phase (see chapter three for further details).

### 6.2.1.1 Goals

The category 'goal' is split into domestic and foreign goals. Domestic goals are divided into the sub-categories of effectiveness, immigration, national stability, history, law, politics and socio-economic situation.<sup>51</sup> The following discusses the particular sub-categories in more detail and at times I will illustrate themes with text passages from the parliamentary debates.

The theme of **effectiveness** regarding the constitutional amendment has attached the dimensions of negative and positive, i.e. it can be either argued that the amendment would be effective or that it would not be effective. The theme is not clearly related to voting behaviour and it is important to study the context in which it has been used. For example, the amendment can be viewed as not being effective by not tackling the causes of a perceived asylum problem and therefore it needs to be rejected or it can be understood as not being effective in the context that it is not effective (enough) as represented especially by politicians from CSU; the latter would possibly lead to a support of the amendment but proposals of further restrictions.

**Immigration** has attached the general dimensions of positive, negative, inclusive and exclusive and the critique of these four dimensions. With regard to the former two dimensions, text passages are distinguished as to whether they reflect an immigration measure which discusses immigration in a positive light such as the support of an initiative to integrate asylum-seekers or in a negative light such as the reduction of misuse, burden, flood, crime etc. The quote by Michael Glos reflects a typical association of asylum-seekers as a (financial) 'burden':

The financial cost [of asylum seekers] which amounts to billions is no longer acceptable for the German taxpayer- especially when one considers that only a few asylum seekers are genuine.

Michael Glos, CDU/CSU, 1993

The following contribution by the right-wing politician Dregger exaggerates the perceived burden even further:

That [experience of the population] carries on with kindergarten places: asylum-seeking women who have plenty of time place their children into a kindergarten to the burden of working German mothers [who cannot find a place]. It ends with crime. Especially the former produces natural reactions.

Dr Alfred Dregger, CDU/CSU, 1993<sup>52</sup>

A further distinction has been made as to whether the positive or negative representation of asylum has been applied in the context of the asylum movement or other factors such as the government or the wider economic situation. For example, a politician may view asylum seekers as a 'burden' but blames the government for the situation rather than the asylum seeker.

We are dealing with mayors and federal MPs who no longer know what to do because they are forced to economise at all times and who are at the same time confronted with increasing expenditure for the accommodation of refugees. Obviously the asylum-seekers are not the cause of the housing shortage and ..., school problems and unemployment...they are caused by the government and no one else.

Renate Schmidt, SPD, 26 May 1993

Although one would expect that politicians who use this line of argument reject the amendment of the constitution as it would not tackle the causes of their perceived problem, Renate Schmidt supports the amendment for politically strategic reasons, arguing that, once the amendment has been accepted, the government cannot blame any longer the SPD for the immigration problem.

Text which represents immigration in an inclusive and exclusive manner is distinguished further between territorial inclusion/exclusion and social inclusion/exclusion. Territorial exclusion relates generally to the safe-third-country rule. Heinz Rother links an argument of territorial exclusion of asylum-seekers with humanitarianism implicitly assuming that asylum-seekers are economic migrants.

In practice, it is a fact that only the financially better off can afford a journey to Germany...I find it an absolute injustice and an inhumane policy to determine the chance of survival from such [financial] possibilities; while the poorest of the poor have to starve because they cannot afford the fee for traffickers.

Heinz Rother, CDU/CSU, 1993

Territorial inclusion refers to both open border policies in general and the support of an immigration law.<sup>53</sup> The above sub-concepts are very distinct and will be dealt with as separate categories when the findings of the analysis will be presented in the following sections. Social exclusion and inclusion is mainly applied in the context of the social benefit debate and the question whether asylum-seekers should be excluded from the general German benefit system. Hannelore Rönsch manages to justify the exclusion of asylum-seekers from the general benefits system on humanitarian grounds.

Social aid refers in principle to the achieved standard of living in our social context. The objective of social aid is to integrate recipient into the community...However, this [principle] does not apply to persons who arrive from countries with different standards of living and who are supported out of public funds so that they can stay for a short period of time...The attempt to socially integrate persons who arrive from different living conditions and who will normally return after a short while would be a disadvantage to them, as they would struggle to reintegrate into their cultural and social context.

Hannelore Rönsch, CDU/CSU, 26 May 1993

Text passages relating to **national stability** have been distinguished according to their reflection of a positive or negative situation or a critique of both. Arguments such as the

need to reduce frustration and angst amongst the population or the re-establishment of loss of trust or democratic stability have been frequently used as justifications of amending the constitution as reflected in the following quote by Rudolf Seiters:

A failure to accept the constitutional change would be catastrophic for the democracy of the country, the political power of the state and the public trust into politicians and parliament.

Rudolf Seiters, CDU/CSU, 1993

Klose from the SPD discusses the danger to national stability in the concrete context of increased xenophobia:

I do not want to discuss the financial burden of such an influx. However, the consequences for the population must be discussed. Somebody who lives, for example, in Hamburg in an area with a high proportion of asylum-seekers feels the direct and concrete consequences. The people there are not xenophobic but their standard of living worsens in an often depressing way; they feel threatened, personally and socially.

Hans-Ulrich Klose, SPD, 1993

Political action has been frequently seen as a way to re-establish some lost national stability. Politicians who possibly otherwise would have not supported the argument argue that political frustration which causes xenophobia and the support of political parties on the far right needs to be counteracted by political action as reflected in Solms' statement:

90 per cent of the population expect from us a change of the constitution. A failure at this point would have dramatic consequences. The trust in politics would be fundamentally disturbed and the trust in the democratic parties would be increasingly damaged. Not only the democratic parties but the entire democratic system would be destabilised. That is my presumption. The consequences would be incalculable.

Dr Hermann Otto Solms, FDP, 1993

Kuessner's speech reflects a similar focus on political action:

I vote for the constitutional amendment because I cannot see any other possible way in the current political context in Germany. A further increase in political radicalism endangers our path into democracy which we have

just started in former East Germany. I hope that we protect politically persecuted with this amendment. If this does not happen in practice we have to deal with this subject again.

Hinrich Kuessner, SPD, 26 May 1993

The **historical argument** refers in general to text passages where politicians argue that the constitutional article needs to be adapted to the new immigration situation as the historical context of the formulation of the constitution in 1949 has changed. This argument is generally compatible with a support of the constitution as reflected in

Hintze's contribution:

With regard to the mothers and fathers of the constitution: they remembered well the Nazi-terror and formulated, therefore, the right of protection; but they never anticipated that this right of protection will be one day abused by traffickers who make business out of the right of asylum.

Peter Hintze, CDU/CSU, 1993

**Legal concerns** refer mainly to the section of the amendment which relates to the role of the Constitutional Court within the airport procedure (see chapter one for further information).

The code for **politics** is a general code which comprises text passages which view the political debate or political action in a negative or positive way.

The **socio-economic situation** has been mainly represented under the themes of unemployment and housing which had the usual dimensions of positive, negative and a critique of both; the context in which these themes were discussed was again relevant for the understanding of the voting behaviour. Trittin's contribution is a typical example where the housing problem is discussed in the context of governmental failure:

The government is further responsible for the problems and situations in the municipalities. The increasing number of first applications has overcharged the capacity of the central reception centre in Lower Saxony. A solution to this problem could have been found. There are in Lower Saxony, in Bramsche and Osnabrück, about 4 000 places vacant in transit centres. Repeated requests to make these places temporarily available —temporarily!

— and only for the first admission of refugees were rejected. Instead refugees in Hannover and Osnabrück had to live in tents.

Jürgen Trittin, SPD, 1993

The category of **foreign goals** relates to European developments and here especially the **harmonisation** of immigration measures and **bilateral agreements**; the dimensions of positive, negative and a critique of both are applied. The separation between harmonisation and bilateral agreements has been seen as a vital one as harmonisation is a neutral term leaving it open to what extent harmonisation should or could be restrictive or generous. In contrast the category of bilateral agreements has a more direct connotation regarding the *refoulement* of asylum-seekers into third countries.

#### 6.2.1.2 Normative principles

As mentioned above normative principles are goals which reflect a more substantive value system that is less easily challenged through the environment. In the context of immigration the principles of nationalism, humanitarianism, religion and ideologies such as socialism or communism have been identified as main sub-categories. Existing literature on immigration has identified racism as part of the immigration discourse and rhetoric (see for example Castles and Kosack 1973, Kay and Miles 1992 and Rich 1986). I expand this focus upon racism and incorporate a wider range of value schemes which include different forms of nationalism, i.e. liberal, communitarian and ethnic nationalism (see Parekh 1994).<sup>54</sup> I distinguish in the coding framework between the inclusive type of liberal nationalism and the exclusive types of communitarian and ethnic nationalism. The ideologies of egalitarianism, ethnicism and racism do not appear as separate normative principles, but are attached to the types of liberal, communitarian or ethnic nationalism respectively. A distinction is made to what extent politicians' contributions reflect these different types of nationalism or a critique of them. Explicit



nationalism has been rare throughout both debates and politicians such as Alfred Dregger on the extreme right are exceptions (see previous section).

Another normative principle which is especially relevant in the context of political asylum is humanitarianism. Humanitarianism is associated with the concern and promotion of human welfare (Sykes 1988). Although concepts such as liberalism also encompass the aim of human welfare I have chosen humanitarianism as umbrella category for my coding framework as it directly addresses the concerns which were raised during the political debates. Although there are conceptual overlaps between humanitarianism and a liberal argument the latter encompasses explicitly economic dimensions and ideas about the relationship between the individual and the state which were not detected in the debates (see Kuper and Kuper 2001, Holliefield 1992; for a further analysis of liberalism see the evaluation of Holliefield's (1992) approach in chapter two). I follow Gibney's (2004: 19) notion that the principle of humanitarianism is a *responsibility* of liberal democracies. I will relate my findings on humanitarianism to Holliefield's (1992) notion on 'embedded liberalism' in chapter seven.

The following themes were detected in the debates: the support of legal human rights documents such as the Geneva Convention and the International Declaration of Human rights (see chapter three, footnote 20, for a further discussion of human rights), the protection of persons in general, the concern of protecting human dignity (referring to notions of humanity and humane treatment based upon moral values), universal responsibility (relating to the economic and political support of members of the population outside the nation-state borders) or merely text passages which reflect empathy with asylum seekers (i.e. an understanding of asylum-seekers' situation).

In my coding framework I distinguish between a humanitarianism which is directed outside the nation-state such as the support of developmental aid and one which is applied internally such as the advocating of human dignity within the asylum

procedure. Jörg van Essen exemplifies a humanitarianism which is directed externally (assuming that asylum movements can be reduced via developmental aid).

Problems in countries-of-origin cannot be solved by accepting [as asylum seekers] the financially well off persons who can pay for traffickers. An improvement in developmental aid for countries-of-origin is therefore necessary to reduce immigration in future.

Jörg van Essen, FDP, 1993

While Jelpke addresses humanitarianism internally which she thinks will be violated if the constitutional amendment is accepted:

You sacrifice today international humanitarian norms by empowering municipalities and federal states to decide whether a situation should be already defined as war or still as a crisis. Nothing will be easier than to abandon humanitarian concerns within the triangle of political convictions, diplomatic considerations and the pressure of consent between the federal and central government.

Ulla Jelpke, PDS/Linke Liste, 1993

We shall see later on that the distinction between internal and external humanitarianism is vital for the consistency of politicians' justification schemes and their actions in the asylum debate. For the same reason, the coding framework acknowledges also a separate code for a limited humanitarianism which is applied exclusively to so-called genuine refugees and which disregards the humanitarian needs of apparently 'non-genuine refugees'.

Other concepts which are categorised under normative principles, yet are less dominant in the debates, are religious belief systems or political ideologies such as communism, socialism or conservatism. Again, for all of these codes a distinction has been made to what extent politicians used them in an affirmative or in a critical way.

### 6.2.1.3 Perception of environment

This section discusses the sub-categories for the *meta* category 'perception of environment'. This concept is in principle applicable to all sub-categories identified for

the categories of goals and normative principles and may comprise the following categories: effectiveness, immigration, national stability, harmonisation, history, humanitarianism, legal concerns, nationalism, political ideologies, politics, religion and the socio-economic situation. The properties and dimensions applicable to these sub-categories are the same as outlined above when discussing them in the context of 'goals' or 'normative principles'.

The following will discuss in more detail the themes of the perception of xenophobia (as a sub-category of nationalism) and humanitarianism as their use in the debates demands a more refined coding than outlined in the section on normative principles.

A large amount of the debates surrounding the constitutional amendment dealt with the discussion of xenophobia in Germany, evoked by an increase in xenophobic attacks in Germany during the early 1990s. While politicians across the political parties and supporters and rejecters of the amendment condemn the attacks they differ in their causal analysis of xenophobia. As a consequence, the coding framework distinguishes between those text passages which primarily blame the as 'influx' perceived asylum seekers for the increase in xenophobia and those where politicians refer primarily to other factors such as the media, the asylum debate or the economy to explain xenophobia. We will later see that this distinction is vital for distinguishing between politicians' justifications for or against the constitutional amendment. Politicians like Dregger (cited below) who suggest that there is a causal link between immigration and xenophobia are more inclined to change the constitution and restrict immigration than politicians who explain xenophobia by other factors than immigration (see quote by Weiss on p. 172) (for further discussion on xenophobia see also chapter 4).

Year after year thousands of asylum-seekers enter our country, without being politically persecuted and in general in a good constitution. This is quite different and leads to different reactions [within the population] when

compared with the refugees from Vietnam...that some asylum-seekers behave improper, presumptuous, and in some cases criminal is the opposite of what Germans learnt regarding the behaviour in a host country...our citizens are furious when they are labelled by some politicians and the media as being xenophobic, while they only try to form their own judgement on the basis of their obvious experiences.

Dr. Alfred Dregger, CDU/CSU, 1993

The politician Weiss, in contrast, places the discussion of xenophobia in the context of the political debate which is coherent with his rejection of the amendment:

We all have to take seriously the anxieties of the population towards unlimited and undirected immigration...This anxiety leads to aggression and marks the stranger as an enemy. However, this angst was and is stirred up by the current asylum debate.

Konrad Weiss, Bündnis 90/Grünen, 1993

The code '*perception* of humanitarianism' needs to be further differentiated. It is important to distinguish between internally and externally directed humanitarianism and to identify whether humanitarianism has been applied to the past, to the constitutional amendment or other issues. Distinctions between the different contexts of humanitarianism are important as the positive perception of humanitarian action in the past may be consistent with both the support or rejection of the amendment while a critical perception of the constitutional amendment with regard to humanitarian issues would be inconsistent with a rejection of the amendment. The following quote by Otto reflects a positive perception of the amendment:

The speedier procedure does not only lead to a speedier rejection of unfounded claims but also to a speedier acceptance of well-founded claims. When, therefore, for hundreds of thousands of refugees and their families the time of uncertainty and often undignified accommodation can be reduced, then it [the support of the amendment] is not an act of inhumanity but in contrast a command of humanity.

Hans-Joachim Otto, FDP, 1993

## **6.2.2 The statistical findings**

The open coding procedure is in Strauss and Corbin's (1998) terms merely a procedure to develop a coding framework which can be applied to the axial coding phase. My thesis employs the open coding scheme in a more traditional way and links it to some basic statistical analysis which is reasonable as I have a relatively large sample of text units for the 1993 debate, i.e. 142 contributions. As mentioned before, qualitative analysis and the axial coding scheme cannot avoid some form of quantification and the conduct of statistical testing provides concrete information about the extent arguments have been used by politicians with different political background and voting behaviour on the constitutional amendment.

I will apply significant tests to identify significant/non-significant differences between political parties, voting behaviour on the amendment and the use of particular justification schemes. However, the overall strategy of my analysis remains a theory-building approach but at some stages findings are looked at in numerical terms to make links between justifications and decision-makers more concrete and transparent. Therefore, findings in the open coding framework do not only relate to a list of categories, concepts, properties and dimensions and relationships between them but also to a statistical analysis of their use by politicians.

### **6.2.2.1 An overview of themes with regard to dominant/non-dominant application<sup>55</sup>**

The analysis of the parliamentary debate in 1993 shows clearly that themes relating to humanitarianism and a negative representation of asylum overarched the debate (see Appendix 6.2 for overview of themes). The theme which was mentioned (at least once) by the largest number of politicians (57 per cent of politicians) was the perception that

internal humanitarian principles were (actually or potentially) damaged within Germany. Of those who applied this theme, 92 per cent were rejecters who discussed humanitarianism in the context of issues such as the loss of an individual right for asylum-seekers, bad social conditions for asylum-seekers or the failure to take civil war refugees out of the asylum procedure. The few supporters who perceived an actual or potential lack of humanitarianism set it into a causal context of asylum itself, arguing that negative issues surrounding asylum such as misuse, burden etc. endanger national stability and, consequently, lead to a violation of humanitarian principles within Germany. Other humanitarian themes such as the advocating of humanitarian principles within and outside Germany have been also classified as being 'dominant' (38 per cent and 37 per cent respectively). Similarly represented was the view that the constitutional amendment continues to maintain humanitarian principles (35 per cent of politicians). As already mentioned in chapter three, humanitarianism is in the context of both labour migration and asylum-seeking a potentially viable factor of understanding immigration policies. It is important to highlight the versatile application of the concept by politicians which can range from selective to universal and from pretentious to sincere. Chapter four has shown the extent to which the political context of Germany following re-unification, the reservations of other countries regarding the enlargement of Germany and the increase of xenophobic attacks may have encouraged politicians to stress humanitarianism.

A further theme which was applied by a large number of politicians was the perception of an 'asylum problem' and the goal to reduce such a problem. Nearly half of all politicians (44 per cent) made reference to the above themes and blamed the asylum movement rather than other factors for the asylum problem. Further themes which have been 'dominant' or 'fairly dominant' were the argument that the amendment would not be effective (31 per cent), a general critique of the political debate and actions by other

political parties (30 per cent), the goal to re-establish national stability which had been damaged by the asylum movement (26 per cent) and the demand for an immigration law (24 per cent).

Interestingly, themes relating to exclusion have been significantly less utilised than those of a negative portrayal of asylum and humanitarianism: the goal to exclude asylum-seekers who arrive from safe-third-countries or safe-countries-of-origin and a critique of such an exclusion was applied by 16 per cent and 17 per cent respectively. In conclusion the debate has been overarched by humanitarian issues in combination with a negative portrayal of asylum which was blamed upon the asylum movement itself. Themes such as Europe, exclusion, history, inclusion, legislation, national stability, nationalism, a positive representation of asylum and xenophobia have been less dominant. The measuring of the level of dominance with which themes occurred does not give any information as to what extent themes were actually significant for the decision-making process. The next section will give an overview to what extent themes were linked or not linked to a particular voting behaviour.

#### **6.2.2.2 The relationship between themes and voting behaviour on the amendment**

The following gives an overview of the relationship between the use of themes and voting behaviour on the amendment. Before the actual findings of the debate are discussed I will briefly outline the relationships between themes and voting behaviour which one would expect with regard to principles of consistency (see Appendix 6.3).<sup>56</sup> The following themes are regarded as being more consistent with a support of the amendment which makes asylum procedures in Germany more restrictive by introducing measures such as the third-country rule and a so-called airport procedure (see chapter one for further discussion): exclusion, the implementation of bilateral agreements, the lack of national stability which is blamed upon the asylum movement,

the limitation of humanitarian principles within Germany, the assertion that humanitarian principles remain in the amendment and the explanation of xenophobia in the context of asylum. In contrast, the following issues appear more consistent with a rejection of the amendment: inclusion, critique of exclusion, a positive representation of asylum, a negative representation of asylum in the context of governmental failure, an advocating of humanitarian principles both inside and outside Germany, a critique of the constitutional change regarding its effectiveness and legal context, a perceived lack of national stability which is blamed upon other factors than asylum and an explanation of xenophobia which is not referring to asylum. Several themes such as the advocating of humanitarianism outside Germany, the critique or praise of the political debate and action, the European goal of harmonisation or the general confirmation that humanitarianism exists within Germany are very general themes which could be attached both to a rejection or a support of the amendment.

The following summarises the relationship between themes and voting behaviour which were *in practice* found in the 1993 debate (see Appendix 6.4). Most codes which were identified as having significant links *in practice* fit their categorisation *in principle*. Thus the significant use of justification schemes by both supporters and rejecters was consistent with their voting behaviour (as outlined in the previous section). However, a discrepancy between the expectations in principle and the findings in practice occurs with regard to the themes which were *not* made use of in practice (reflecting that the identification of themes in practice and in principle were not circular). A large number of themes which were seen as being *in principle* consistent with rejecters failed to establish a significant link. For example, goals which reflected an explicit inclusion or a critique of exclusion of asylum-seekers, a negative representation of asylum which was explained by governmental failure rather than the asylum movement, an advocating of inclusive nationalism or a positive perception of asylum



were not significantly linked to a rejection of the amendment. Thus rejecters' justification schemes are in general consistent with their voting behaviour; however, they only made use of a minimal stock of justifications available to them. As a consequence, the public was presented with a political debate which neglected a positive image of asylum and an explicitly inclusive nationalism. Thus negative images were countered via a critique of those images rather than a distinct change in discourse which focused upon positive and inclusive images of asylum.

Finally, I will outline in more detail the findings regarding themes of humanitarianism as they played the most dominant role within the debate. In most cases it led to a significant link with a specific voting behaviour: supporters especially portrayed the amendment as being humanitarian and argued that human rights existed outside Germany. These themes allow for an advocating of humanitarianism alongside agendas such as exclusion or the safeguarding of national stability. In contrast, rejecters of the amendment used themes of humanitarianism which are not compatible with demands of exclusive asylum policies or the safeguarding of national stability: they criticised cases where humanitarianism was violated within Germany and outside Germany and demanded humanitarian policies and measures towards asylum-seekers. Thus, we can clearly distinguish between the specific contexts in which humanitarianism was used by supporters and rejecters. Supporters applied an *exclusive humanitarianism* that mentions humanitarianism in selective circumstances while rejecters advocated an *inclusive humanitarianism* such as the support of humanitarian rights within Germany or the critique of a limitation of humanitarian principles within Germany. The code of humanitarianism can be further distinguished with regard to its 'sincerity of application', i.e. to what extent it demands political action and can be proven in political action. The advocating of humanitarianism or the perception of a violation of humanitarianism reflect in this respect a more sincere application of

humanitarianism than the mere statement that the constitutional amendment is humanitarian. As a consequence I distinguish between a 'strong' and a 'weak' form of humanitarianism. A strong humanitarianism incorporates types of humanitarianism which are inclusive and 'sincere' (e.g. the advocating of normative principles within Germany, the critique of the violation of humanitarianism within and outside Germany) while a weak humanitarianism relates to an exclusive and politically insincere notion (e.g. the assertion that the constitutional change is humanitarian, the advocating of humanitarianism outside Germany, the perception that humanitarianism exists in Germany, the perception that humanitarianism exists outside Germany).

#### **6.2.2.2 Changing justifications: contrasting the 1993 debate with a debate in 1991**

This section contrasts the 1993 debate (*Deutscher Bundestag* 26.5.1993) with an asylum debate held in 1991 (*Deutscher Bundestag* 18.10.1991). It investigates to what extent justification schemes changed or remained the same during the early 1990s (see Fig. 6.1 and Appendix 6.5 for exact results).

Table 6.1 A general comparison between justifications utilised in 1991 and 1993

Justifications	Very dominant (utilised by more than 40 per cent of politicians)	Less dominant (utilised by less than 10 per cent of politicians)
1991	<p><b>Xenophobic attacks and racism</b></p> <p>Critique of racism in general and xenophobic attacks in particular which were explained by other factors than the asylum problem</p> <p><b>Asylum Problem</b></p> <p>Perception of an asylum problem which has been caused by an increase in asylum seekers</p> <p><b>National Stability</b></p> <p>Emphasis of positive features of national stability and inclusion of asylum seekers</p>	<p><b>Humanitarianism</b></p> <p>Advocating humanitarianism within and outside Germany and perceiving Germany as being humanitarian</p>
1993	<p><b>Humanitarianism</b></p> <p>Assumption that humanitarianism has been violated within Germany</p> <p><b>Asylum Problem</b></p> <p>Perception of an asylum problem which has been caused by an increase in asylum seekers</p> <p>The goal to reduce the asylum problem which was caused by an increase of asylum seekers</p> <p><b>National stability</b></p> <p>Emphasis on national stability which has been endangered by the asylum problem</p>	<p><b>Xenophobic attacks and racism</b></p> <p>Critique of racism and xenophobic attacks</p>

The condemnation of xenophobia was the dominant theme in the 1991 debate. Over 40 per cent of politicians criticised xenophobia in 1991, while by 1993 the theme of xenophobia was only mentioned by less than 10 per cent of politicians. Interestingly, all politicians in 1991 explained xenophobia via other factors than the increase in asylum seekers; while by 1993 7 per cent of politicians placed it in the causal context of the asylum movement. There is a further contrast between both debates regarding the use of the humanitarian theme: the 1991 debate mentions humanitarianism in the context of advocating it within and outside Germany and perceiving positive features within Germany. However, the use of these three themes is categorised as 'fairly dominant' (utilised by 20 to 30 per cent of politicians) or 'not dominant' (utilised by 10 to 20 per cent of politicians). And the theme which had been applied in 1993 by the highest number of politicians (i.e. the assumption that humanitarianism had been violated within Germany) is not mentioned at all in 1991. Similar to 1993 the theme of an 'asylum problem' is dominant and discussed in the context of the asylum movement. However, in contrast to 1993, politicians emphasised in 1991 the positive features of national stability and the inclusion of asylum-seekers, possibly due to the highly politicised context following the increase in xenophobic attacks (although more attacks followed in 1992). Therefore, there has been a significant shift in politicians' contributions between 1991 and 1993 from a focus upon a critique of xenophobia, inclusion and positive features of national stability to an emphasis upon humanitarianism and a damaged national stability. The discussion of the 'asylum problem' as such did not change fundamentally (see chapters 4 and 7 for further discussion regarding xenophobia and national stability).

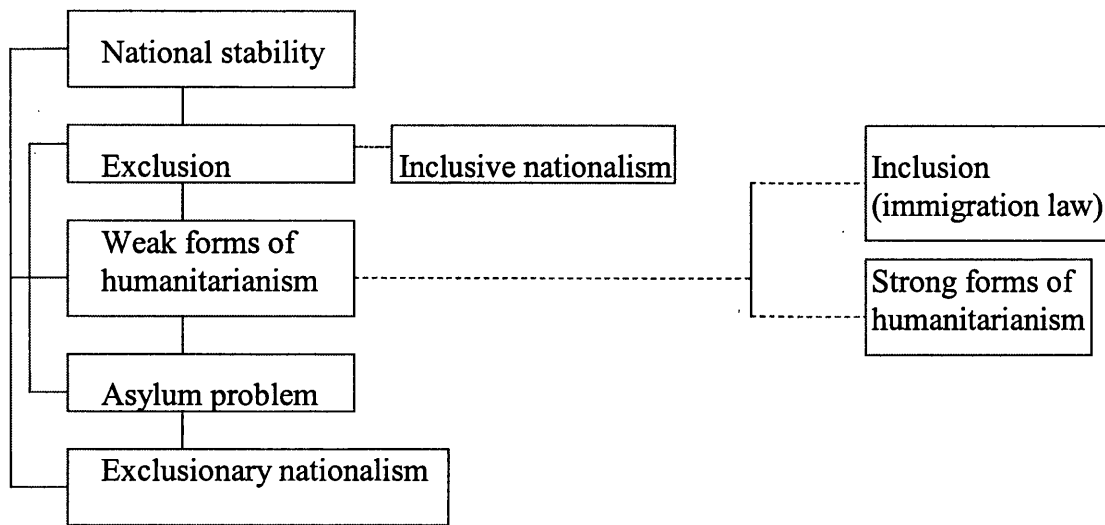
### 6.3 Findings in axial coding

The previous section on open coding has identified the concepts and categories used in the debate and, in our case, the relationship between political party, voting on the amendment and the use of certain codes. The objective of axial coding is to analyse the *relationship between codes*. As discussed in the previous chapter Strauss and Corbin (1998) produced a paradigm which categorises codes along the six dimensions of causal conditions, phenomenon, context, intervening conditions, action/interaction strategies and consequences. The following presents findings concerning the link between themes in general and, in particular, the semantic context of justifications controlled by party membership and voting behaviour.

#### 6.3.1 Semantic contexts of themes

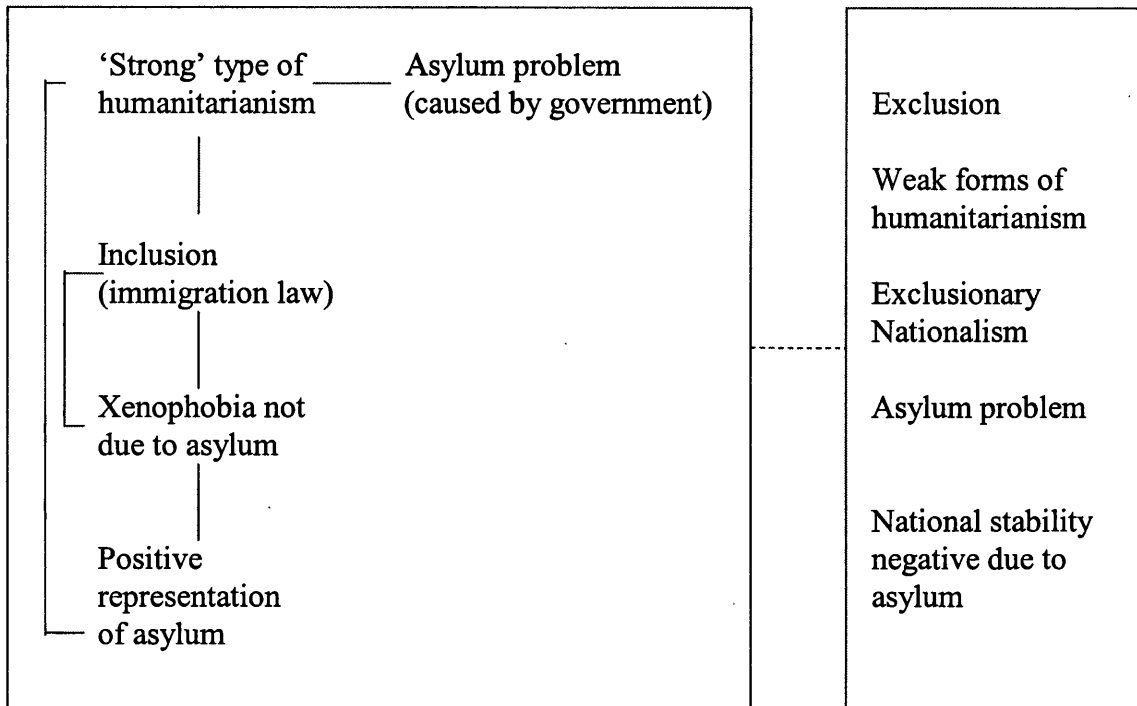
The following summarises the *relationships between* themes in general (see Appendix 6.6 significance levels between themes and Appendix 6.7 for an overview of graphical schemes outlining the semantic context of individual themes).<sup>57</sup> After analysing the semantic context of individual themes two major paradigm models appear. Figure 6.1 represents the first model which associates 'strong' types of humanitarianism (as defined in the coding framework in section 6.2.1) with themes of inclusion, a positive representation and a perception of the asylum problem as being caused by the government; significantly negative links (indicated by the perforated lines) are established between these themes and themes of exclusion, exclusionary nationalism and a damaged national stability due to asylum. This paradigm reflects a justification system which would be expected from rejecters.

Figure 6.1 Significant links between themes corresponding to a support of the constitutional amendment



The second paradigm is associated with justifications expected from supporters. Significantly positive links have been found between ‘weak’ forms of humanitarianism (as defined in the coding framework in section 6.2.1), themes of exclusion, worries about national stability, a negative representation of asylum and an exclusionary nationalism. Interestingly, there has been also a significant link between the theme of exclusion and an inclusive nationalism indicating that politicians who advocated exclusion of asylum seekers mainly in the form of the safe country rule were keen to confirm that they are, in principle, not against immigration. Politicians’ contributions which focused upon ‘weak’ forms of humanitarianism displayed significantly negative links with ‘strong’ forms of humanitarianism and the demand of an immigration law (see Figure 6.2).

Figure 6.2 Significant links between themes corresponding to a rejection of the constitutional amendment



The two paradigms discussed above indicate that justification schemes were overall very consistent if significant relationships are used as a basis. However, I found that justifications appear less coherent when I looked at justification schemes according to voting behaviour and party membership and when I investigated not only significant relationships but also the frequency with which themes were used, which will be discussed in the next sections.

### 6.3.2 Political profiles in 1993

The following gives an overview of dominant themes which were used by the different political parties (see Appendices 6.8, 6.9 and 6.10).

#### 6.3.2.1 The Far Left

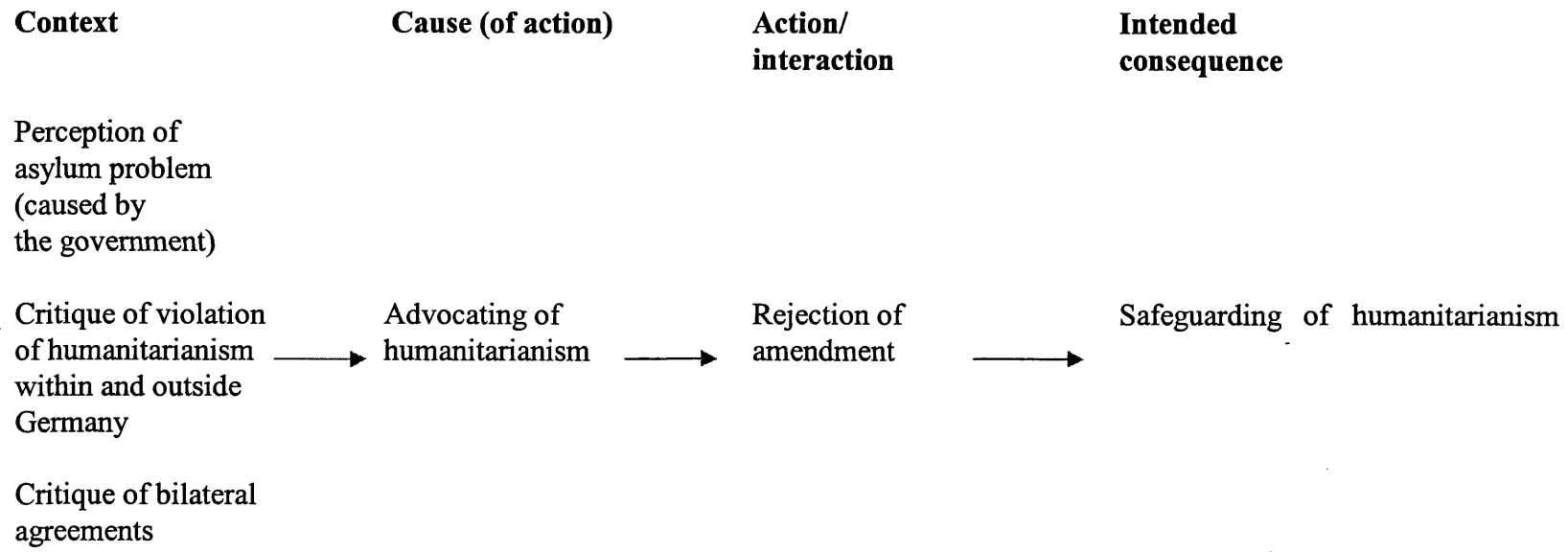
The contributions by the Far Left were dominated by the critique that humanitarian principles are violated within Germany (83 per cent), followed by a positive affirmation of humanitarianism (58 per cent), an affirmation of the asylum problem that was blamed upon the government (50 per cent), the reference to situations in countries-of-origin where humanitarianism has been violated outside Germany (50 per cent) and a critical perception of bilateral agreements (25 per cent). Although the above themes were frequently applied by politicians of the Far Left, they were not linked in any significant ways. However, fairly strong negative relationships existed between the perception that humanitarianism was violated within Germany and the perception that humanitarianism existed within Germany (-.379); and a fairly strong positive relationship occurred between the perception that humanitarianism was violated within Germany and the advocating of humanitarianism within Germany (.447).

Applying Strauss and Corbin's (1998) paradigm for axial coding, Figure 6.3 displays the causal links of justifications by the Far Left.<sup>58</sup> The general context of their justifications relates to the perception of an asylum problem which is thought to be caused by the government, the critique of a violation of humanitarianism within and outside Germany and a critique of bilateral agreements. The description of this general context leads to the advocating of humanitarianism within Germany (cause of action) which is used as the main determinant for the rejection of the amendment (action/interaction). Thus the Far Left based their main justification upon a normative principle and the intended consequence of their action lay in the safe-guarding of this



principle. In this respect they agreed with all the other parties that there was an asylum problem and offered the safeguarding of the constitutional article as a political measure; while references to an immigration law or changes to procedural laws were not provided to any significant extent during the final debate.

Figure 6.3 A causal paradigm for the justifications of the Far Left



In summary, the findings above show that the Far Left displayed a very consistent political profile whereby the demand of humanitarianism was linked with a critique of governmental policies as being the causal factor for the 'asylum problem'. Interestingly, the Far Left did not deny the existence of an 'asylum problem' nor did it emphasise a possible exaggeration of the negative representation of asylum in the context of crime, misuse, numbers and burden. It merely shifted the blame for the asylum problem away from the asylum-seekers to the government. Further, the Far Left did not combine the perception of a perceived problem with positive features of asylum such as labour skills of asylum-seekers, positive impact upon the German economy (e.g. container industry, staff in reception centres etc.) or culture. Therefore, it advocated positive humanitarian principles but combined those with an emphasis that as asylum problem exists although the government was made responsible for this problem. The justification schemes by the Far Left did not counter the overall debate nor did it provide concrete political measures to overcome the perceived asylum problem (except the overthrow of the government) as reflected in Konrad Weiss' (Bündnis 90/ Die Grünen) contribution:

The present unsatisfactory situation [regarding asylum-seekers] is the result of an indecisive and helpless governing, a governing that has dreadfully failed. Municipalities and federal districts were abandoned by the government although it was conceivable that the influx of refugees and asylum-seekers will carry on and that administration and reception capacities were exhausted...the support of persecuted and distressed people is not only a human duty but also a Christian virtue.

Konrad Weiss 1993

### 6.3.2.2 The SPD

Similarly to the Far Left, SPD politicians emphasised humanitarianism in their justification schemes: 72 per cent were critical of a perceived violation of humanitarianism within Germany, 43 per cent advocated internal humanitarianism, 35 per cent commented on human rights violations outside Germany and 26 per cent asserted that Germany was still a country which followed humanitarian principles. SPD justifications further resemble those of the Far Left in combining the humanitarian theme with the discussion of an ‘asylum problem’: 40 per cent of the SPD argued that an asylum problem existed and 46 per cent aimed to reduce the problem. However, in distinction to the Far Left, the majority of SPD politicians blamed the problem on the asylum movement itself rather than the government.

Other topics which were mentioned by the SPD are the lack of effectiveness (43 per cent), the goal of implementing an immigration law (33 per cent) and a general critique of the political debate (26 per cent). The overall profile of SPD politicians appeared to be less coherent than that of the Far Left or the CDU/CSU due to splits within the SPD and different voting behaviour regarding the amendment: 132 of SPD politicians supported the amendment against 110 who rejected it.<sup>61</sup> The following analyses supporters’ and rejecters’ justifications separately (see Appendix 6.9).

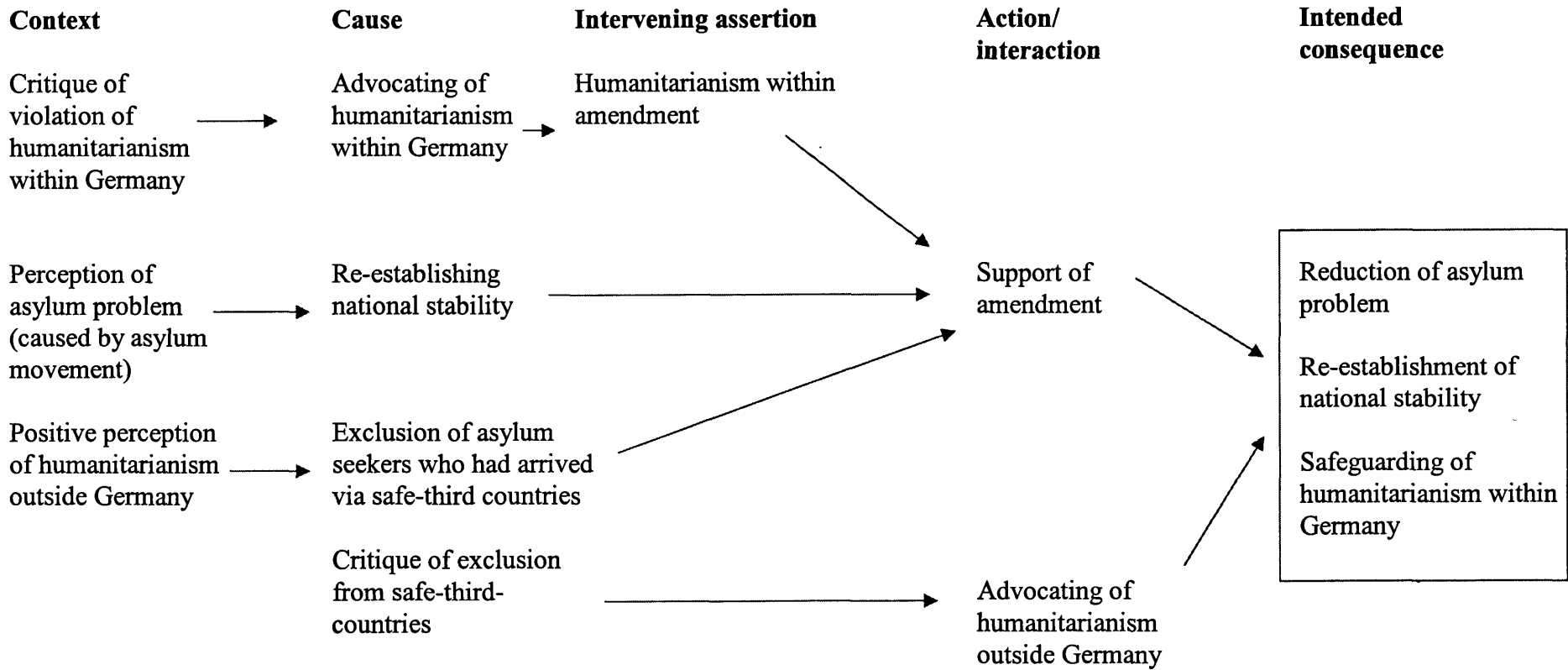
**Supporters** focused especially upon the assertion that the amendment will reflect humanitarian principles (63 per cent), the goal of reducing the asylum problem (57 per cent), describing the asylum problem in the context of the asylum movement itself (40 per cent), criticising the limitation of humanitarianism within Germany (33 per cent), stating the goal to re-establish national stability which was perceived as being damaged by the asylum movement (33 per cent), the goal of exclusion (27 per cent) and the advocating of humanitarianism outside Germany (27 per cent).

The findings regarding significant links show the ambivalence of SPD supporters regarding the safe country rule. Supporters combined significantly often a support of the safe-country-rule with a critique of the same. However, all in all they decided to support the amendment on the basis that it reflected humanitarian principles. The statement that the amendment is humanitarian was significantly often linked to the advocating of humanitarianism outside Germany. A similar link between internal and external humanitarianism existed in the context of normative principles whereby SPD supporters were keen to advocate humanitarianism within Germany but at the same time argued that humanitarianism exists in other countries justifying an exclusion of asylum seekers from safe countries and their support of the safe-third-country rule. In general, SPD supporters were keen to combine the normative principle of humanitarianism with political goals such as the exclusion of asylum-seekers or the re-establishing of national stability. The category perception shows a similar marriage between general humanitarian themes and topical political issues.

Figure 6.4 summarises the causality of the justifications by SPD supporters. They focused on the general context of the asylum problem which they discussed in the causal context of the asylum problem referring to themes such as misuse, burden and trafficking. This perceived situation was associated with the goal to reduce the asylum problem by excluding asylum-seekers who had entered Germany via safe-third-countries (cause of action) and the goal to re-establish national stability (cause of action) which became the main political justification for supporting the amendment (action). However, as mentioned above SPD supporters did not only focus upon political measures but also emphasised humanitarianism. The context of the asylum problem was combined with the affirmation that humanitarianism existed outside Germany, i.e. safeguards existed in transit sending countries (context) which justified the measure of excluding asylum-seekers who had come through safe-third-countries. Further, SPD supporters focused

upon the violation of humanitarianism within Germany referring especially to social situations of asylum seekers (context) which was linked to the advocating of humanitarianism within Germany (cause of action). Due to the fact that the amendment was viewed as being humanitarian (for example, providing a better situation for those asylum seekers who were classified as 'genuine' as non-genuine asylum seekers were dealt with via the safe country of origin regulation), politicians could justify their support of the constitutional change. Although SPD supporters discussed the violation of humanitarianism within Germany they were keen to assert that the general context was humanitarian as reflected in the amendment. Therefore, both humanitarian and political goals determined the support of the amendment. While the amendment is an action which responds to the asylum problem within Germany, SPD supporters advocated as an external measure the increase in humanitarianism mainly in form of developmental aid. Both actions were intended to reduce the asylum problem and to re-establish national stability.

Figure 6.4 A causal paradigm for the justification schemes of SPD supporters



In summary, supporters were keen to incorporate into their justification humanitarian principles but applied humanitarianism in the 'weaker' version of a perception rather than a normative principle; and, when they advocated humanitarianism as a principle, they directed it outside Germany. They combined this weaker version of humanitarianism with themes of an asylum problem (caused by the asylum movement), national stability and exclusion. The following contribution by Renate Schmidt reflects this emphasis on the asylum problem alongside the affirmation that humanitarianism will be safeguarded.

It [the asylum problem] is a concern for people who live in deprived conditions. They have justified and unjustified anxieties, their children go to schools with eight to ten different nationalities and their frustration and anger are constantly increasing. The financial capacities of towns are threatened by the large number of asylum-seeker. It is not true, that we expel people back to countries where they may face torture and death; instead, we send them to a safe-third-country. If safety cannot be guaranteed, then the country is no longer defined as a safe-third-country. Because of this I vote for the amendment...I also warn against the assumption (reflecting German arrogance) that our prevailing regulations are the only possible, humane, democratic and correct measures. Our European neighbours who also have a little bit of democratic experience have reasonable regulations and procedures which are similar to our constitutional amendment.

Renate Schmidt, SPD, 1993

Analysing **rejecters'** justifications I found that 94 per cent of rejecters criticized humanitarianism within Germany. Rejecters also criticized the effectiveness of the amendment (63 per cent) and the violation of humanitarianism outside Germany (56 per cent). Consequently, rejecters from the SPD advocated humanitarianism internally (50 per cent) and supported an immigration law (48 per cent) and further procedural laws (21 per cent). Nevertheless, rejecters focused on the asylum problem in the context of the asylum movement itself (40 per cent) and supported the goal of reducing the asylum problem caused by the asylum movement (40 per cent) (see Appendix 6.9).

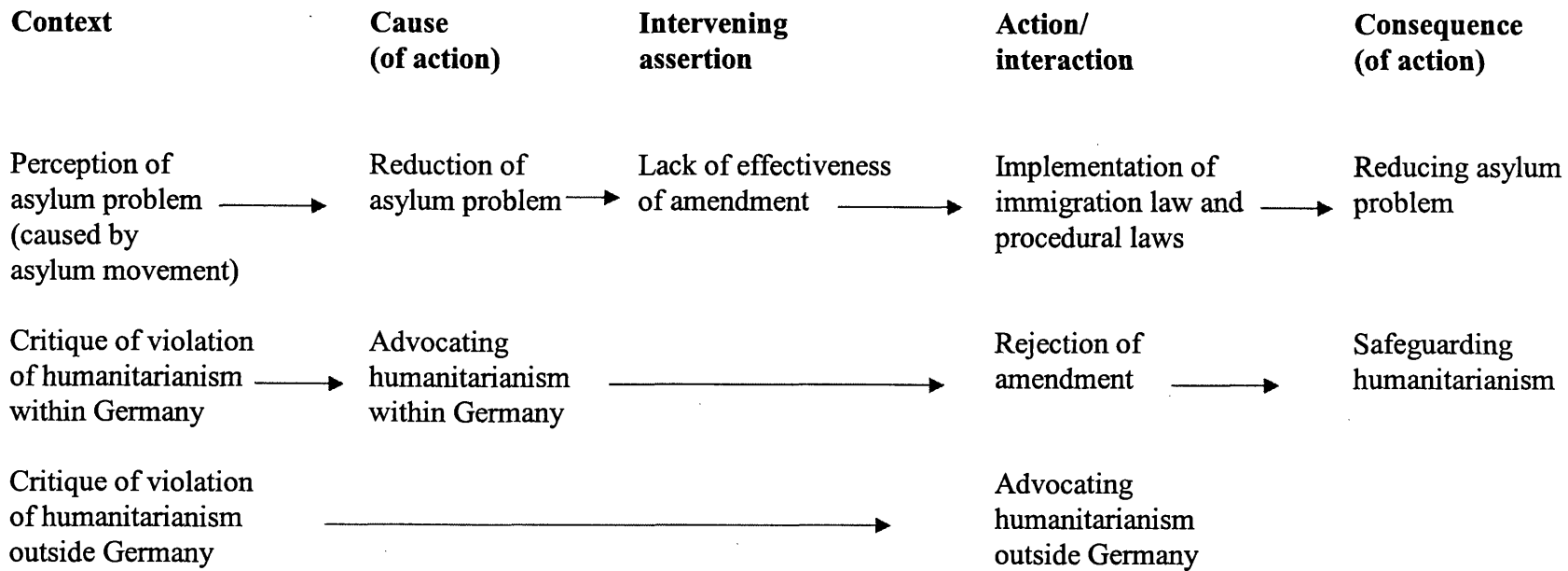


The investigation of significant links between themes displays a network which centres around the theme of dealing with the asylum problem which is perceived as being caused by the asylum movement itself. Rejecters were keen to portray themselves as political realists (emphasising the goal of reducing the asylum problem); however, they did not see the constitutional amendment as a humanitarian or effective way to solve the problem. Rejecters linked the goal of reducing the asylum problem significantly with the intention of safeguarding humanitarian principles within and outside Germany, the critique of the violation of humanitarian principles within Germany, the critique of the amendment with regard to its effectiveness and the support of an immigration law. Thus, in contrast to supporters SPD rejecters showed a consistent and unambiguous position towards the amendment. They also offered concrete political measures in form of further procedural laws and an immigration law whereby the former played a vital role in the justification of rejecters reflected in the fact that it is significantly linked with most of the dominant themes.

Figure 6.5 displays the causal links of rejecters' justifications from the SPD. Similar to SPD supporters rejecters perceive an asylum problem. They link it to the goal of reducing the asylum problem (cause) which is thought to be achieved by the implementation of immigration and procedural laws (action/interaction) rather than the amendment. Alongside this overview of the social situation they criticized the violation of humanitarianism within Germany (context) which led to the advocating of humanitarianism within Germany (cause) and the rejection of the amendment (action/interaction) due to not fulfilling this demand. Rejecters also discussed the violation of humanitarianism outside Germany (context) which determines the advocating of humanitarianism outside Germany (action/interaction). Thus, similar to the Far Left, the intended consequence of rejecting the amendment was the safeguarding of humanitarian principles. However, in contrast to the Far Left, SPD rejecters

accompanied this normative principle with concrete political goals (other than the amendment) to reduce the asylum problem.

Figure 6.5 A causal paradigm for the justification schemes of SPD rejecters



To sum up, rejecters placed more emphasis upon the themes of humanitarianism than supporters and incorporated 'stronger' forms of humanitarianism such as the advocating of internal humanitarianism. Similar to supporters they discussed the asylum problem as a causal consequence of the asylum movement rather than other factors, but argued that the amendment would not be effective enough to deal with this problem. Therefore, via the theme of effectiveness they could produce a coherent link between their advocating of humanitarianism, an open critique of the asylum movement as creating an asylum problem and a rejection of the amendment. In contrast to the Far Left, they proposed concrete political measures such as an immigration law. Further, rejecters stressed equally the discussion of their perception of the situation, normative principles and concrete political goals. Interestingly SPD rejecters were reluctant to link the asylum problem to the problem of national stability reflected in the fact that they did not emphasise national stability in their justifications.

The following extract of an open letter by twelve SPD politicians reflects the rejecters' emphasis upon the asylum problem, but also upon their demand of humanitarianism, effectiveness and alternative political measures:

We understand the feelings, worries and the anger amongst our population regarding the influx of refugees...We have to deal every day with municipal and inner-political problems which have been caused by the influx of foreign people. However, we are convinced that the undermining of a valuable basic right, the implementation of extremely problematic changes regarding the asylum procedure and the demolition of a constitutional article are inapt and ineffective measures to solve the problem...We reject the compromise for the following reasons: ...because in practice the right of asylum will be demolished...because the compromise allows to expel persecuted people without any procedures. We desire therefore as social democrats a policy which offers limited and regulated immigration and naturalisation.

Schofburger, Buttner, Kubatschka, Lambinus, Mascher, Mattischek, Pfaff, Schmidbauer, Simm, Skarpalis-Sperk, Stiegler, Titze-Stecher, SPD 1993

In conclusion, the overall profile of the SPD is inconsistent as it combines 'strong' forms of humanitarianism (such as a critique of a violation of internal humanitarianism and the advocating of humanitarian principles within Germany) with an open critique of the asylum movement which is associated with misuse, burden and an endangered national stability. Comparing supporters' and rejecters' justification schemes, supporters displayed more coherent justifications combining 'weak' forms of humanitarianism with an open critique of the asylum movement. In contrast, rejecters linked in a contradictory way 'strong' forms of humanitarianism with a negative representation of the asylum movement. They managed to create consistency between their justifications and their decision on the amendment by referring to a lack of effectiveness.

### **6.3.2.3 The FDP**

The most dominant themes applied by FDP politicians in general were a negative representation of the asylum situation (which is blamed upon the asylum movement as such) and the advocating of humanitarian principles within Germany (56 per cent). Followed by a critique of the safe-third-country rule (50 per cent), the goal to re-establish national stability which was damaged by the asylum movement (50 per cent), the goal to reduce the asylum problem (caused by the asylum movement) (44 per cent), concerns about an actual or potential shortcoming of internal humanitarianism (44 per cent) and a critique of the political debate (44 per cent). Themes relating to the implementation of an immigration law, the lack of effectiveness, the implementation of procedural laws, positive aspects of harmonisation, the assertion that the amendment will reflect humanitarian principles and positive aspects of the political debate were used by between 30 and 40 per cent of politicians. Less dominant (used by 20 to 30 per cent) were issues relating to exclusion, the assertion that Germany is still humanitarian and the advocating of humanitarianism outside Germany.

The above use of themes shows that in comparison to other parties, FDP politicians made use of the largest variety of justifications. Similar to the SPD, the FDP profile is combining themes which are not compatible or contradictory. The following will investigate to what extent this incoherence disappears when we consider justifications by supporters and rejecters separately (see Appendix 6.9).<sup>62</sup>

**Supporters** amongst the FDP discussed the asylum problem in the context of the asylum movement and stated the goal of reducing this problem (64 per cent for both), displayed the goal of re-establishing national stability which had been damaged by the asylum movement (55 per cent), asserted that the amendment is humanitarian (45 per cent) and advocated internal humanitarianism (45 per cent) and external humanitarianism (36 per cent). Over a third of supporters were also critical of the safe-third-country rule and to a large extent the same 36 per cent were also supportive of the safe-third-country rule. 27 per cent of supporters focused upon European harmonisation, criticised the amendment regarding its effectiveness, supported an immigration law and reflected in general a positive perception of humanitarianism within Germany.

Regarding significance the dominant themes of reducing the asylum problem and re-establishing national stability appeared significantly often in combination. Interestingly, supporters from the FDP incorporated a number of criticisms regarding the effectiveness of the amendment and the critique of the safe country rule. They linked significantly often the lack of effectiveness with the goals of re-establishing national stability and implementing an immigration law. Thus FDP supporters suggested that the amendment would not re-establish national stability and that it would be dangerous to assume otherwise. However, due to the population's expectations (influenced by the political debate of the CDU/CSU which gave the impression that the amendment would solve a variety of problems) the amendment has to be supported as national stability would deteriorate even further. Generally FDP politicians criticized the amendment's

effectiveness and combined the former significantly often with a critique of the safe-country-rule and an advocating of an immigration law; although a number of supporters identified positive aspects in the safe country rule and justified their position with an advocating of humanitarianism outside Germany. Dr Solms' commentary reflects well the above argument.

The nearly 440 000 asylum-seekers who have asked for protection last year and the 161 000 refugees who arrived in the first four months of this year force us to acknowledge the changing conditions. They force us to develop procedures which can counteract the suspension of the asylum law...90 per cent of the population expect from us a change of the constitution. A failure at this point would have dramatic consequences. The trust into politics would be severely damaged. The trust into the democratic parties would be damaged. Not only the democratic parties but the entire democratic system would be endangered.

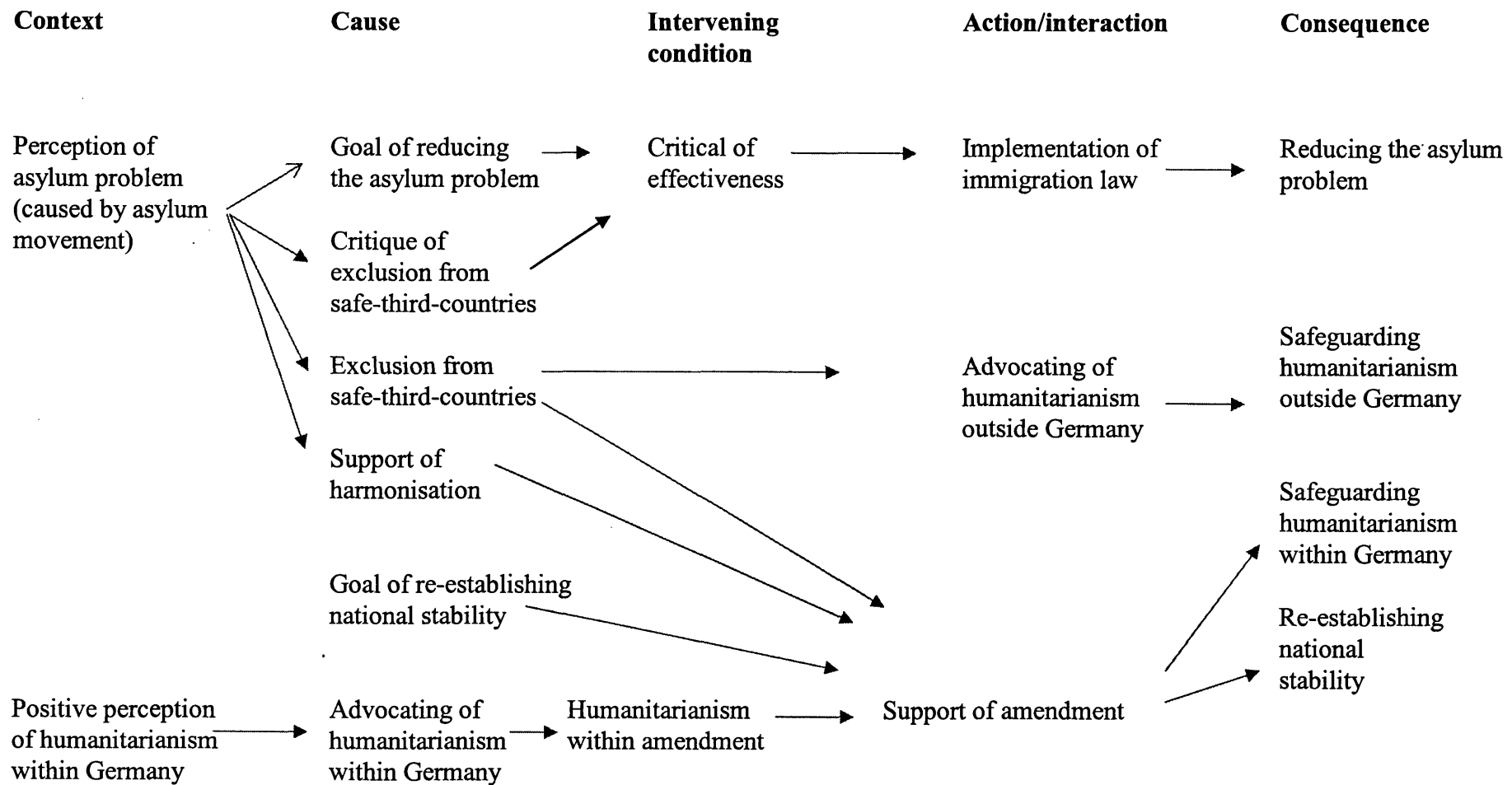
Dr Solms, FDP 1993

With regard to the causality of supporters' justification schemes I identified the perception of an asylum problem (caused by the asylum movement) as one general context in which justifications were placed. This perception influenced the goal to reduce the asylum problem and to re-establish national stability. However, FDP supporters criticised the effectiveness of the amendment (intervening assertion) with regard to its capacity to solve the asylum problem. Similar to SPD supporters they argued that a support is nevertheless necessary to safeguard national stability. Similar to politicians from other parties they combined the debate of the asylum problem with a humanitarian theme; in their case it is the general positive perception of humanitarianism (context) in which the debate took place. This is linked to a continuous advocating of humanitarianism within Germany which substantiates, together with the affirmation that the amendment is humanitarian, their support of the amendment. Thus the intended consequence of their support is to avoid a further deterioration of national stability combined with the ongoing support of humanitarianism. Alternative actions

were also proposed to deal with the asylum problem and to re-establish national stability (see Figure 6.6).



Figure 6.6 A causal paradigm for the justifications of FDP supporters



**Rejecters** of the amendment criticized a perceived violation of humanitarianism within Germany (86 per cent), advocated humanitarianism within Germany (71 per cent), were critical of the safe-third-country rule (71 per cent), criticised the lack of effectiveness of the amendment (57 per cent), perceived an asylum problem as being caused by the asylum movement (57 per cent), criticised human rights violations outside Germany (43 per cent), advocated an immigration law (57 per cent), recommended procedural laws (57 per cent), had the goal to re-establish national stability damaged by the asylum movement (43 per cent) and were supportive of the European harmonisation process (43 per cent) (see Appendix 6.9).

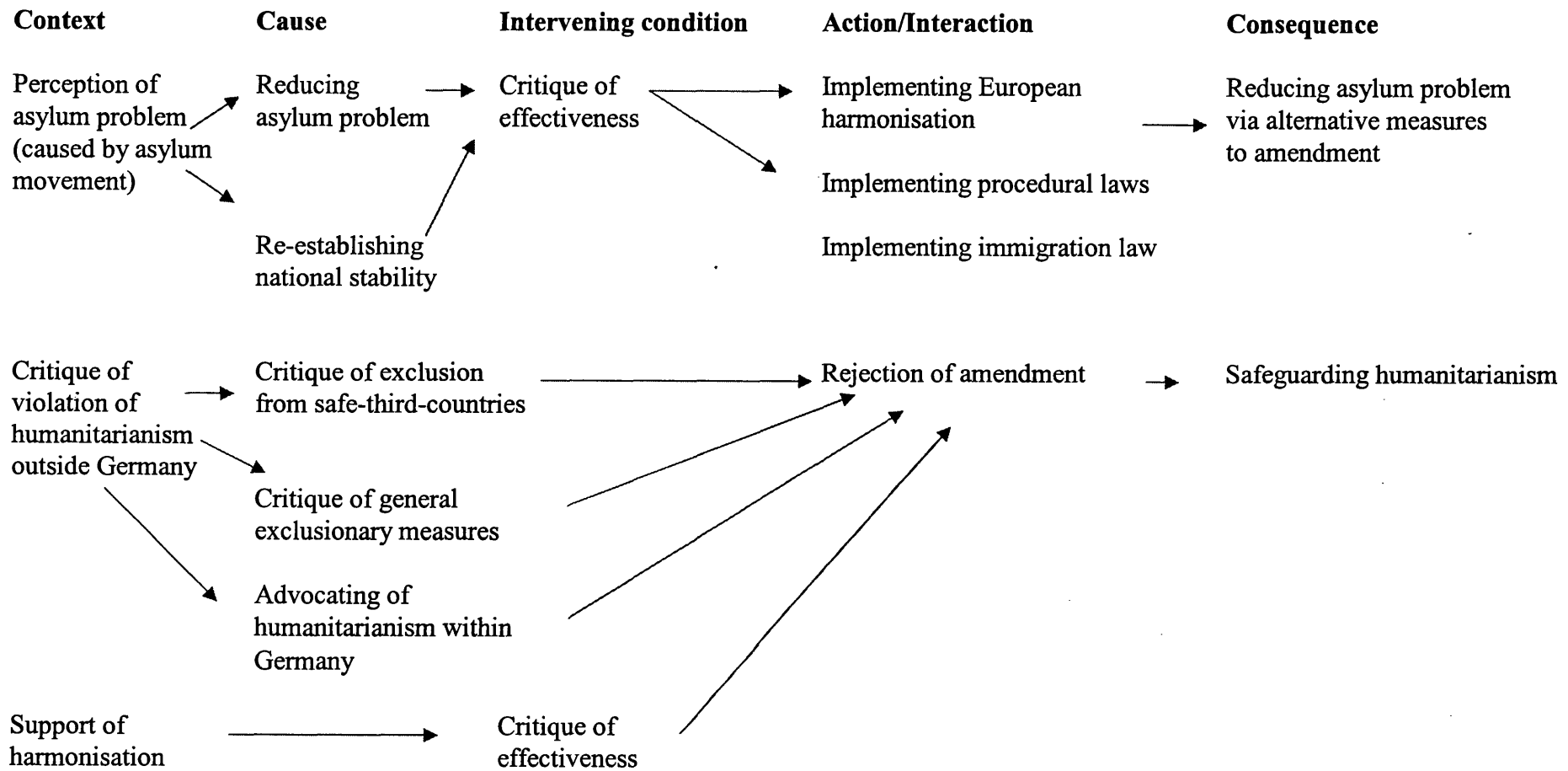
Rejecters from the FDP have linked significantly the goal of re-establishing national stability to the perception of an asylum problem (caused by the asylum movement); however, both themes were overruled by a critique of the amendment regarding its effectiveness which is significantly linked to a critique of a violation of humanitarianism outside Germany and a critique of the safe country rule. Those politicians who emphasised the critique of a violation of humanitarianism within Germany were in favour of European harmonisation and further procedural laws; however, they did significantly not mention an immigration law. The above findings suggest that rejecters from the FDP can be divided into those who justified their decision on humanitarian grounds and those who referred to concrete political alternatives. Hirsch emphasised this critique regarding the violation of humanitarian principles in his contribution:

The proposals contradict humanitarian principles. They do not correspond with our legal duties associated with the Geneva Convention. They violate prevailing principles of our constitution. We recognise the need of our municipalities. We also understand the limits regarding the population's capacity to accept refugees...Political action cannot mean the defence against refugees, instead a common European refugee policy should be developed which implements a fight against the causes for flight and a burden-sharing. Nothing of that is recognisable — not even in the beginning — in the proposal.

Dr Hirsch, FDP, 1993

Applying Strauss and Corbin's paradigm I found that FDP politicians who rejected the amendment placed their justifications into the general contexts of the asylum problem, the violation of humanitarianism outside Germany and a support of harmonisation. As a consequence of the portrayal of the asylum problem the goals of reducing this problem (cause) and re-establishing national stability (cause) were stated. However, due to the critique of the effectiveness of the amendment, these causes led to a rejection of the amendment and the alternative proposal of an immigration law and further procedural laws. The critique of a violation of humanitarianism outside Germany determined a critical perception of exclusionary measures in general and the safe-third-country rule in particular and encouraged an advocating of humanitarianism within Germany. As a consequence the amendment could not be accepted as it was associated with exclusionary measures which were interpreted as a limitation of humanitarianism. Although a European harmonisation process was generally supported, the amendment was perceived as being not effective to encourage this process which was another reason for the rejection of the amendment. Therefore, it was believed that the rejection of the amendment predominantly safeguarded humanitarianism while the perceived problems of national stability, asylum and European harmonisation were dealt with via alternative measures (see Figure 6.7).

Figure 6.7 Causal paradigm for justifications from FDP politicians who rejected the amendment



In summary, the profile of FDP politicians is similar to that of SPD politicians with respect to its diversity and tendency to combine themes which are less compatible, e.g. strong forms of humanitarianism and a discussion of the asylum problem in the context of asylum-seekers rather than other factors. When I distinguished between supporters and rejecters justifications remained diverse and inconsistent in the case of supporters. The former focused especially on the reduction of the asylum problem, but also placed emphasis upon the limited effectiveness of the amendment and criticised the safe-third-country rule. Rejecters justified their decision more consistently by referring to humanitarian issues, a critique of the amendment regarding effectiveness and by proposing alternative measures instead of the amendment. They also focused upon national stability and the asylum problem; however, they regarded the amendment as not being able to counter these problems.

#### **6.3.2.4 The CDU/CSU**

The most dominant theme amongst CDU/CSU politicians has been the assertion that the amendment is humanitarian (77 per cent); followed by the goal to reduce the asylum problem (caused by the asylum movement) (57 per cent), the goal to re-establish national stability which had been damaged by the asylum problem (53 per cent), the goal to exclude asylum-seekers (50 per cent) and the goal to support European harmonisation (50 per cent). Further dominant themes amongst CDU/CSU politicians were the support of a limitation of humanitarian principles within Germany (38 per cent), an advocating of exclusive forms of nationalism (38 per cent), a support of the safe country rule (30 per cent) and a negative perception of asylum (30 per cent). Themes such as external humanitarianism, critique of the political debate, the support of the benefit law and a

positive perception of humanitarianism outside Germany were less dominant (used by 20 to 30 per cent of politicians).

CSU politicians were keen to emphasise that the amendment was humanitarian and linked this argument significantly with the goal of excluding asylum-seekers who arrived from safe countries; thus the problematic safe-third-country rule (from a humanitarian point of view) was countered with the somehow empty affirmation that the amendment was nevertheless humanitarian. There is a further significant link between the goal of reducing the asylum problem and the proclamation of general exclusionary measures for asylum-seekers. Schäuble's quote below reflects the keenness of CDU/CSU politicians to mingle humanitarianism with political pragmatism.

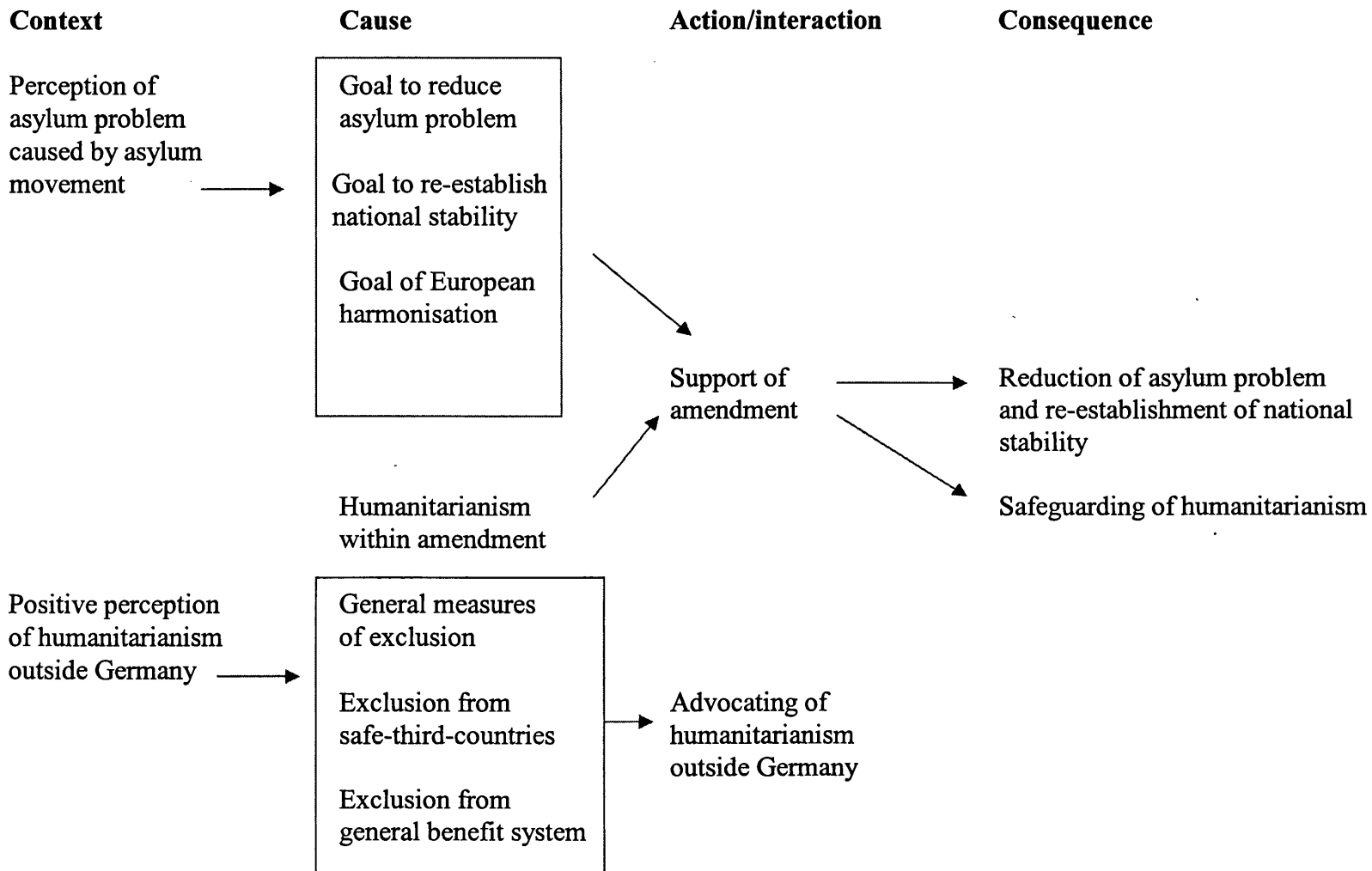
The decision we have to make is important for the inner peace in our country, for a friendly relationship between Germans and foreigners and for the ability to guarantee persecuted people protection, shelter and accommodation in future...We need to harmonise our constitutional measures regarding the protection of politically persecuted persons with the international community and the Geneva Convention. Nothing else is the issue of today's debate and decision. People who speak about the demolition of the protection of persecuted persons propose that the rest of the civilised states of this world fails to protect persecuted people.

Dr Schäuble, CDU/CSU, 1993

Figure 6.8 presents the causal relationship between the justifications which were dominantly used by CDU/CSU politicians. The portrayal of the asylum problem (caused by the asylum movement) and the positive perception of humanitarianism outside Germany were at the centre of their justifications. The former themes motivated a support of the amendment on the grounds of reducing the asylum problem, re-establishing national stability and supporting European harmonisation (which was believed not to be possible if there was a constitutional guarantee of investigating individual asylum claims). The general portrayal of a positive context

regarding humanitarianism outside Germany (guarantee that asylum seekers were protected in so-called safe countries and safe-countries-of-origin) justified general measures of exclusion and the safe-third-country rule. These exclusionary measures justified a support of the amendment and the affirmation that the amendment was humanitarian guaranteed the intended consequences of reducing the asylum problem and re-establishing national stability without violating humanitarianism. To make sure that their interest in humanitarianism existed as much as amongst other parties, CDU/CSU politicians also emphasised the advocating of humanitarianism outside Germany.

Figure 6.8 A causal paradigm for the justifications of CDU/CSU politicians





Therefore, CDU/CSU politicians dramatised the asylum situation much more than any other political party as they treated the 'asylum problem' as a cause for the decline of national stability, democratic order and political trust which consequently led to an inability to fulfil humanitarian principles. However, the stress upon national stability did not coincide with a neglect of humanitarianism; far the opposite, politicians from the CDU/CSU were especially keen to point out that the amendment is humanitarian. The overall profile of the CDU/CSU was consistent whereby a 'weak' form of humanitarianism was combined with a negative representation of asylum, a negative scenario of national stability, themes of exclusion and an exclusive nationalism.

### **6.3.3 A factor analysis for the 1993 debate**

The factor analysis for the 1993 debate identified four clusters which I defined as humanitarian opposition, anti-government, ambiguous opposition and anti-exclusionists (see Appendix 5.10).<sup>63</sup> A univariate analysis of variance found that both the constructive opposition and the anti-exclusionist cluster were significant with the Far Left ( $p=.00$  and  $p=.05$  respectively) while the other two clusters showed no significance with a particular party. Codes identified in the cluster of ambiguous opposition were utilised across the Far Left, the SPD and even by the FDP who were part of the government, however critical of the position on asylum by their coalition partner. Thus the former cluster was not significantly linked to a specific party which is an indicator for the similarity of justifications across the different parties.

All in all the factor analysis did not display any surprising results and generally did not contradict my findings using the grounded theory approach. However, the limitations of the factor analysis become very obvious as its level of information is not comparable in any way to the depth which the grounded theory approach provided. Therefore, in the context of analysing politicians' justification schemes a factor analysis

does not seem to provide a sufficiently in-depth understanding of the semantic context. I also doubt to what extent it can enhance the grounded theory approach from a statistical point.

#### **6.3.4 A contrast of political profiles in 1991 and 1993**

Appendix 6.12 displays to what extent the profile of political parties has changed or not changed between 1991 and 1993.<sup>64</sup> Figure 6.9 presents a causal paradigm for the justifications of the Far Left in 1991 which indicates that the general context of their justifications relates to the discussion of xenophobia, a critique of exclusion, a perception of an asylum problem which was discussed in the causal context of the asylum movement and the perception that the government was responsible for problems regarding national stability. Although the above topics were no longer emphasised in the 1993 debate the theme of advocating humanitarianism internally remained to be the main justification for rejecting the constitutional change in 1991 and 1993. In this respect the main pattern of justification of the Far Left had not changed. Investigating significance links between themes is questionable due to the small sample for 1991 (i.e. three contributions) and will, therefore, not be addressed. Thus the figure below is based upon the use of dominant themes and does not reflect significant and/or strong relationships.

Figure 6.9 A causal paradigm for the justifications of the Far Left in 1991

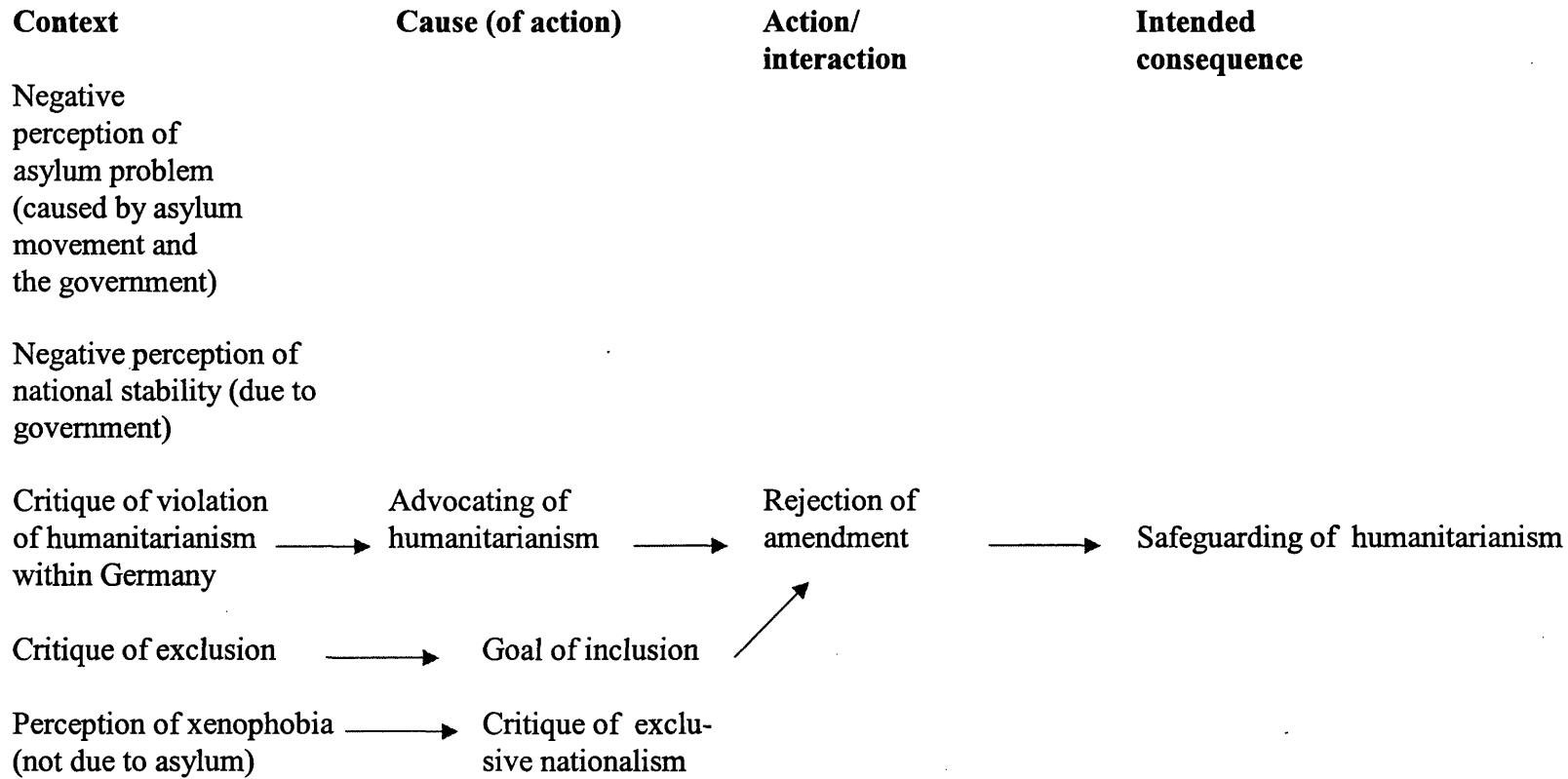
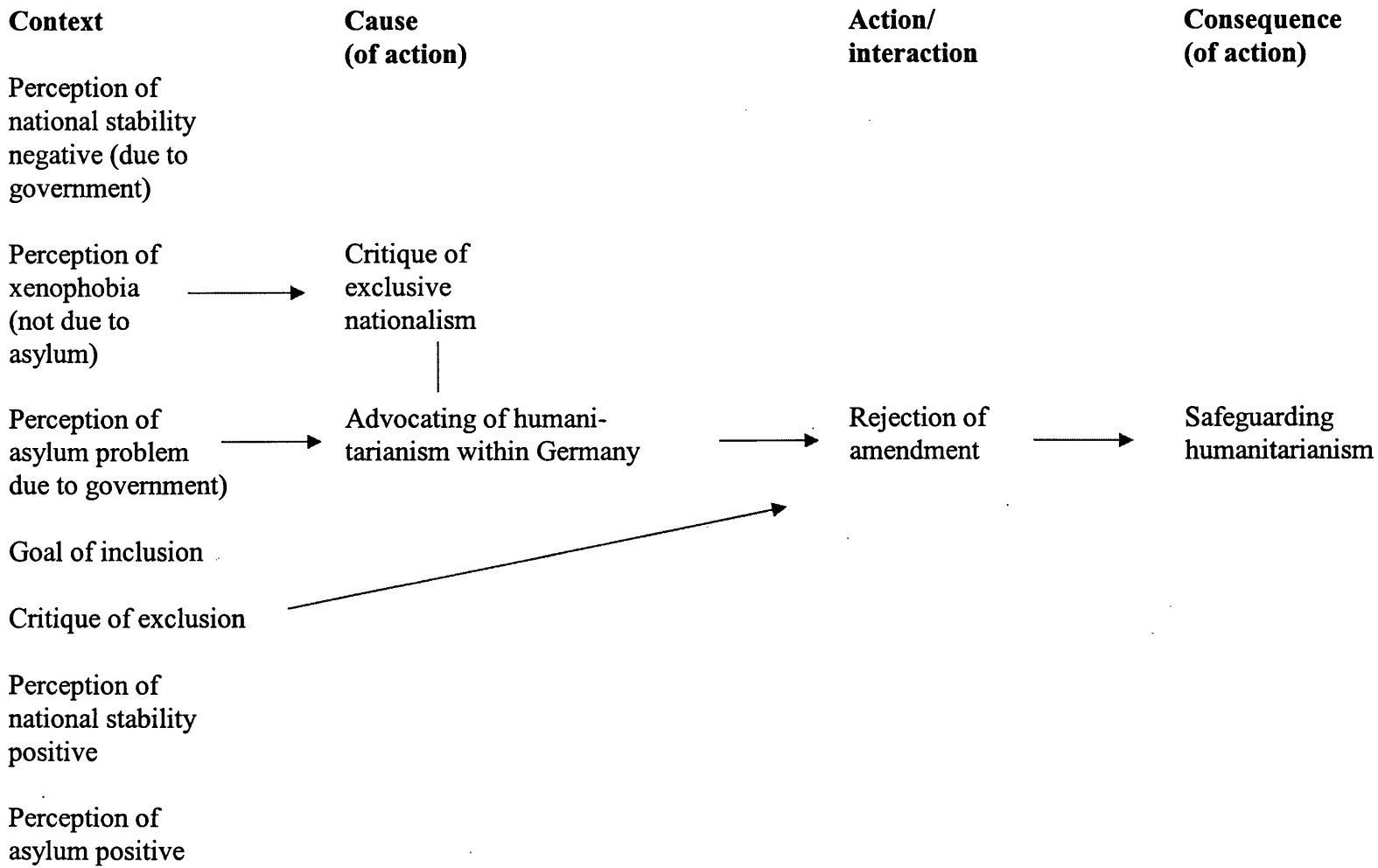


Figure 6.10 demonstrates that SPD politicians emphasised during the 1991 debate especially positive aspects of national stability and asylum and the general goal of including asylum-seekers. They also focused upon the government as a causal factor of the asylum problem and viewed national stability in a positive light. Normative principles such as humanitarianism and, especially, the critique of exclusive nationalism were the main justifications to reject the amendment. Although the findings are only based upon eight contributions of politicians they indicate that there are significant and strong relationships between these normative principles and the opinion that the asylum problem was caused by the government rather than by the asylum movement itself. Therefore, the asylum problem is acknowledged but does not compromise the advocating of humanitarianism and an inclusive nationalism as the government is identified as creating the asylum problem. By 1993 these justifications had changed considerably with regard to rejecters and those who moved over to support a constitutional change. The main distinction is that by then the asylum problem was no longer blamed upon the government. Consequently, the justifications had to change significantly if they should remain consistent; while supporters of the amendment emphasised the re-establishing of national stability, rejecters focused upon the lack of effectiveness.

Figure 6.10 A causal paradigm for the justifications of SPD politicians in 1991



In 1991 FDP politicians focused upon the critique of an exclusive nationalism, an explanation of xenophobia which did not focus upon asylum and the European goal of harmonisation; although the sample is very small a strong relationship can be found between the discussion of xenophobia and the rejection of an exclusive nationalism. In this respect FDP politicians linked, similar to SPD politicians, the argument that xenophobia is not caused by the asylum movement to the critique of an exclusive nationalism and the rejection of the constitutional amendment. Therefore, FDP justifications underwent a major shift between 1991 and 1993 when the main focus of supporters was placed upon the asylum problem and national stability which were discussed in the causal context of the asylum movement, whereby rejecters emphasised humanitarianism, a critique of exclusion, doubts about the effectiveness of a constitutional change but also an asylum problem which was caused by the asylum movement itself (see Appendix 6.10). Although the justifications changed for both supporters and rejecters, the advocating of European harmonisation remained a dominant topic in 1993. The above findings show reluctance by FDP politicians to engage in the asylum debate in 1991 while by 1993 they had developed complex justification schemes regarding the support or rejection of the constitutional amendment.

Figure 6.11 A causal paradigm for the justifications of FDP politicians in 1991

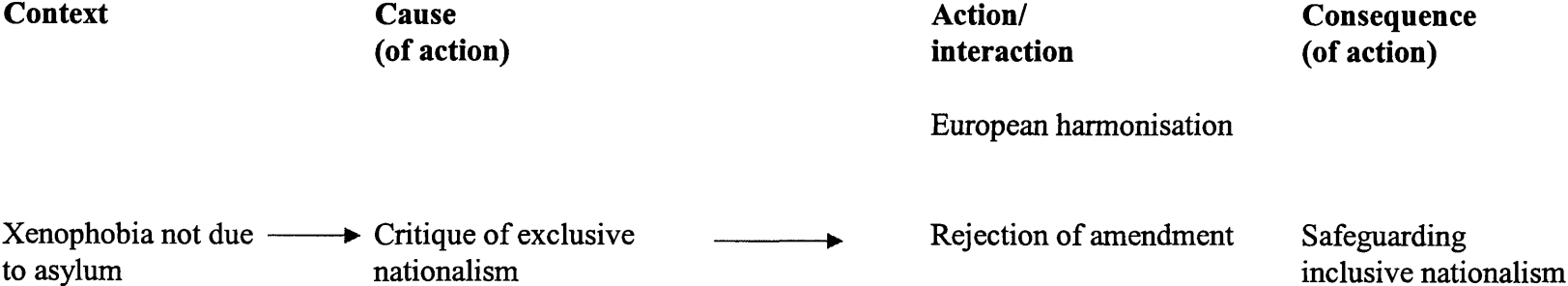
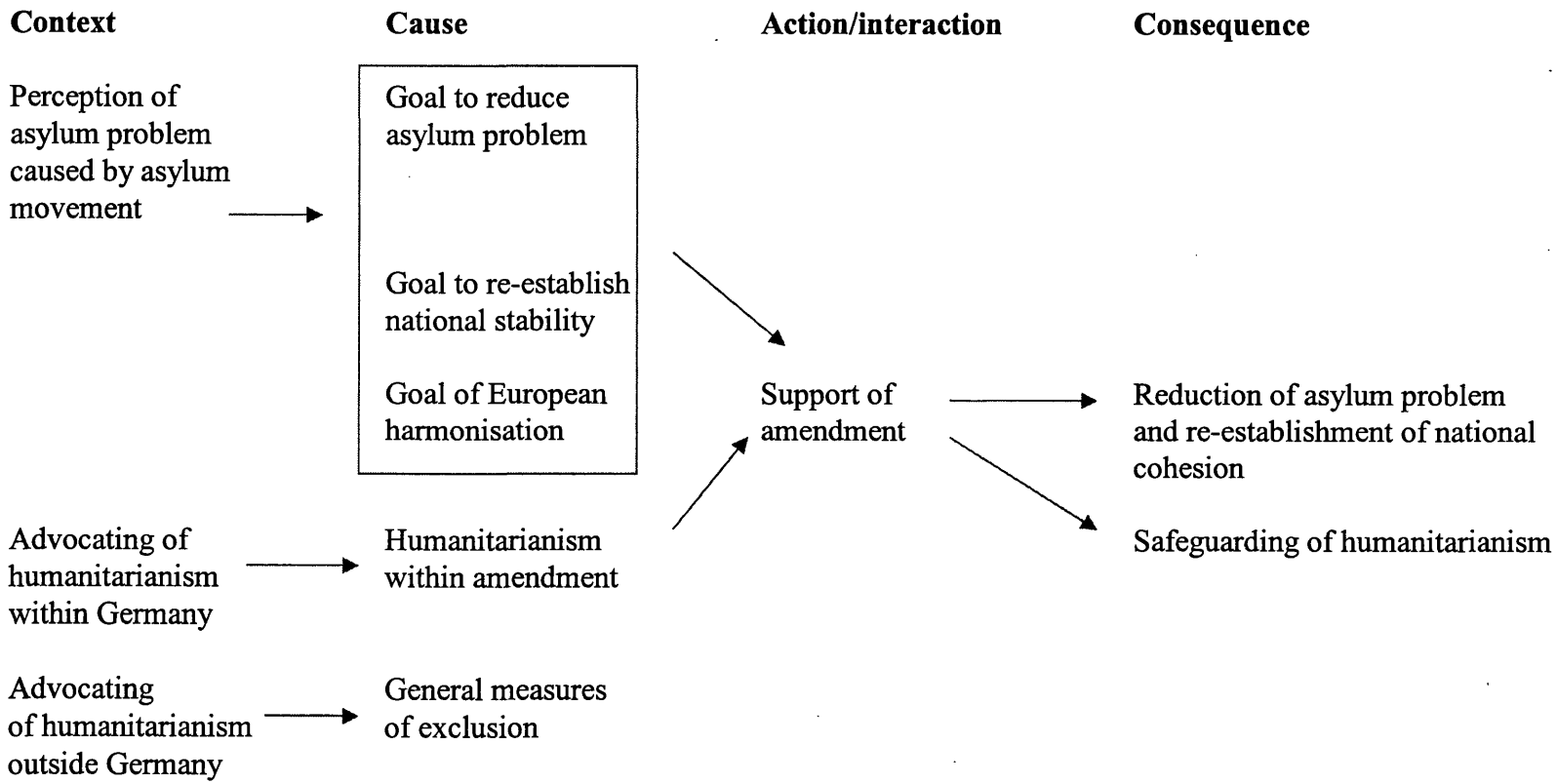


Figure 6.12 demonstrates that CDU/CSU politicians emphasised the asylum problem (perceived as being caused by the asylum movement itself) as much in 1991 as they did in 1993. There are strong links between the asylum problem and the goal of exclusion ( $r=.736$ ) and the goal of re-establishing national stability ( $r=.843$ ) but also a critique of exclusive nationalism; again these links can only serve as indication as they are based upon a very small sample of eight contributions. In 1991 politicians already emphasised humanitarianism and developed strong links ( $r=.713$ ) between the advocating of humanitarianism within Germany and outside Germany. All in all the justification scheme of the CDU/CSU had not changed significantly between 1991 and 1993 except that humanitarianism in 1993 was much more clearly associated with a 'weak' form of humanitarianism which, in particular, concentrated upon the humanitarianism within the amendment.



Figure 6.12 A causal paradigm for the justifications of CDU/CSU politicians in 1991



In conclusion, the profiles of the Far Left and the CDU/CSU remained fairly constant, while especially the profiles of FDP and SPD politicians changed significantly between 1991 and 1993. This is not surprising as a large number of politicians from those parties shifted from a rejection of the amendment to the support of it. However, those who carried on being against a constitutional change did also alter their justifications. By 1993 all politicians from the SPD and the FDP, irrespective of their position regarding the constitutional change, perceived the asylum problem as a problem which could no longer be only blamed upon the government. In this respect SPD and FDP politicians were keen to portray themselves by 1993 as 'political pragmatists' *and* 'moralists'.

### **6.3.5 Significant links between themes controlled by voting behaviour on amendment**

This section gives a profile of supporters and rejecters based upon the dominant themes they made use of and to what extent these themes were linked to each other in any significant ways (Appendix 6.13).<sup>65</sup>

Findings indicate that supporters of the amendment were especially keen to assert that the amendment reflects humanitarian principles (66 per cent), followed by the goal of reducing the asylum problem (58 per cent), the perception of an asylum problem (54 per cent) and the goal to re-establish national stability (45 per cent). Between 20 per cent and 40 per cent of supporters advocated humanitarianism within (20 per cent) and outside Germany (34 per cent), demanded exclusionary measures for asylum-seekers in general terms (27 per cent) and in the context of safe countries (30 per cent), expressed a critique of a violation of humanitarian principles within Germany (23 per cent) and perceived positive aspects of humanitarianism within and outside Germany (20 per cent).

In contrast, rejecters focused primarily upon a critique of a violation of humanitarian principles within Germany (92 per cent), followed by the advocating of humanitarianism within Germany (56 per cent), a critique of a violation of humanitarianism outside Germany (54 per cent), a critique of the amendment regarding its effectiveness (52 per cent) and the idea to implement an immigration law (41 per cent). 35 per cent perceived an asylum problem within Germany and 31 per cent expressed the will to reduce the asylum problem and 21 per cent demanded further procedural laws.

Thus, both supporters and rejecters made extensive use of humanitarian themes and the portrayal of the asylum problem. However, the justification schemes of supporters and rejecters can be distinguished with regard to the emphasis they placed upon the asylum problem, the types of humanitarianism they referred to, the way alternative measures to the constitutional amendment were discussed and exclusionary measures were advocated. Over half of supporters stressed the asylum problem and the goal to re-establish national stability compared with only a third of rejecters. Although a humanitarian theme was mentioned by the largest number of supporters (66 per cent) it was a 'weak' humanitarianism. In comparison, over 90 per cent of rejecters refer to a strong type of humanitarianism. While supporters combined the themes of an asylum problem with the advocating of exclusionary measures, rejecters combined it with a critique of the amendment regarding its effectiveness and proposed alternative political measures such as an immigration law and further procedural laws.

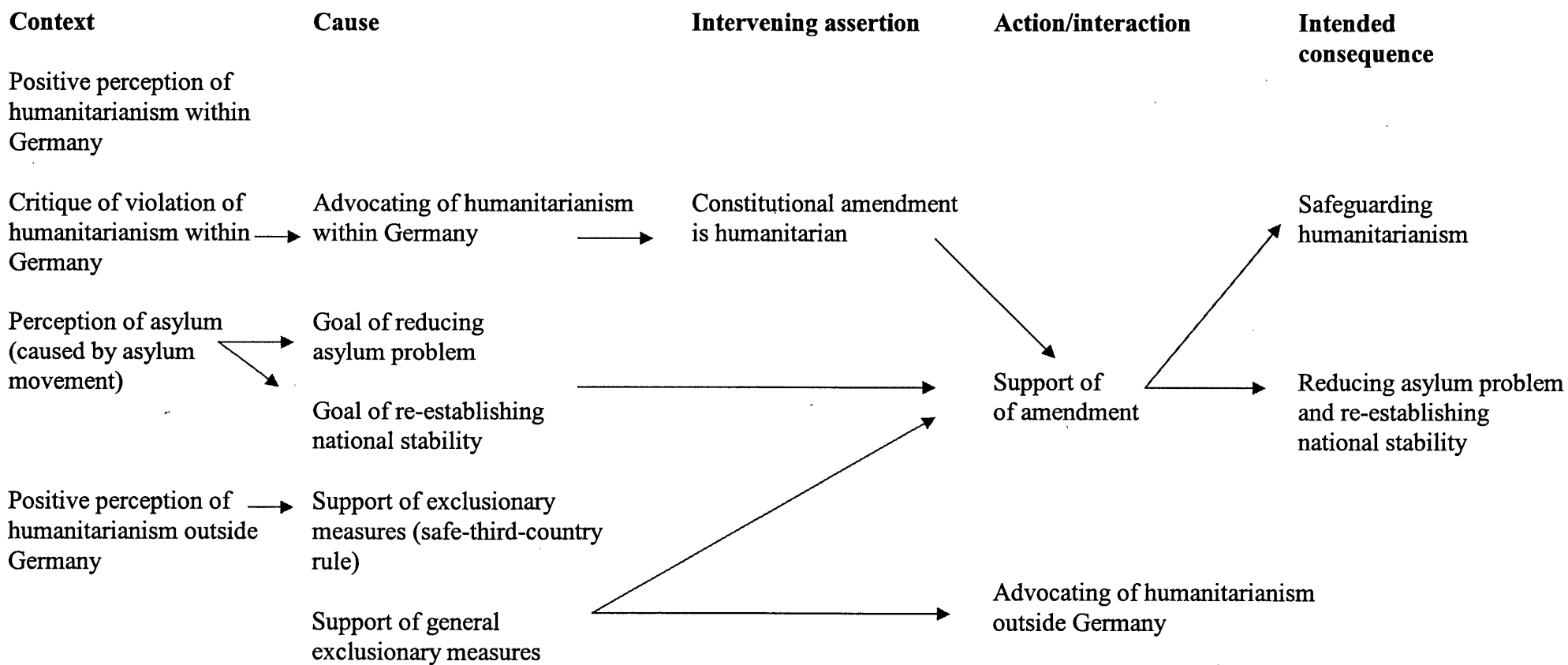
Studying the significance of relationships between supporters' justifications indicates their keenness to neutralise their support of more restrictive asylum measures which reflect a reduction in humanitarianism. As already mentioned in the sections on the semantic context of themes (6.3.1) and party profiles (6.3.2), significance does not necessarily refer to a strong relationship; however, most correlation coefficients for the

justification schemes of supporters and rejecters reach at least .3 and some go beyond .5 which indicates a strong relationship. Supporters linked the goal of implementing exclusionary measures significantly with an affirmation of safeguarding humanitarian values within the amendment and the goal to reduce the asylum problem. Further, supporters perceived asylum-seekers as creating an asylum problem within Germany and avoided in this context to a significant degree the critique of violating humanitarian principles within Germany. The affirmation that the amendment is humanitarian was significantly not linked to an advocating of humanitarianism within Germany which indicates that supporters were keen to neutralise their measures by applying 'weak' forms of humanitarianism such as the advocating of humanitarianism outside Germany and the affirmation that the constitutional amendment safeguards humanitarianism. In this sense they made more use of a scale of humanitarianism and allowed for humanitarianism only up to the point where it was politically practical. Further, they contextualised humanitarianism by applying it to a specific group (e.g. genuine asylum seekers, ethnic minorities residing within the country) and geographical context (e.g. outside Germany, countries-of-origin). However, supporters did not only use humanitarianism to counter-balance restrictive measures but they also made the provocative but contradictory statement that restrictive measures could actually enhance humanitarianism. They argued, for example, that exclusive measures would better national stability and, therefore, increase the tolerance from the German population towards residing ethnic minorities or increase the willingness to give developmental aid etc. Again, the above argument can be only valid if supporters applied humanitarianism exclusively to the ethnic minorities already residing in Germany; obviously ignoring the negative effects restrictive measures may have on political refugees. And, the supporters' argument is only valid if problems relating to national stability are blamed upon asylum-seekers rather than other factors, e.g. governmental policies and historical

events such as reunification which may have had consequences upon the dominance of ethnic nationalism in the public and political debate. These supporters who were in favour of the safe country rule were keen to emphasise the humanitarianism within the constitutional amendment (.520,  $p=.000$ ). Finally, it needs to be highlighted that within the group of supporters a minority used themes such as the advocating of an immigration law, the critique of effectiveness and the critique of the safe country rule and mentioned them significantly often together. This network of justifications reflects the group of FDP and SPD politicians who changed their voting behaviour briefly before the final vote in May 1993.

Figure 6.13 gives an overview of supporters' justification schemes applying Strauss and Corbin's (1998) causal paradigm. The scheme highlights that supporters placed their justifications into the general context of a critique of violation of humanitarianism within Germany which is associated with an advocating of humanitarianism and the support of the amendment; this causality does only work via the intervening assertion that the amendment is humanitarian. In this way they could reflect that their intended consequence of supporting the amendment was the safeguarding of humanitarianism. Secondly, they placed their debate into the context of the asylum problem and the goals to reduce this problem and the associated problem regarding the lack of national stability and suggest exclusionary measures. Therefore, the support of the amendment is seen as dealing with the above problems and issues. As mentioned above, the controversial safe-third-country ruling was backed up with the assertion that humanitarianism existed outside Germany and the further promotion of such humanitarianism.

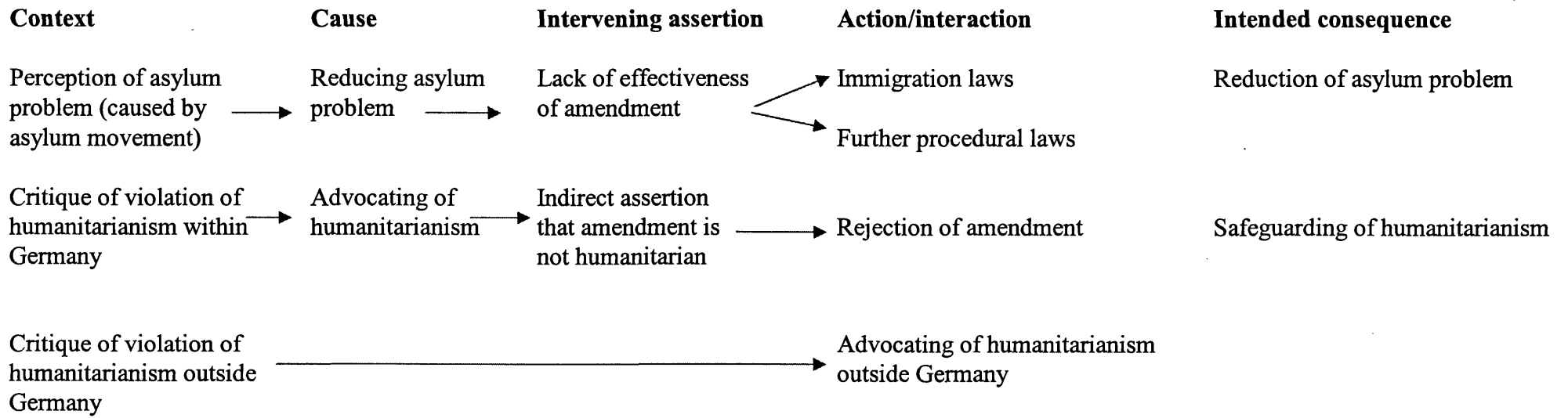
Figure 6.13 Justification schemes of supporters of the constitutional amendment



The study of significant links between themes indicates that rejecters emphasised the presence of an asylum problem and the responsibility of politicians to deal with it. Significant links exist between the perception of an asylum problem and the need to reduce this problem. However, they argued in the same context that humanitarianism needs to be safeguarded, perceiving the amendment as violating the humanitarian principles of protecting asylum-seekers and being ineffective to deal with the perceived asylum problem. Significant links occur between the advocating of humanitarianism within Germany and the goal and perception of an asylum problem and the critique of violation of humanitarianism within Germany. Rejecters suggested to a significant degree to counter the asylum problem by implementing an immigration law.

Figure 6.14 displays a general overview of rejecters' justification schemes. Similar to supporters the asylum problem and the goal to deal with it overarches the general debate of rejecters. However, via the intervening assertion that the amendment cannot actually deal with the problem, rejecters justified their dismissal of the amendment and proposed instead alternative measures. While supporters viewed humanitarianism in a positive way, rejecters had a negative perception of humanitarianism within and outside Germany which determined their promotion of humanitarianism and their rejection of the amendment which was not viewed as being compatible with these principles.

Figure 6.14 Justification schemes of rejecters of the constitutional amendment





In summary, the primary justification of supporters lay in their image of being politically realistic by stressing the asylum problem. However, although supporters were keen to be 'politically realistic', they were also interested in neutralising their aims of implementing restrictive measures by referring to themes of humanitarianism. Rejecters, in contrast, initially justified their decision by pointing out humanitarianism; however, they were also keen to neutralise their image of being politically unrealistic by pointing out the asylum problem and suggesting political alternatives to an amendment.

The above indicates that the concept of humanitarianism has been crucial in understanding the justification schemes of politicians in the asylum debates of 1991 and 1993. Previous analyses of immigration debates and rhetoric have placed less emphasis on humanitarianism (see Layton-Henry 1992, Miles 1982, Rich 1996, Saggar 1992, Solomos and Back 1995 and Wrench and Solomos 1993); although a few authors such as Holliefield have in context of his concept of 'embedded liberalism' more explicitly incorporated concepts relating to humanitarian issues. There are different possible explanations for this relative lack of dealing with humanitarian motives of politicians in the context of immigration policy. It may be a reflection of the authors' focus of investigation, i.e. the above authors emphasised especially the wider context rather than politicians' justifications and decision-making processes; or, it may be a reflection of the theoretical and/or methodological approach of former studies which often focused *a priori* on the concept of racism and different forms of nationalism and ignored the concept of humanitarianism as possible variable in the investigation process (see chapter two). And/or, the discrepancy may be explained via a shift in political culture due to the increase of racist attacks in Germany following reunification and an increased obligation on politicians to show a humanitarian face towards foreigners. Finally, my findings can

be also a reflection of the fact that political asylum is by definition linked to the concept of humanitarianism.

The findings show that rejecters and supporters used quite similar justification schemes. When analysing the contributions I often did not decipher the voting behaviour on the amendment until the final paragraph (especially in the case of politicians from the SPD and the FDP). Thus priority was not necessarily reflected in the quantitative use of themes which were consistent with a particular voting behaviour and, at times, contributions appeared quite inconsistent with the voting behaviour. This shows that the representation of decision-making processes were not necessarily reflecting a clear-cut distinction in respect to politicians' voting behaviour.

## **6.6 Findings in selective coding and the formulation of a theory**

Strauss and Corbin's (1998) last phase in the coding procedure is 'selective coding' whose aim is to build a theory from the data gathered. The political profiles plus the general paradigms of the link between overall codes in the debate will be the basis for this section and the design of a 'integrative diagram' for the justification schemes of politicians in the asylum debate of 1993. Let us first of all summarise the findings.

Both humanitarian themes and the discussion of the asylum problem have dominated the justification schemes of the 1993 debate. Themes relating to exclusion, national stability, effectiveness and political measures such as an immigration law and procedural laws have also played a vital role. However, issues such as the inclusion of asylum seekers and inclusive forms of nationalism have been largely absent from the debate. Significant links were found between specific themes and voting behaviour, e.g. themes of exclusion and asylum problem were significantly linked to supporters while themes of strong humanitarianism, a critique of exclusion were linked to rejecters.

In the investigation of links *between* themes I found that justifications in general had been linked very consistently. Two models of justification schemes in general were discovered (see section 6.3.1). The first model showed significant links between ‘weak’ types of humanitarianism and themes such as the advocating of exclusionary measures, a discussion of the asylum problem in the causal context of the asylum movement, a goal of re-establishing national stability and a support of an exclusionary nationalism, whereby the former types of humanitarianism were significantly not linked with the advocating of an immigration law and ‘strong’ types of humanitarianism. In contrast, the second model displayed significant links between ‘strong’ types of humanitarianism and topics such as a critique of exclusion, an advocating of an immigration law, a discussion of the asylum problem in the context of the government and an explanation of xenophobia which focused upon factors other than asylum. The first model shows justification schemes which one would expect from supporters, while the second model corresponds with a rejection of the constitutional amendment. However, when I analysed significant links between themes according to party membership and voting behaviour the justification schemes became less clear-cut and consistent. Except for the Far Left, politicians justified their voting behaviour by making significant links between ‘strong’ and ‘weak’ forms of humanitarianism, combined the portrayal of an asylum problem (as being caused by the asylum movement) with ‘strong’ forms of humanitarianism or discussed themes of exclusion in the context of a critique of exclusion. Explicit inconsistencies occurred in the context of the safe country rule whereby politicians from the SPD and the FDP mentioned significantly often together a support and a critique of the safe country rule. Inconsistencies are also detected between justifications and voting behaviour. For example, over 20 per cent of FDP supporters criticised the effectiveness of the amendment, justifying their support by arguing that the population expects some political action whereby a rejection of the amendment would

destabilise further national stability. Thus the amendment is not supported to improve the asylum policy but to avoid a deterioration of national stability which was caused by factors other than the asylum movement. Justification schemes of SPD and FDP supporters are especially diverse and controversial as these politicians had moved from a rejection of the constitutional amendment in the beginning of the 1990s to a support of it.

The study of justification schemes amongst supporters and rejecters indicates that both were keen to focus upon humanitarianism and the asylum problem. In combination with themes of exclusion and national stability the above themes led to a support of the amendment. In contrast, rejecters discussed the above themes in the context of a critique of the amendment regarding its effectiveness, and alternative measures such as procedural laws and an immigration law. The analysis of supporters and rejecters has shown that both were keen to challenge their stereotypical self-representation, i.e. supporters were political realists but inhumane while rejecters were humane but politically unrealistic. Thus, supporters neutralised their support of further restrictive measures by referring to humanitarian topics and rejecters neutralised their emphasis of humanitarianism by emphasising the lack of effectiveness of the amendment and by advocating political alternatives. Although justification schemes of supporters and rejecters were overlapping one should not overlook that significant links exist between specific themes and voting. Thus, themes such as exclusion, a support of an exclusionary nationalism, 'weak' forms of humanitarianism, a portrayal of the asylum problem as being caused by the asylum movement were significantly more often mentioned by supporters than rejecters of the amendment. While topics such as strong forms of humanitarianism, the lack of effectiveness in the amendment, an advocating of an immigration law, a critique of exclusionary measures towards asylum-seekers and an

exclusionary nationalism were significantly more often discussed by rejecters than supporters.

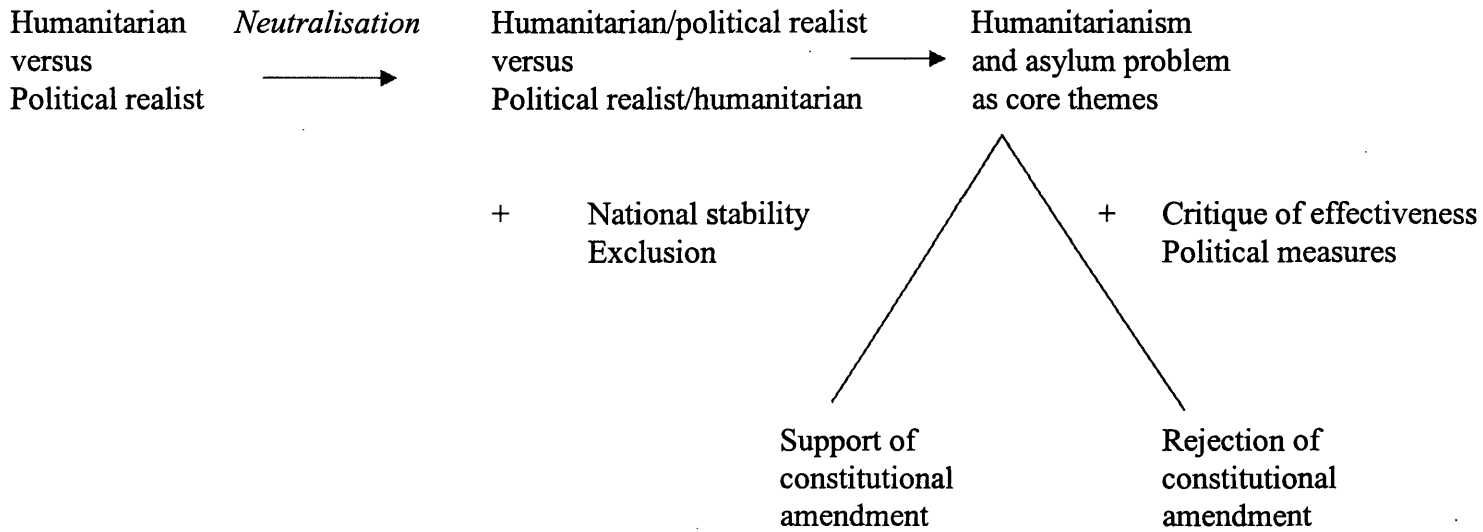
The following will sketch an overall theory which illustrates the relationship between party membership, voting behaviour and justification schemes of politicians used in the asylum debate in 1993 (see Figure 6.15). First, findings have shown that party membership had an effect on the consistency within justification schemes and between justification schemes and voting behaviour: Those political parties which kept their original position towards the constitutional amendment, i.e. the Far Left and the CDU/CSU displayed fairly consistent justifications while SPD and FDP politicians and here especially their supporters displayed more inconsistencies between justifications and between justifications and voting behaviour. Thus party membership in combination with an individual politician's decision to change his/her position towards the constitutional amendment determined consistency in justifications.

Figure 6.15 The relationship between political background and consistency of politicians' justification schemes

Far Left	<u>Consistent position regarding the constitutional amendment</u>	Consistency within justification schemes and between justifications and voting behaviour
CDU/CSU		
SPD	<u>Inconsistent position regarding the constitutional amendment</u>	Inconsistency within justification schemes and between justifications and voting behaviour
FDP		

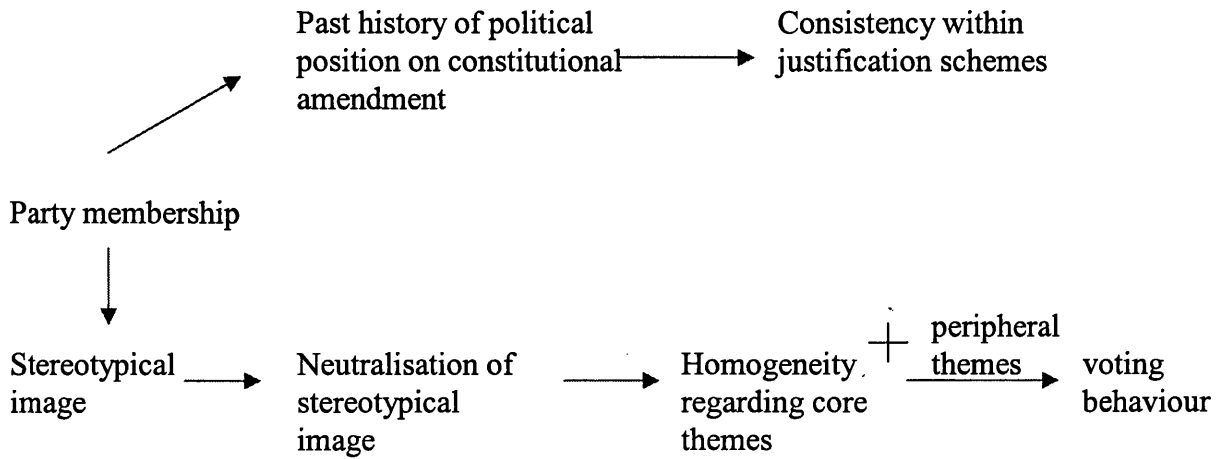
Secondly, the analysis showed that politicians were keen to neutralise their stereotypical image. Those who were associated with political realism aimed to show their humanitarian face while those who were perceived as being humanists made an effort to show political realism. Again party membership can be partly used to distinguish political realists from humanitarians; the Far Left representing the latter while CDU/CSU politicians representing the former. Politicians from the SPD and the FDP can be less clearly classified. Rejecters from the SPD and the FDP represented themselves primarily as humanitarians, however supporters from the SPD were also keen to portray themselves as humanitarians while supporters from the FDP were emphasising their 'political realism'. Due to their desire to neutralise these images the politicians' core justification schemes overlapped to a large extent, discussing humanitarian themes along with the asylum problem. Only with the additional peripheral themes of national stability and exclusion and a critique of effectiveness and political measures can supporters be distinguished from rejecters and vice versa (see Figure 6.16).

Figure 6.16 The process of neutralisation by supporters and rejecters of the constitutional amendment



The following sketches a general paradigm for politicians' justifications in the asylum debate of 1993

Figure 6.17 A general paradigm for politicians' justifications in the asylum debate of 1993





## 6.5 A critical note on methodology

The findings of this chapter have combined a semantic analysis with a numerical analysis as part of the grounded theory approach. The semantic analysis has been especially applied in the context of profiles regarding the justification schemes of different political parties and those of supporters and rejecters of the amendment. The analysis was based upon descriptive and inferential statistics. For the analysis of significant links I was only interested in those themes which were 'fairly dominant' or 'dominant'. The final paradigm of politicians' justification schemes which was outlined in the previous section also reflects both dominant and significant schemes; in some cases dominance overruled significance. For example, the asylum problem was portrayed in the final theory as one of the core themes that spread across political parties and voting behaviour although a significant relationship only existed between supporters and this theme. However, in the final theory it could be ignored because the asylum problem was extensively used by supporters and rejecters. This acknowledgement reflects that my overall approach related to the grounded theory approach rather than a strict statistical analysis. This is consistent with my emphasis throughout the chapter that the basis of my analysis remains theory-building and qualitative whereby statistical measures are merely utilised to generalise the vast amount of data.

Overall the grounded theory approach has enabled me to develop a detailed and consistent analysis of politicians' justifications. Generalisations have been made with regard to political parties' profiles and politicians' voting behaviour which have been the basis for the theoretical frameworks developed in the previous section. These generalisations do not necessarily reflect exact *individual* politicians' justification schemes as outlined by Strauss and Corbin (1998). However, such an analysis which remains on the level of individual contributions was not appropriate in my case as the

sample was too large. For that reason, simple statistical methods were applied to generalise the data.

## **6.6 An evaluation of findings in the context of existing literature**

A large amount of literature focuses upon the representation of immigrants in the political debates of Western European nation-states (Geddes 2003, Joppke 1999, Kauffmann 1986, Kaye 1994, Köfner and Nicolaus 1986, Perlmutter 1996 and Pfaff 1993). These authors agree that asylum seekers are associated with negative themes such as asylum misuse, flood and crime, whereby a distinction is made between the deserving and the undeserving migrant (see, e.g., Geddes 2003 and Joppke 1999). Geddes (2003) argues that the 'bogus asylum seeker' discussion justified the exclusion of them. Although my findings reflect the negative portrayal of asylum seekers, they also indicate that justifications changed between 1991 and indicate that the negative portrayal of asylum seekers was incorporated into a strong and complex humanitarian argument where the exclusion of asylum seekers was justified in a variety of ways including asylum misuse but also issues such as national stability and humanitarianism itself. It is important to highlight that the exclusion of asylum seekers (much more than that of economic migrants) violates the basic moral obligations towards them. In this respect the construction of the undeserving asylum seeker was necessary to overrule moral obligations which would have normally taken priority. In this respect the debate on asylum misuse freed the decision-makers from moral constraints. This, however, did not mean that humanitarian concerns were thrown out of the discourse altogether. Instead, supporters of the amendment still felt obliged to appear humanitarian, but directed this humanitarianism outside Germany or referred to 'empty' promises about humanitarianism. The findings of my case study regarding the negative portrayal of asylum seekers in the political debate overlap with those from previous studies. And,

although humanitarianism played an important role in the political debate, there was a consensus between the parties that asylum seekers were not portrayed in a positive or empathetic way. Kaye (1994) has shown that the political debate is less consensual when it deals with refugees. In the context of refugees parties' ideological position, foreign policy consideration, refugees' geographic location and political circumstances have been identified as factors which either lead to a positive or a negative position on specific refugee groups (see Kaye 1994).

My findings disagree with assumptions by Joppke (1999) and Geddes (2003) that there is a clear-cut distinction between the political left and the political right in Germany with regard to their justifications of asylum policy. Both authors associate the political left with humanitarianism while they characterise the political right as defending national sovereignty. My findings have shown that the justifications between the parties were less clear-cut; i.e. both the political left and the political right were keen to refer to humanitarianism *and* national stability. The findings have also indicated that alliances occurred across the political left and the political right. A simple dichotomy between the political left and the political right fails to reflect the more complex political scenario whereby the lower hierarchies of the SPD adopted justification schemes from the CDU/CSU; while leaders from the FDP formulated a similar position as the SPD.

## 6.7 Conclusion

This chapter has applied the grounded theory approach to the analysis of politicians' justification schemes. The approach was chosen as it reflects a systematic inductive approach which identifies justification *schemes* rather than an account of individual themes. As a consequence my findings highlight that the political debate on asylum seekers did not only centre on the topics of an asylum problem and an endangered national stability but combined this discussion with a complex debate on humanitarianism. To link these less compatible themes politicians had to redefine humanitarianism in a (geographically and socially) limited context. The majority of politicians (irrespective of whether they were supporters or rejecters of the constitutional amendment) focused on the two core themes of the asylum problem (caused by the asylum movement) and humanitarianism; although supporters were more likely to apply a limited version of humanitarianism while rejecters were keen to make references to universal notions of humanitarianism. However, with regard to politicians' justifications the distinction between rejecters and supporters is mainly based upon themes which they link to the core themes of humanitarianism and the asylum problem. While supporters emphasised national stability and exclusion, rejecters focused upon the critique of effectiveness and further political measures such as the immigration law. In this respect all politicians irrespective of voting behaviour and political party membership were keen to portray themselves as both humanitarians and political realists and neutralised the stereotypical portrayal of the political left as being idealists and the political right as being pragmatists.

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### Notes

<sup>47</sup> see *Deutscher Bundestag* (18.10.1991, Stenographischer Bericht, 51 Sitzung) and *Deutscher Bundestag* (26.5.1993, Stenographischer Bericht, 160. Sitzung).

<sup>48</sup> The large number of contributions by the SPD has no direct effect on my qualitative analysis of justifications which focuses on the *link* between themes and specific party profiles; however, it impacts upon my general overview of dominant/non-dominant justifications as presented in 6.2.2.1.

<sup>49</sup> The analysis was presented as a paper ('Asylum debates in Britain and Germany in the early 1990s: humanism versus nationalism') at the British Sociological Association, Annual Conference 1996, Worlds of the Future: Ethnicity, Nationalism and Globalisation University of Reading 1 - 4 April 1996.

<sup>50</sup> The identification of themes is already part of the open coding phase and could be defined as findings rather than methodology. As it is the fundamental basis for the quantitative and qualitative analysis of justification schemes and theory building presented in chapter five I outline it in the current methodology chapter.

<sup>51</sup> Immigration has been chosen as an umbrella category, although the analysis of findings in the next chapter will show that politicians mainly made reference to asylum, except in the case of an immigration law. However, for classificatory reasons asylum has to be viewed as a sub-type of immigration.

<sup>52</sup> It should be noted that asylum-seekers have no right to obtain a kindergarten place although some reception centres voluntarily offer that facility (Liebaut and Hughes 1997).

<sup>53</sup> Passages relating to 'immigration law' have been coded separately as its characteristics as 'inclusive' may be debatable. I decided to code it as inclusive as the general will to accept immigrants is reflected in the support of an immigration law. On the other hand one could argue that it depends upon its level of restriction/generosity to what extent an immigration law is in actual fact inclusive. This example shows that bias cannot be avoided when we attach labels to codes. However, the transparency of the coding procedure can control the impact upon the author's decision-making upon the analysis.

<sup>54</sup> Parekh's (1994) defines the liberal view of the nation-state as an acknowledgement of the spirit of 'civility' or 'liberal conversation', while the communitarian type is based upon the existence of cultural ties and the ethnic or nationalist type is based upon blood ties.

<sup>55</sup> The following categories have been applied with regard to 'dominant/non-dominant themes; the brackets indicate the percentage of politicians who used the theme: very dominant (40 per cent and above), dominant (30 to below 40 per cent), fairly dominant (20 to 30 per cent), not dominant (10 to 20 per cent) and not very dominant (0 to 10 per cent) (see also Appendix 5.2).

<sup>56</sup> The concepts of consistency/inconsistency are defined in a very broad sense. They relate to issues of coherency rather than logic correctness.

<sup>57</sup> The findings are based upon Pearson correlation coefficients between dominant themes, i.e. those themes which have been used by at least 20 per cent of politicians.

<sup>58</sup> Strauss and Corbin's paradigm (1998) was slightly amended to the context of justification schemes focusing on intended consequences and intervening assertions rather than consequences and intervening conditions.

<sup>61</sup> Of the 82 contributions analysed 52 politicians from the SPD rejected the amendment while 30 supported it.

<sup>62</sup> It should be noted that the following percentages are based upon relative small absolute numbers. Eleven politicians from FDP supported the amendment while seven politicians rejected it.

<sup>63</sup> The following  $\alpha$ - values were discovered for the reliability tests of the identified clusters: constructive opposition ( $\alpha = .6$ ), anti-government ( $\alpha = .79$ ), ambiguous opposition ( $\alpha = .59$ ) and anti-exclusionist ( $\alpha = .7418$ ).

<sup>64</sup> The sample for the debate in 1991 is very small. Overall 26 contributions have been analysed: Far Left (3), SPD (8), FDP (7), CDU/CSU (8).

<sup>65</sup> Dominance is defined as being used by more than 20 per cent of supporters or rejecters.

**PART III    CONCLUSION**

## **Chapter 7 A substantive theory for German asylum policy in the early 1990s**

- 7.1 Revisiting the objective of the thesis
- 7.2 The theoretical tools: a conceptual framework in conjunction with analytical dualism
- 7.3 Findings of the case study
  - 7.3.1 Structure and agency in the context of the constitutional change
  - 7.3.2 Detailed findings relating to the three layers of the conceptual framework
    - 7.3.2.1 The first layer: moral panic? Politicians' misconceptions of causal factors regarding developments in the wider environment
    - 7.3.2.2 The second layer: opportunistic use of structural conditions by the CDU/CSU and missed opportunities and strategic naiveté by the SPD and the FDP
    - 7.3.2.3 The third layer: the 'humanitarian face' of politicians in the light of more restrictive asylum policy
- 7.4 Evaluating the findings in the context of existing literature
- 7.5 Recommendations for further research

### **7.1 Revisiting the objective of the thesis**

The objective of the thesis was to formulate and apply a theoretical framework which deals explicitly with structures, actors and the relationship between both in the investigation of immigration control policy. This thesis follows on from methodologically more flexible studies of immigration policy which have been increasingly formulated since the early 1990s (see Freeman 1979, Schierup 1990, Richmond 1994, Solomos 1995, Joly 1996, Joppke 1998a and 1998b, 1999, 2001, Brochman 1999, Faist 2000, Guiraudon 2000, 2001, Kastoryano 2002, Geddes 2003 and Schuster 2003). The majority of the above approaches have not discussed explicitly the concepts of structure and agency although they addressed both dimensions in their case studies of immigration policy. Freeman (1979), Richmond (1994), Faist (2000) and Kastoryano (2002) analyse the structure-agency link more explicitly in a theoretical context of different immigration areas including immigration control, settlement and immigration flow.

The formulation of a theoretical model which deals with social structures and actors also fits into a current debate in immigration theory regarding the amalgamation

of different explanatory schemes. I utilised in a pragmatic way suggestions in social theory which deal with theoretical flexibility and the link between social structures and actors, and I consequently based my model upon a conceptual framework approach and analytical dualism (see Mouzelis 1993 and Archer 1995 respectively). The following summarises my theoretical approach in more detail before I present the overall findings of my case study.

## **7.2 The theoretical tools: a conceptual framework in conjunction with analytical dualism**

The conceptual framework that was outlined at the beginning of the thesis identified with the help of existing literature factors which may have been *potentially* relevant for a particular study of immigration policy. By offering methodological flexibility it provided a platform to amalgamate explanatory factors of immigration policy identified in existing studies. I stressed explicitly the theoretical and methodological problems of deterministic approaches and their ability to deal with structure and agency. The objective of using a conceptual framework was not only to offer methodological flexibility for the empirical investigation but, in particular, to examine the link between structure and agency without preconceptions about their influence upon each other, therefore avoiding methodological individualism as much as structural determinism. 'Agency' was examined by looking at politicians' changing positions on asylum measures and justifications for their positions between 1991 and 1993. The analysis of agency was carried out in two ways. First, I investigated to what extent politicians of different parties and different hierarchical positions in the federal system maintained or changed interactive and normative structures which dominated the asylum debate between 1991 and 1993. Secondly, I investigated politicians' justification schemes of two parliamentary debates on asylum by using a systematic content analysis. The aim of



this analysis was to identify general changes of politicians' justifications (i.e. goals, perceptions and normative principles) between 1991 and 1993, and in particular to examine the motives of SPD and FDP politicians for changing their position on the constitutional change. With regard to structure I was interested both in macro phenomena such as the economic, social and political environment and interactive and normative structures in the particular context of the political party system. However, the explanatory power of macro phenomena such as rising asylum numbers, an increase in xenophobic attacks and electoral successes of the far right did not lie in their correlation with changes in asylum policy but in their comparison with politicians' perceptions. This way, I could identify to what extent politicians' ideas about the environment diverted from a more objective analysis of the wider environment. Analytical dualism and here especially Archer's (1995) 'morphogenic model' was utilised to carry out an in-depth examination between normative and interactive structures and politicians' actions in the context of the political party system. I did not attend to engage in an elaborated discussion on analytical dualism which Archer (1995) represents but merely selected her model as it provided a pragmatic solution to investigate the interaction between social structures and actors without falling into determinism or conflating structures and actors.

### **7.3 Findings of the case study**

The following gives first of all general overview of the processes which led to the constitutional change emphasising the analytical tools of agency and structure. The second part of this section provides a detailed summary of findings relating to the three layers of the conceptual framework.

### 7.3.1 Structure and agency in the context of the constitutional change

The case study has shown that the constitutional change came about via a particular constellation between factors relating to structure and agency. The structural conditions at the beginning of 1990 were in favour of a constitutional change. However, with regard to agency the majority of politicians were still opposed to this change mainly justified by normative principles. These principles related mainly to the conviction that the constitution is unimpeachable and humanitarian principles need to be safeguarded within and outside Germany. This situation changed rapidly during the early 1990s and normative principles became increasingly overruled and/or affected by short-term political goals and a negative perception of the wider socio-political environment. Why did the constellation change between the three factors which influence decision-making processes, i.e. normative principles, goals and perception of environment? I identified the following developments in the context of structure and agency as being relevant for the change in decision-making:

First of all, the structural conditions in the closer political context were in favour of a change: asylum was on the top of the political agenda and associated with negative images. Further, normative and communicative structures in the political system benefited the Conservative parties and, therefore, a constitutional change. The discourse on the constitutional change was well established and in firm hands of the CDU/CSU. Strong communication existed between CDU and CSU while communication structures between the parties which rejected the change were weak or missing. In the wider socio-political context the increase in asylum applications, decreasing recognition rates and xenophobic violence could all be used to justify a constitutional change even if politicians' assumptions about a causal link between these factors and the asylum movement were incorrect and the above problems could not be solved via a constitutional change. Although xenophobic violence and asylum applications were

decreasing by the time the constitutional change was decided they were influential in overruling and/or changing the normative principles which politicians held in the early 1990s.

Let us have a closer look at agency. The majority of politicians at the beginning of 1990 were still contesting a constitutional change mainly on the basis that the constitutional article on asylum was an important indicator for humanitarianism within Germany. By 1993 the majority of politicians had changed their position in favour of a constitutional change which was mainly justified with the safeguarding of national stability. Humanitarianism still played a vital role in the justification process; however, its universal application from the early 1990s had been replaced with a more restrictive definition by 1993.

How were the above developments in the realm of structure and agency interconnected? How was it possible that a majority of politicians who strongly rejected a constitutional change by 1990 supported such a change only several months later? I argued that rejecters of the constitutional change failed to challenge and change the structural conditions in the closer and wider political structure for their advantage. Instead of creating their own communicative and normative structures within the political system they settled within the existing structures which were dominated by the Conservative parties. In more concrete terms rejecters (i.e. the Far Left, SPD and FDP) failed to develop communication structures between them and missed out on creating their own discourse, themes and justifications with regard to asylum policy. Instead, factions developed within SPD and between SPD and FDP which weakened their position further. The only time when rejecters created their own agenda, by linking the constitutional change to the European harmonisation process, they manoeuvred themselves even further into the defensive after realising that the proposal was unrealistic. In this situation of indecisiveness and dependency upon the dominant

discourse led by CDU/CSU it is not surprising that a relatively small event such as the electoral success of the far right in two regional elections, was a sufficient trigger to move leading members of SPD and FDP over to a support of the constitutional change. In contrast the relatively small number of supporters at the beginning of 1990 managed to strengthen their position significantly by utilising the various opportunities which were presented in the closer and wider socio-political environment.

The above discussion shows that structural factors were vital factors which influenced the decision-making process leading up to the constitutional change. Without an increase in asylum applications and xenophobic violence during the early 1990s it is unlikely that CDU/CSU would have managed to push through the constitutional change. However, politicians had a more or less limited choice to interpret and act upon these structural developments; here rejecters clearly missed out on their opportunities (even if limited) while supporters utilised and influenced the closer and wider structure very successfully for their own advantage. Thus structural factors alone cannot explain the constitutional change; instead, the processes between structure and agency lead to an understanding of this important change in asylum policy. Further, it is important to highlight how politicians' justification processes were more or less influenced by developments in the party political context and the wider national context. Chapter six showed how the majority of SPD and FDP politicians changed their justifications between 1991 and 1993 which led to a support of the amendment. Increasing pressure from the CDU and CSU, increasing xenophobic attacks at least until 1992, a political debate (dominated by CDU and CSU) which raised expectations amongst the population that the amendment would be able to deal with the asylum problem and a reunification debate which centred around exclusive forms of national identity had led to a support of the amendment by the majority of SPD and FDP politicians. Interestingly, the justifications of rejecters and supporters of the amendment were not drastically

different, focusing both on the central themes of the asylum problem and humanitarianism (although humanitarianism can take on many dimensions which are more or less compatible with an asylum policy which can offer protection); only the attachment of peripheral themes such as national stability and exclusion and a critique of the effectiveness of measures and the advocating of alternative political measures of an amendment distinguishes the supporters from the rejecters respectively. It is important to highlight that that justifications of SPD and FDP politicians who changed from a rejection to a support of the amendment had changed between 1992 and 1993. While they initially argued that a change would be effective to deal with problems which they faced in their municipalities and/or a change could be acceptable after the implementation of a European asylum law, they utilised in 1993 the argument that a rejection of the amendment would lead to a further damage of national stability (characterised by a public which showed angst, frustration and lack of trust into the political system). They blamed mainly the political debate by CDU and CSU for a situation, where expectations among the population (regarding the effectiveness of the amendment to deal with the asylum problem) had been falsely raised.

The following analyses in more detail the factors of xenophobic violence, national stability and the economy and their impact on the constitutional amendment. My analysis of the political and the media debate showed that 1991 was marked by the account, condemnation and explanation of the racist attacks occurring in Germany at that time while 1993 emphasised a damaged national stability which was characterised by a general public which showed angst, frustration and lack of trust in the political system. During the parliamentary debate in 1993 the discussion of xenophobic violence was not in the centre of the debate; 7 per cent of politicians discussed xenophobic violence in the causal context of asylum and 6 per cent focused upon factors other than asylum such as the political debate and the media. Instead, the emphasis had moved by

1993 to a portrayal of a damaged national stability which politicians substantiated via the description of the 'psychological state' of the general public (e.g. angst, frustration and lack of trust); themes such as worsening of ethnic relations, xenophobic violence and electoral successes by the far right were mentioned by some politicians as hypothetical consequences of this increased angst and frustration but did not dominate explicitly the final debate; this may be due to the fact that xenophobic violence had declined by 1993, the gains of the far right had been sporadic and politicians were generally keen to portray Germany as being not xenophobic. Although xenophobic violence and the far right were not central themes for the *final* debate of the amendment, they play a significant role in the overall explanation of the constitutional amendment. An overall analysis of events shows that the increase in xenophobic attacks at the beginning of the 1990s was an important factor for the CDU/CSU to demand a constitutional change. As they blamed the increase in asylum seekers and a failed asylum system for the xenophobic attacks they could utilise the constitutional amendment (and its claim to reduce the number of asylum seekers) as remedy for these attacks. Sections 4.5.1 has highlighted that this explanation by politicians was misconstrued and instead social-economic and psychological factors surrounding reunification and the increased focus on exclusive nationalism in the reunification debate were responsible for the xenophobic attacks. In the same way the moral panic surrounding the sporadic gains by the far right in 1992 was also vital to move rejecters of the constitutional amendment over to being supporters. Overall, xenophobic attacks and the electoral successes of the far right at the beginning of the 1990s were vital catalysts for the constitutional amendment even if by 1993 politicians and the media were reluctant to portray the amendment as a response to such events.

With regard to economic factors it is also important to distinguish between the representation of economic factors in the parliamentary debates and the actual impact of

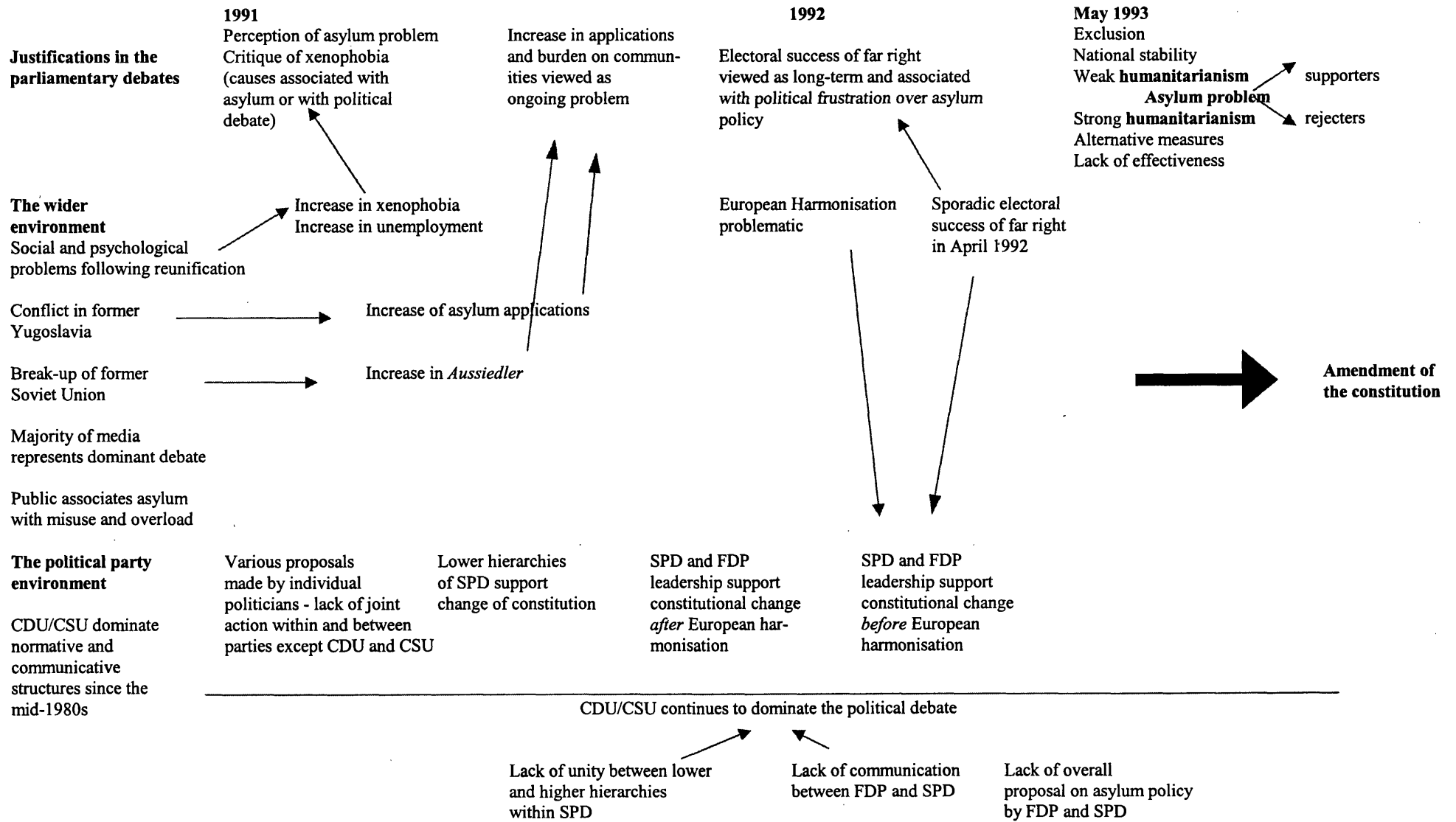
economic factors (as part of the wider structure) upon the process which led to the constitutional amendment. Supporters of the amendment did not utilise the wider economic situation and especially the high unemployment in the East to justify their position in parliamentary debates. Instead, they focused on economic problems of towns and municipalities to accommodate asylum seekers. This should not say that wider economic developments (especially following reunification) did not play a significant role in the process leading up to the constitutional amendment. On the structural level the economic situation following reunification was highly influential as it had an impact upon the increase in xenophobic attacks which again was a significant motive for CDU/CSU politicians to push for a constitutional amendment at the beginning of the 1990s.

### **7.3.2 Findings relating to the three layers of the conceptual framework**

The following summarises the findings for the different layers of the conceptual framework which investigated (1) the wider national and international environment, (2) elaboration of structures within the closer environment of the political party system and (3) politicians' justification schemes for their decision on the amendment (see Fig. 7.1).

Figure 7.1 Detailed explanation of the process which led to the change of Art. 16 (2) of the German constitution<sup>66</sup>

**Layers of framework**





### **7.3.2.1 The first layer: moral panic? Politicians' misconceptions of causal factors regarding developments in the wider environment**

The analysis of the wider environment in chapter four identified the following factors as being influential in the process of changing Art. 16 of the constitution: the war in former Yugoslavia which led to an increase in asylum applications, rising numbers of *Aussiedler* following the break-up of the Soviet Union, the representation of the asylum issue in the media and public opinion, social, economic and psychological problems following reunification which were responsible for a significant increase in xenophobic attacks, European harmonisation and the electoral success of the far right. As mentioned before these factors *per se* did not necessarily lead to the constitutional change. Instead, the focus has to be placed upon the way politicians interpreted, misinterpreted and *explained* these developments in the wider environment. The following highlights the discrepancy between an objective analysis of events in the wider environment and the perception of these events by politicians.

Regarding the 'asylum problem' chapter four highlighted that the increase of asylum applications was mainly caused by the conflict in former Yugoslavia (see Bloch and Schuster 2002 and Thränhardt 1995). However, politicians from the CDU/CSU and lower hierarchies within the SPD developed the causal link between an asylum law which was too generous in comparison to other EU states (due to its constitutional guarantee) and the large numbers of asylum applicants. For this reason the high numbers of asylum-seekers were perceived as a long-term situation with possibly increasing tendencies. I outlined in chapter four that the number of asylum applications was determined by factors such as occurrence of conflicts close to the receiving country, historical and family links between country of origin and receiving

country whilst the generosity or restriction of legislation in countries of destination is less influential in the decision-making process of refugees. Therefore, a discrepancy existed between the way politicians perceived the numbers of applications and actual developments regarding asylum applications. It is speculative why politicians exaggerated the asylum situation. However, it was in the interest of the CDU/CSU to picture an asylum problem which they had actively encouraged in the past. For example, Münch (1992) pointed out that the government moved disproportionately more asylum-seekers into federal states and towns that were governed by the SPD which caused severe accommodation problems in those communities. Asylum misuse was another issue associated with the asylum movement apart from the fear of being 'flooded'. In the context of increasing numbers of asylum seekers from former Yugoslavia, politicians perceived the decreasing recognition rates as an indicator of asylum misuse. However, such an interpretation was incorrect as most asylum-seekers from Yugoslavia were granted a humanitarian status (*Duldung*) which was not reflected in the official recognition rates that related to the full Geneva Convention status (see Liebaut and Hughes 1997). Thus the large number of asylum-seekers from former Yugoslavia increased the absolute number of applications and decreased, therefore, the recognition rate as their status was not incorporated. However, especially politicians from the CDU/CSU interpreted the decline in recognition rate with an increase in the misuse of the asylum system and ignored the fact that the majority of asylum-seekers were granted protection, although not with full rights. The misconception of asylum figures had further consequences on the political level. Due to the pressure on communities to accommodate high numbers of asylum seekers and *Aussiedler* SPD politicians lower down in the federal structure adopted the line of the CDU/CSU and accepted a change of the constitution long before the leadership did.

As a consequence a split within the SPD emerged which weakened the position of the SPD to oppose proposals by the CDU/CSU.

The increase in xenophobia was a further factor where the conception of politicians diverted from a more objective analysis. Social scientists identified that the increase in social problems such unemployment, identity problems of youngsters in former East Germany and the exclusion from a modernisation process were responsible for the increase in xenophobic attacks during the early 1990s in Germany. Nevertheless, politicians from the CDU/CSU argued that the increase of xenophobia was caused by the asylum problem. They argued that the lack of political action to solve the asylum problem led to political frustration and the support of xenophobic violence. I counter this assumption by outlining that not the asylum movement as such but the way it was portrayed in the media and the political debate led to the situation where asylum-seekers were blamed for social and psychological problems which were caused by reunification. Another factor which gave an ideological basis for the xenophobic attacks was the political debate surrounding reunification which was stressing ethnic nationalism. Although politicians did not explicitly criticise multiculturalism, their emphasis upon exclusive nationalism rejected indirectly more tolerant ideologies of the nation-state. Although reunification could not have been justified in other terms than ethnic nationalism, I argue that it was not necessary to neglect other more inclusive forms of nationalism in the debate, especially once reunification had taken place. I disagree here with Joppke (1999) who argues that the ethnic nationalism which was laid down in the Preamble of the Basic Law (demanding the unification of the German people) was not compatible with a more inclusive form of nationalism. There is no reason why the political debate could not combine both and, indeed, political parties such as the SPD, the FDP and the Greens have done so in

the context of the immigration debate in the past. Another fact that points towards the relationship between reunification and the rise of xenophobic violence is that attacks peaked significantly during the anniversaries of reunification; once reunification was no longer a novelty in the public debate the attacks decreased. This is not to say that reunification necessarily had to lead to an increase in xenophobia. The above analysis highlighted that the increase in xenophobia following reunification was caused by the emphasis of exclusionary nationalism in the political debate and the decision by the government to unify immediately rather than gradually which led to a large extent of economic, social and psychological problems; if reunification would have been handled differently (e.g. a careful and sensitive dealing with nationalism emphasising inclusive nationalism and a gradual reunification process which could cope with the emergent social and psychological problems) the increase in xenophobia may have been prevented. To sum up, the argument by politicians from the CDU/CSU that the asylum problem had caused frustration amongst the population which led to an increase in xenophobic violence and could only be reversed by a constitutional change was based upon a number of false assumptions: first, the constitutional change did not affect the extent of the asylum movement as the high numbers of applications in 1992 were not the outcome of a generous asylum law but mainly the consequence of the conflict in former Yugoslavia. Secondly, the reason for the rise in aggressive nationalism lay in problems surrounding reunification and the way the asylum debate was led rather than the asylum movement itself.

A further development which was misconceived by both CDU/CSU and SPD and FDP politicians related to the electoral success of the far right in two federal states in 1992. As a consequence of this success the majority of SPD and FDP leaders moved over to an acceptance of the constitutional change and from then onwards the

political debate was based upon the content of such a change rather than the change itself. Politicians explained the increased support of the far right with the increased political frustration of the population. However, analyses of the far right have shown that the main motive for supporting the far right was based upon xenophobic feelings rather than political frustration. And authors such as Stöss (1990) argue that political frustration is part of a democratic system that can encourage various voting behaviours including the support of fringe parties in general, abstaining or the (reluctant) support of established parties. In this respect the support of the far right is better explained by the general increase in xenophobia at that time than political frustration. Nevertheless, politicians who previously rejected the constitutional change perceived the developments regarding the far right as a response of political frustration and changed their position on the amendment. The reaction to the electoral gains of the far right reflected a 'moral panic' which could have been avoided if politicians had been better informed about the issue of 'political frustration'.

The European harmonisation of asylum policy was also misjudged by politicians. By the beginning of the 1990s the Schengen Agreement and the Dublin Convention had developed some common measures on the intergovernmental level such as common visa policies, surveillance systems, control of international carriers via the Carrier's Liability Act or criteria which defined the country responsible for dealing with a particular asylum claim. Except for the surveillance systems and the Carrier's Liability Act the implementation of above measures faced a variety of problems which were highlighted by social scientists and representatives from refugee organisations at the end of 1980 and the beginning of 1990 (see Blumenthal 1991 and Cruz 1990). Especially the Dublin Convention was problematic in practice due to the different interpretations of the Geneva Convention and the different legal systems of

EU countries. A survey, which was carried out by the author of this thesis in 1992, found a high level of pessimism amongst representatives of NGOs with regard to the European harmonisation process of asylum policy. Nevertheless, individual politicians from the leadership of the SPD and the FDP announced at the end of 1991 that they would agree to a constitutional change if it was part of a European asylum law. Only a few months later they denounced this proposal as they realised that a common European asylum law was far from likely. Although they distanced themselves from a European asylum policy they did not denounce the support of a constitutional change and claimed at the beginning of 1992 that they might consider a change *before* a common EU asylum law. In this respect the misconception of European harmonisation initiated a first move towards a constitutional change within the leadership of the FDP and the SPD. The announcement of linking the change to an EU asylum law was ill-considered and uninformed. It reflected a situation in which politicians were driven by the CDU/CSU (which was increasingly blackmailing the SPD for its lack of political action) to make some hasty proposals on the future of asylum policy.

The above discussion highlights that the misconception of developments in the wider environment, such as the increase in asylum applications, decrease in recognition rates, the rise of xenophobic violence, the electoral success of the far right and the European harmonisation, was a dominant factor which caused the constitutional amendment. The misconception was not always relating to the phenomena as such but much more to the *causal* factors which politicians used to explain above developments: the increasing asylum numbers and decreasing recognition rates were explained via asylum misuse rather than regional conflicts and the xenophobic attacks and support of the far right were viewed as being caused by

political frustration rather than social problems and an increased emphasis upon an exclusionary nationalism following reunification.

The final factors which need to be considered in the wider environment are the media and public opinion; neither can be ignored if one investigates the making of a political agenda. The results of a small newspaper survey in 1991 and 1993 confirmed the results of existing studies regarding the negative portrayal of immigrants in general and asylum seekers in particular. The analysis of three newspapers (two broadsheets and one tabloid, whereby the tabloid and one of the broadsheets were affiliated with the political right and the remaining broadsheet with the political left) found that the asylum problem was in the centre of the media coverage, although the broadsheet which was affiliated with the political left gave more objective information on the arguments of both rejecters and supporters and was more likely to be critical of restrictive measures. In contrast the tabloid and broadsheet which were affiliated with the political right gave a biased and exaggerated account focusing dominantly upon asylum misuse and crime and failing to discuss the justifications of rejecters of the constitutional change. All in all, the newspapers focused on the asylum problem in 1991 and 1993 although the political debate in 1993 had become more complex including themes such as national stability, humanitarianism and concerns regarding the effectiveness of the constitutional change. In this respect the general public was confronted mainly with negative associations of asylum which referred to misuse and crime. And the more refined arguments which had developed by 1993 in the political debate were not reflected. To what extent did public opinion reflect the portrayal of asylum seekers in the media and in the political debate?

Looking at public opinion I examined two opinion polls whereby one was affiliated with the political right and the other with the political left. Due to the

methodological shortcomings of opinion polls it is very difficult to draw any substantive conclusion from the data as questions asked were very selective and often methodologically problematic. Nevertheless, a generalising picture which emerged from the study of the opinion polls was that the public in principle supported the granting of asylum although they were very concerned about asylum misuse. This is not surprising considering the emphasis the media and the political debate placed upon asylum misuse. However, the more important finding of the study of opinion polls is that they (irrespective of their political affiliation) reflected in their questions merely the dominant debate on asylum and, therefore, reinforced indirectly conceptions of misuse, burden and overload. Thus both opinion polls failed to disseminate more informed knowledge about these issues and were in this sense neither independent from the dominant debate nor enlightening which is surprising given that one of the opinion polls represented the opposition.

In conclusion, although I focused upon macro factors such as unemployment, conflict in Yugoslavia or electoral gains of the far right, I did not make direct explanatory links between these developments and changes in asylum policy to avoid determinism and reification. Instead, I examined how politicians perceived these factors and utilised them in their own justifications. This shows that these factors were open to interpretation by different actors and that a correlation between macro factors could not provide a satisfactory explanation of asylum policy or any other policy. A further problem which questions a simple correlation between macro factors is that they might be defined and measured quite differently. For example, the discussion of asylum figures and recognition rates in chapter four highlighted the different ways these data could be and were compiled and interpreted. A further issue which questions the link between macro factors is that actors develop different explanation



schemes for the causes of macro factors and links between them. The discrepancy between the politicians' explanation regarding an increase in xenophobic attacks and that of social scientists exemplifies this. The case study indicated that especially the different explanatory frameworks of developments in the wider environment had a salient effect upon the change of the constitution.

Do the above findings indicate a 'moral panic' (see Cohen 2002 and Erjavec 2003)? Erjavec (2003: 84) identifies the following four characteristics of 'moral panic': high concern over behaviour of a group, increased level of hostility towards the group which is regarded as a threat, a disproportional perception of a threat and a short-lived and volatile panic. The first three characteristics are reflected in the way politicians addressed asylum seekers in the political debate. Chapters four, five and six highlighted that politicians were concerned about the behaviour of asylum seekers and identified them with misuse, crime and trafficking. Thus, politicians perceived asylum seekers as a threat to national security. This threat was exaggerated to a large extent as I showed in the context of the perception and interpretation of asylum numbers, the interpretation of xenophobic attacks and the electoral successes from the far right. To what extent the panic was 'volatile' is questionable. The asylum issue was continuously on the public agenda throughout the 1980s. However, reunification, the increased xenophobia, the electoral successes of the far right and the peak number in 1992 reinforced the asylum debate further. In the context of these events asylum seekers were made into 'folk devils'. My newspaper analysis showed that the media were also emphasising the asylum problem and produced a negative portrayal of asylum seekers which was directly associated with a national threat. The above discussion proves that it is vital for an investigation to mediate the relationship

between macro factors with actors and to identify their interpretations and perceptions of these factors and causal relations between them.

### **7.3.2.2 The second layer: opportunistic use of structural conditions by the CDU/CSU and missed opportunities and strategic naiveté by the SPD and the FDP**

The above heading characterises in general terms my findings relating to the political party environment which led to the change of the asylum article in the constitution. This area represents best the systematic examination of the link between agency and structure by applying Archer's (1995) 'morphogenic sequence' which organised the investigation of structures and actors along time to avoid conflation and determinism: First, the existing structure relating to interactive and normative structures of the asylum debate at the beginning of 1991 was examined; this structure was the consequence of intended and unintended actions beforehand which were of lesser relevance to my case study and, therefore, not systematically investigated. Secondly, I analysed to what extent politicians elaborated (i.e. maintained or changed) these structures and which role the different federal hierarchies played within this process. Finally, I presented the normative and interactive structures in May 1993 which were the outcome of this process of elaboration.

Chapter five found that the CDU/CSU dominated both the interactive and normative structures at the beginning of 1991 by being the initiator of new restrictive asylum measures and by directing communication towards the SPD in form of criticism and blackmail. The SPD failed to give a united response and politicians addressed in different and sometimes contradictory ways the policy proposals by the CDU/CSU. There was also a lack of communication between the FDP and the SPD

although they had similar views on asylum policy and immigration policy in general. Such communication could have strengthened the opposition of the constitutional amendment. However, animosities between the FDP and the SPD (due to an end of their coalition in the early 1980s) prevented a common policy strategy between both parties; and the fact that the FDP was part of the government and the SPD in opposition presented a further obstacle. The dominant normative structures at the beginning of 1991 which were established by the CDU/CSU emphasised especially the asylum problem in terms of burden, crime, flood and misuse and focused upon the need to change the constitution. The SPD and the FDP and the Far Left remained in a passive and defensive position and did not actively propose alternatives to the former themes and proposals. Therefore, the CDU/CSU position on asylum was not changed or challenged and the Conservatives could continue to emphasise the asylum problem and to demand a constitutional change without an effective opposition. The dominant position by the CDU/CSU was further enforced by the fact that several SPD politicians who represented towns and municipalities adopted the normative structures of the CDU/CSU. The leadership of the Far Left, the SPD and the FDP rejected a constitutional amendment, however failed to form a united opposition against the Conservatives. In 1992 both the FDP and the SPD proposed independently that they were in favour of a constitutional change if it was implemented after a European harmonisation. As mentioned before, they had to denounce this proposal, as a common European asylum policy was very unlikely to be formulated in the near future. Motivated by the electoral success of the far right, the leadership of the FDP and the SPD decided to support a change *before* European harmonisation on asylum. Following this decision, the focus was placed upon the extent and content of such a change. Surprisingly, parts of the SPD leadership moved over immediately to adopt

the CDU/CSU position on safe-third-countries without any discussions while this time lower hierarchies and members of the leadership were highly critical of such a restrictive approach, contradicting Münch's (1992) suggestion that lower hierarchies in the federal system were more restrictive towards asylum-seekers than higher ones. In the context of the safe-country-rule, different hierarchies within the SPD united and for the first time the FDP and the SPD decided to pursue common action if the CDU/CSU did not accept their less restrictive proposal on safe countries. If they had co-operated earlier in this way they may have prevented the constitutional amendment.

In summary, the second layer has highlighted how the structural context was in favour of the CDU/CSU. They dominated the asylum debate and were confronted with an opposition to their policy proposal which was divided; there were not only factions within the SPD but also between the leadership of the FDP and the SPD although they represented similar positions on the constitutional change. With regard to political action politicians from the SPD and the FDP enforced their structural disadvantage further by failing (1) to produce concrete proposals on asylum policy, (2) to foster relationships with the FDP and (3) to try to overcome the faction between lower and higher hierarchies within the SPD.

### **7.3.2.3 The third layer: the 'humanitarian face' of politicians in the light of more restrictive asylum policy**

With regard to the third layer of the conceptual framework politicians' justifications changed significantly across the parties between 1991 and 1993. In 1991 politicians from all parties were preoccupied with the asylum problem and the increase in

xenophobic attacks, while in 1993 a more complex political debate had developed: although the asylum problem was still in the centre of discussion, supporters linked the problem to themes of a damaged national stability, a 'weak' form of humanitarianism and exclusive measures such as the safe-third-country rule. In contrast, rejecters of the amendment incorporated their perception of an asylum problem into a debate that emphasised 'strong' humanitarianism, the lack of effectiveness of the constitutional change and the proposal of alternative measures. Therefore, my findings challenge assumptions that the political left and the political right had significantly different discourses, i.e. the right focused upon asylum misuse while the left stressed humanitarianism (see Castles and Miller 1998 and Joppke 1999). Instead my analysis suggests that all parties emphasised the asylum problem *and* humanitarianism. This keenness of all politicians to incorporate humanitarianism into their justifications can be explained by the explicit humanitarian basis of asylum policy and the raised awareness of politicians following the increase in xenophobic violence.

The discovery and analysis of complex justification schemes is the outcome of the grounded theory approach which emphasises the link between concepts. Thus my findings cannot be easily incorporated into former classification schemes which stressed an explicitly racist discourse in the context of the immigration debate (see, e.g., Rich 1986 and Saggar 1992). Although the attacks on foreigners were utilised to justify and accelerate a change of the amendment, politicians' justifications as such did not reflect a discourse which utilised exclusive forms of nationalism or racism. My findings suggest that politicians' justifications are complex and that both a traditional content analysis and an anecdotal analysis have limitations to discover the semantic link between themes (see chapter three for further discussion). However,

chapter three has highlighted that especially anecdotal content analysis is able to provide scope while the grounded theory approach is limited to snapshots due to its complexity of analysis. In this respect a combination is recommended to satisfy both scope and depth of analysis. I have utilised anecdotal content analysis of newspaper reports in chapter five to provide a general overview of party developments between 1991 and 1993 while chapter six focuses on an in-depth analysis of changing justifications of immigration policies.

The grounded theory approach highlighted that the core themes of the main parties centred on the asylum problem and humanitarianism. Depending on party affiliation and voting position on the amendment different peripheral themes were added to these core subjects. Thus humanitarianism played an important role in the justifications although it often reflected an empty shell rather than a profound moral principle reflecting what Gibney (2004: 229) called 'organized hypocrisy'. Further, to be able to combine their support of humanitarianism with the topic of an asylum problem, politicians had to stress the issues of 'misuse' and 'bogus asylum seekers' to provide themselves with moral grounds for temporally limiting the principle of an universal humanitarianism.

#### **7.4 Evaluating the findings in the context of existing literature**

The final section compares the research process and findings of the present study with existing analyses of immigration policy. Chapter two criticised a number of existing studies of immigration policies for their methodological determinism which led in most cases to an overemphasis of structural factors in the explanation process. Although the limitations of these approaches had been highlighted, elements of their explanatory frameworks were integrated into the conceptual framework which guided

the analysis of the present case study. A number of authors provide less deterministic frameworks acknowledging both structure and agency as more independent variables of analysis. Although they often do not discuss explicitly theoretical and methodological issues relating to the study of structure and agency they offer a wide range of explanatory variables. For example, Joly's (1996) list of factors such as social costs, national stability and identity were recognised in my conceptual framework. Freeman's (1979) *external constraints on policy* and especially his *proximate determinants* (party systems, political styles and belief systems of decision-makers) were identified as relevant explanatory variables; or, Brochman's (1999) variables of parliamentary parties, non-governmental organisations and international forces. In this respect the existing studies provided a variety of issues which were potentially relevant for the case study of German asylum policy.

How do my findings compare with existing studies of immigration policy and of asylum policy in particular? The approaches outlined in chapter two should be revisited in this section. With regard to economically determined approaches such as that by Kay and Miles (1992), my findings highlighted that wider economic factors such as unemployment were not utilised by politicians to justify the amendment although it had a significant impact upon the overall process leading to the constitutional amendment. Reunification led to severe economic problems which influenced the increase in xenophobic attacks. These attacks were utilised by CDU/CSU politicians to highlight the necessity of a constitutional amendment during the beginning of the 1990s (although they did not link them to the overall economic situation following reunification). Instead, politicians related economic issues to the situation in municipalities and Joly's (1996) factor of 'social costs' was more influential in politicians' justifications than the overall economic condition. These

costs played a role on the level of the municipalities where it motivated SPD politicians to adopt the CDU/CSU proposal for a constitutional amendment which created a rift within the SPD and prevented a strong opposition against the amendment.

National identity has been identified as central explanatory category by Parekh (1994) and Joppke (1999) who will be discussed in the following section. Parekh (1994) argues that Germany reflected an ethnic view of the state which determined its restrictive 'guestworker' policy. My findings suggest that an ethnic view did not directly influence asylum policy in Germany as it did not play a major role in politicians' justification schemes in the asylum debates. Instead it affected indirectly the decision-making process on the amendment: an ethnic view of the state or ethnic nationalism was the central theme and justification in the political debates dealing with reunification. This emphasis upon an exclusive nationalism was partly responsible for the rise in xenophobic attacks and the sporadic electoral success of the far right in the early 1990s. The misconception of these events by politicians which I described in the previous section as 'moral panic' determined that politicians from the FDP and the SPD changed their mind on the constitutional amendment. Thus via the reunification debate, ethnic nationalism triggered events (e.g. xenophobic attacks) that justified the support of the amendment. In that respect the concept of national identity is an important variable in the explanation of asylum policy in the early 1990s and without reunification which placed an exclusive form of ethnic identity into the centre of the public debate and made it 'legitimate' to express feelings of ethnic nationalism which led to an increase in xenophobia.

In contrast to Parekh (1994) Freeman (1995a) acknowledges a variety of factors for the analysis of immigration policy such as public opinion, political party



systems, economic cycles and client politics. Although Freeman (1995a) considers multiple factors, he embeds these factors into a rigid framework of sub-hypotheses which are derived from his general assumption that liberal democracies lead to expansive immigration policy. Authors such as Brubaker (1995) and Perlmutter (1996) criticise his link between liberal democracies and expansive immigration policy and the assumption regarding a strong anti-populist norm amongst parties. Both authors refer to developments in European asylum policy during the 1990s which reflect the opposite. My findings confirm Brubaker's (1995) and Perlmutter's (1996) concerns as politicians especially from the CDU/CSU were keen to politicise immigration throughout the 1980s and 1990s. Perlmutter (1996) is right to point out the salience of lower federal hierarchies in this process. Lower federal hierarchies from the CDU/CSU initiated moves towards a constitutional change followed by SPD politicians from municipalities (Münch 1992). However, this is not to say that lower federal hierarchies are necessarily more restrictive with regard to immigration policy. For example, in my case study SPD politicians from municipalities opposed their leadership in 1992 for adopting very restrictive policies on safe-third-countries.

The following evaluates the findings of the thesis in the context of more flexible explanation schemes which dealt explicitly with immigration control policy in their case studies (i.e. Freeman 1979, Schierup 1990, Joly 1996, Joppke 1998, 1999, 2001, Brochman 1999, Guiraudon 2000, 2001, Geddes 2003, Schuster 2003).

By focusing on structural factors and politicians' perceptions one of the main findings by Freeman (1979) was that French politicians highlighted the economic benefits of immigration which had a positive affect as to how immigration was perceived in general. In contrast, British politicians ignored the economic benefits of immigration which led to a negative image of immigration in the political debate, the

media and amongst the general public. My analysis has highlighted similar discrepancies between structural developments and politicians' perceptions. Especially the misinterpretation of *causal* factors relating to asylum figures, xenophobia and electoral successes of the far right had a significant impact upon the change of position by politicians from the SPD and the FDP and their subsequent support of the amendment. Further, the failure to perceive structural opportunities such as the co-operation between the FDP and the SPD were also vital for the process of changing the amendment. The two examples above confirm Freeman's (1979) emphasis of mediating structures with politicians' beliefs and perceptions.

Schierup (1990), who also provided a less deterministic approach on asylum, highlighted in his study on Swedish asylum policy how pragmatic considerations of governments can lead to more generous asylum policy. The idea by the Swedish government of linking labour market policy with humanitarianism is exceptional although not without moral dilemmas. Nevertheless, it is one way to associate asylum in positive terms with national interest. As outlined in chapter six politicians from all parties neglected such positive portrayal of asylum seekers within the context of the nation-state. Their only positive notions referred to universal obligations which are more easily overruled by national interest. Although Schierup's (1990) study does not provide the same analytical richness as Joly's (1996), his notion of pragmatic interest is a useful analytical addition to the 'grand' motives of national interest and humanitarianism.

Joly (1996) discussed a wide range of factors relating to domestic politics, foreign policy and ethical factors. My study has confirmed that especially domestic politics and ethical factors have been decisive for politicians' decision-making on asylum. Foreign policy has been less influential with regard to the constitutional

amendment except for the European harmonisation process which indirectly moved the leadership from the SPD and the FDP closer to a constitutional amendment (see chapter four). With regard to domestic policy Joly (1996) differentiates between the categories of economy (labour requirement, economic cycle, demography and environment), social costs (availability of provisions, housing, medical care, social services and education) and culture and ideology (national cohesion, national identity, shared values, integrity of the domestic political structure). Chapters four and six have highlighted that the general economic situation especially reflected in high levels of unemployment in former East Germany had an effect on the xenophobic attacks which influenced the asylum debate during 1991. However, the national economic situation was not explicitly mentioned by politicians to justify the amendment. Instead, politicians utilised in their justifications what Joly (1996) defines as social costs and focused on the social and financial situation of communities. Joly's third category of ethical factors suggests that the degree of tension between the sovereign state and universal obligations and the extent to which priority is attributed to freedom has an impact upon asylum policy. My analysis of politicians' justifications especially highlights tensions between sovereignty and humanitarian obligations and my findings propose that politicians developed a variety of strategies to overcome these tensions by applying different types of humanitarianism ('weak' and 'strong' forms as outlined in chapter six) and by creating a hierarchy of deserving and undeserving social groups to marry national interest with universal obligations.

With regard to Joly's (1996) variable 'concern about freedom' I will not engage in a more refined argument on the concept of freedom but outline some general considerations which arose from my analysis. Most politicians applied different degrees of freedom to the various groups residing in Germany: German

citizens were prioritised followed by long-term residing ethnic minorities, genuine asylum seekers and finally non-genuine asylum seekers. All politicians were confronted with the dilemma between universal humanitarian obligations and more politically pragmatic strategies to limit 'freedom' for certain groups. Politicians from the SPD, the FDP and the CDU/CSU overcame these concerns by arguing that a generous level of freedom granted especially to so-called non-genuine asylum seekers endangers not only the freedom of residing ethnic minorities and so-called genuine asylum seekers themselves but the entire democratic system which provides the platform for the granting of such freedom.

To sum up Joly's (1996) paradigm reflects very well Portes' (1997) idea of amalgamating different approaches or factors which may influence asylum policy and her concepts of social costs, national cohesion, tension between sovereign state and universal obligations have been central in understanding the processes which led to the amendment of the constitution. As pointed out in chapter two the main shortcoming of Joly's paradigm is her failure to incorporate her concepts into a wider theoretical and methodological framework which distinguishes clearly between structural and voluntaristic aspects of these concepts.

Brochman (1999) developed a similar approach as Joly (1996) and identifies a 'web of factors' as influential. She focuses on historical precedents and traditional patterns of behaviour (such as traditions in terms of humanitarian values and cultural openness towards the outside world), labour unions, parliamentary parties and non-governmental organisations and international forces (e.g. other states' policies and the character of the international flows in themselves). My findings have shown that in the German case traditional patterns of behaviour (in the form of humanitarian values), parliamentary parties and international forces were especially relevant; while

non-governmental organisations, labour unions and 'cultural openness towards the outside world' did not play a major role in the constitutional amendment.

Joppke (1999) is another author who stresses concept relating to the nation state and here especially the two principles of citizenship and sovereignty which he views as determinants of immigration control policy. Joppke (1999) treats his core concept of sovereignty as a structural factor and explains the amendment of Art. 16 (2) by the 'unique impairment of sovereignty' which is constituted in the constitutional article itself. As argued before, these normative structures which reflect sovereignty are relevant for the analysis; however, they cannot be utilised without looking at politicians' understanding of these structures. My analysis of politicians' justifications discovered that initially CDU/CSU politicians and later on SPD representatives from municipalities viewed indeed the constitutional article as a threat to sovereignty (due to the increasing number of asylum seekers). However, by 1993 this justification was less often utilised and, instead, politicians from all SPD and FDP were keen to emphasise that the change of the amendment will not necessarily reduce the number of asylum seekers arriving at Germany's borders. Nevertheless, the majority of SPD and FDP politicians supported the amendment as they believed that the population expected some political action; if they failed to show such action they feared further destabilisation. Thus the argument which finally motivated the necessary number of SPD and FDP politicians to support the amendment was the concern about national stability; national stability not regarded as being endangered by the asylum movement itself but by an asylum debate (led and dominated by CDU and CSU) which portrayed asylum seekers in a negative context and created moral panic, angst and political frustration amongst the population via the exaggeration of the

situation and wrong causal links between the asylum movement and socio-political problems in Germany.

The above shows that Joppke (1999) is correct to emphasise sovereignty; however, the structural indicators for sovereignty need to be interpreted in the context of politicians' justifications and actions. My analysis has clearly shown that the understanding of the 'unique impairment of sovereignty' by politicians changed over time and was at the end no longer the central concern of SPD and FDP politicians who facilitated the constitutional amendment. Instead politicians argued that the change will not stop people arriving at Germany's borders and asking for asylum. Thus they were aware that humanitarianism (i.e. the consideration of these cases) overruled, at least for a short time, the nation-state principle of sovereignty.

I further question Joppke's (1999) suggestion that Article 16 (2) can be described as a 'unique impairment of sovereignty'. With regard to refugee protection Article 16 (2) was in many ways offering a similar framework as outlined in the Geneva Convention which was signed by Germany. Crépeau (1999) outlines that the Convention covers the right to seek asylum which consists of several elements:

[T]o admit a person to the territory of a State, to allow the person to remain there, to refuse to expel or extradite and not to persecute, punish or otherwise restrict the person's liberty'.

(Crépeau 1999: 393)

The core of the Convention is that it 'grants a limited right to remain' (Crépeau 1999: 395). Thus in this respect the Geneva Convention demands in the same way as Article 16 (2) some form of investigation of an asylum case and, therefore, a limited right to remain until this decision has been taken. Therefore, the assumption that Article 16 (2) was 'unique' needs to be treated with caution as legal documents such as the

Geneva Convention cover similar aspects. Joppke's (1999) notion that sovereignty was 'impaired' is also an exaggeration as German governments have been in full control of the asylum procedure as they decided what kind of legal and social provisions asylum seekers should be given and were able to restrict these provisions throughout the 1980s. The constitutional amendment itself was an indicator that Germany was in full control of its sovereignty. Thus an 'impairment of sovereignty' related merely to the moment when a person asks for asylum at a German border or from within Germany, although even here countries (including Germany) could prevent through visa policies and carrier's liability measures that refugees arrived at their borders in the first place. Germany's position was only unique (when compared with other European countries) in so far as Art. 16 (2) in principle prevented her to return an asylum seekers without registration; although in practice Germany was already practising immediate return of asylum seekers without registration at her Eastern border (see chapter one for further discussion on *refoulement*). Thus once a person had demanded asylum, Germany had full sovereignty to decide on the follow-up measures of his/her case. Measures could range from immediate removal (as, for example, practised at the border to Poland since the 1980s) to permission to enter an accelerated procedure or a normal procedure. In this respect the constitutional amendment had increased the opportunity and legitimacy of immediate removal due to its safe-third-country ruling. It has not re-established an impaired sovereignty, as Joppke (1999) claims, but it has merely strengthened an already existing right regarding the immediate removal of asylum seekers. In this respect my findings have shown that Joppke's (1999) explanation of a 'uniquely impaired sovereignty' was not influential in the final justification schemes of politicians, and the assumption that such a limitation of sovereignty existed in the first place is also debatable.

Similar to Joppke (1999) Hollifield (1992) stressed the relevance of rights and liberal values in the context of immigration policy; arguing that rights and liberalism in general place a limitation on the state's action and provide a protective framework for immigrants. My findings have shown that the rhetoric of humanitarianism can take many faces. Hollifield's (1992) suggestion that an 'embedded liberalism' (which defends human rights and liberal values such as humanitarianism) limits the state's power with regard to immigration policy needs to be looked at carefully. A distorted form of humanitarianism can be utilised to justify both more restrictive and more generous immigration policies as seen in chapter six. To uphold the relationship between 'embedded liberalism' and generous immigration policies one needs to argue that certain types of humanitarianism which are socially or geographically restricted are not representing 'embedded liberalism'. If one argues that humanitarian concerns can lead to complex and competing situations between social groups the link between 'embedded liberalism' and more generous immigration policies becomes less obvious. Rights and liberal values are important analytical factors in the immigration context. However, my case study has shown that such fundamental rights as the constitutional Art. 16a can be challenged (often by referring to liberal values in the context of 'deserving' and 'undeserving' immigrants as outlined in chapter six) and that liberal values such as humanitarianism can be (mis)used and interpreted in many ways by actors. Gibney (2004) is right to state that there is an 'organized hypocrisy' between the public acknowledgement of liberal democracies regarding the principle of asylum and strategies to prevent asylum seekers from arriving at their borders. My thesis has highlighted how the (mis)use of so-called humanitarian justifications allowed politicians in a semantic context to avow the principle of asylum and at the same time to support concrete policies which contradicted this principle.



Guiraudon (2001) argued that immigration policy is characterised by 'de-nationalization' whereby actors on the local/regional level, the supra-national and the societal/private level gain increasingly influence in the implementation and elaboration of policies. My findings confirm the influence of actors on the local and regional level while actors on the supra-national and private level did not have a major impact on the constitutional amendment.

Schuster (2003) argues that the change of Art. 16 (2) was caused by the structure of the German state as a national state, a welfare state and a liberal *Rechtsstaat* (Schuster 2003: 182). Politicians viewed the incoming asylum seekers as a threat to these structures. The analysis of the political developments (chapter five) and the final debate of the constitutional change (chapter six) highlighted that especially the threat to the liberal *Rechtsstaat* was significant for the change of politicians within the FDP and the SPD. My findings showed that the threat to national identity was less dominant in politicians' justifications in the asylum debates in 1991 and 1993 possibly due to the highly sensitive situation surrounding the increase in xenophobic violence. This does not say that national identity did not have an impact on the constitutional amendment. I argued in chapter four that especially the debate on reunification emphasised an exclusionary conception of national identity which amongst other factors led to an increased violence towards immigrants and established ethnic minorities. This increase in xenophobia was utilised by supporters of the amendment to argue that the liberal *Rechtsstaat* was endangered due to asylum policy. The threat to the welfare state was represented in the asylum debate by emphasising social costs of communities which were associated with themes of increased frustration and lack of trust amongst the population leading to a further decline of national stability. In this respect my analysis showed that on the agency

level the threat to the liberal *Rechtsstaat* was the central motive for the final support of the amendment (see also section 7.3.1). It is important to highlight the ‘moral panic’ which politicians created via the asylum debates throughout the early 1990s; moral panic not so much understood as an incorrect representation of events (xenophobic violence had increased significantly in the early 1990s) than an incorrect explanation of events, i.e. blaming asylum policy for problems regarding the welfare state, the nation state and the liberal state. I have argued in chapter four that reunification rather than asylum policy had a concrete impact on the precarious situation regarding the welfare state (e.g. mass unemployment), the public conception of national identity (defined by exclusionary forms of national identity) and the increase in xenophobic violence at the beginning of the 1990s.

Geddes (2003) listed a range of factors which he saw as being influential in changing the constitution. My findings show that factors such as the negative portrayal of asylum seekers, the erosion of the status of asylum seekers, the perceived immigration crisis following the end of the Cold War, the pressure from the federal states, the growth of the far right and the increase of xenophobic attacks were important for the decision-making process. However, my findings also showed that such a list of factors is not sufficient unless one links it to politicians’ justifications and perceptions.

## **7.5 Recommendations for further research**

As pointed out at the beginning of my thesis the formulation of the conceptual framework should lead to substantive theory *after* the empirical investigation; following empirical investigation and new findings the initial framework can be altered and more areas of investigation can be incorporated. Any further studies

should start again with a conceptual framework which can be elaborated using the findings of previous studies of immigration policy. However, these findings should not be turned into hypotheses but they need to be transformed into 'conceptual tools' which can generate 'interesting questions and establish methodologically proper linkages between different levels of analysis' (Mouzelis 1993: 676). Since the 1990s most studies in immigration policy have moved away from determinism towards conceptual framework approaches. The aim of this thesis was to elaborate these approaches and to discuss more explicitly the theoretical and methodological concerns of conceptual frameworks and their ability to offer a framework for the independent analysis of actors and structures.

The conceptual framework presented in this thesis reflects overall a qualitative methodology. This method is the only possible approach if one's objective is to formulate an all-encompassing approach as Portes (1997), Hollifield (2000) and Meyers (2000) have suggested and if one is interested to place emphasis upon both social structures and actors. A quantitative or hypothesis-testing approach fails to offer the necessary ontological and methodological flexibility which is demanded by such an overarching theoretical approach. This should not say that quantitative approaches in the context of immigration policy are *per se* without value; issues such as the research topic and the availability of existing research must determine the method rather than some ideological belief regarding the superiority of quantitative or qualitative methodology. And, indeed, a quantitative study may be a valuable way of researching specific areas of the conceptual framework. For example, my qualitative study on politicians' beliefs and perceptions could be followed up by a survey of politicians using a structured questionnaire. However, to emphasise again, a conceptual framework rather than a hypothesis-testing approach allows for the

formulation of a flexible and overarching theoretical framework which is necessary for an analysis of structures and actors in the context of immigration control policy.

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Notes

<sup>66</sup> The levels of the conceptual framework in Figure 7.1 have been arranged in a different order than the original conceptual framework to allow for graphical links between different layers.

**APPENDIX**

**Appendix 1.1 Indicators for legal and social provisions during the asylum procedures**

<b>Legal provisions Access of filing an application</b>	<b>Legal provisions (first instance)</b>	<b>Legal provisions (second instance)</b>	<b>Social provisions</b>
<ul style="list-style-type: none"> <li>• Time limit</li> <li>• At border</li> <li>• In-country</li> <li>• Relevance of first interview</li> </ul>	<ul style="list-style-type: none"> <li>Interview</li> <li>• Expertise</li> <li>• Leg. and ling. assistance</li> <li>Decision-making</li> <li>• Expertise</li> <li>• NGO consultation</li> <li>• Leg. and ling. assistance</li> <li>• Second interview</li> </ul>	<ul style="list-style-type: none"> <li>• Time limit</li> <li>First appeal</li> <li>• NGO consultation</li> <li>• Expertise</li> <li>• Hearing</li> <li>• Suspensive effect</li> <li>• Leg. and ling. assistance</li> <li>• Re-examination</li> <li>Further appeals see above</li> </ul>	<ul style="list-style-type: none"> <li>• Financial</li> <li>• Accommodation</li> <li>• Exclusion from detention</li> <li>• Employment</li> <li>• Adult education</li> <li>• Child education</li> <li>• Health care</li> <li>• Unaccompanied minors</li> <li>• Freedom of movement</li> </ul>

**Appendix 1.2 Levels of legal and social provisions for asylum seekers by EU governments\***

	<b>Very low</b> (x = 0 - 0.19)	<b>Low</b> (x = 0.20 - 0.39)	<b>Medium</b> (x = 0.40 - 0.59)	<b>High</b> (x = 0.6 - 0.79)	<b>Very high</b> (x = 0.8 - 1)
<b>Legal provisions</b>	Greece (0.14) Portugal (0.14) Austria (0.15)	Norway (0.23) Italy (0.24) France (0.29) Germany (0.30) Ireland (0.30) Sweden (0.33) Finland (0.35) The Netherlands (0.37) Belgium (0.38)	Spain (0.4) Britain (0.45) Luxembourg (0.46) Denmark (0.47)		
<b>Social provisions</b>	Austria (0.08) Germany (0.09) Greece (0.10) Italy (0.14) Portugal (0.17)	Belgium (0.27) Britain (0.29) Ireland (0.31) France (0.33) Spain (0.33) Luxembourg (0.35)	Finland (0.43) Denmark (0.44) Sweden (0.46) Norway (0.53)	The Netherlands (0.70)	

\* The classification of the member states is based upon the statistical mean of the values for the individual indicators; these values can rank from 0 (very low level of provision) to 1 (very high level of provision).

#### Appendix 4.1 Recognition rates of asylum seekers between 1953 and 1994

Year	Asylum seekers (persons)	Recognition rate (in per cent)
1953 - 68	70 425	-
1969	11 664	-
1970	8 645	-
1971	5 388	57.0
1972	5 289	39.8
1973	5 595	33.0
1974	9 424	32.4
1975	9 627	22.2
1976	11 123	18.4
1977	16 410	10.0
1978	33 136	10.3
1979	51 493	16.5
1980	107 818	12.0
1981	49 391	7.7
1982	37 423	6.8
1983	19 737	13.7
1984	35 278	26.6
1985	73 832	29.2
1986	99 650	15.9
1987	57 379	9.4
1988	103 076	8.6
1989	121.315	5.0
1990	193 063	4.4
1991	256.112	6.9
1992	438.191	4.3
1993	322.599	3.2
1994	127.951	7.3

Source: Bundesamt für die Anerkennung ausländischer Flüchtlinge 1997



## Appendix 6.1

## Coding framework for the parliamentary debates of 1991 and 1993

Goals  
Domestic policy

Concept	Properties	Dimensions	Codes
Asylum	Policies	<ul style="list-style-type: none"> <li>• Advocating policies to deal with positive situation regarding asylum (due to asylum/not due to asylum/ due to government)</li> <li>• Being critical of advocating policies to deal with positive situation regarding asylum (due to asylum/not due to asylum/ due to government)</li> <li>• Advocating policies to deal with negative situation regarding asylum (due to asylum/not due to asylum/ due to government)</li> <li>• Being critical of advocating policies to deal with negative situation regarding asylum (due to asylum/not due to asylum/ due to government)</li> <li>• Advocating general inclusive asylum policies (territorial/social)</li> <li>• Being critical of advocating general inclusive asylum policies (territorial/social)</li> </ul>	<p>goal-asylum-pos (due to asylum/not due to asylum/ due to gov)</p> <p>goal-asylum-pos-crit (due to asylum/not due to asylum/ due to gov)</p> <p>goal-asylum-neg (due to asylum/not due to asylum/ due to gov)</p> <p>goal-asylum-neg-crit (due to asylum/not due to asylum/ due to gove)</p> <p>goal-asylum-incl goal-asylum-incl (benefit)</p> <p>goal-asylum-critincl goal-asylum-critincl (benefit)</p>

Concept	Properties	Dimensions	Codes
<b>Asylum</b>	Policies	<ul style="list-style-type: none"> <li>• Advocating general exclusive asylum policies (territorial/ social)</li> <li>• Being critical of advocating general exclusive asylum policies (territorial and social)</li> <li>• Advocating specific exclusive asylum policies (i.e. safe-third-countries)</li> <li>• Being critical of advocating specific exclusive asylum policies (i.e. safe-third-countries)</li> </ul>	<p>goal-asylum-excl goal-asylum-excl (benefit)</p> <p>goal-asylum-critexcl goal-asylum-critexcl (benefit)</p> <p>goal-asylum-excl (safe countries)</p> <p>goal-asylum-critexcl (safe countries)</p>
<b>Immigration</b>	Policies	<ul style="list-style-type: none"> <li>• Advocating a procedural law</li> <li>• Being critical of advocating a procedural law</li> <li>• Advocating specific inclusive immigration policies (i.e. immigration law; procedural law)</li> <li>• Being critical of advocating specific inclusive immigration policies (i.e. immigration law)</li> </ul>	<p>goal-asylum-proced-pos</p> <p>goal-asylum-proced-crit</p> <p>goal-immigr-incl (law)</p> <p>goal-immigr-critincl (law)</p>
<b>National stability</b>	Policies	Advocating policies to deal with positive situation regarding national stability (due to asylum/not due to asylum/ due to government)	goal-natsta-pos (due to asylum/not due to asylum/ due to gov)

Concept	Properties	Dimensions	Codes
<b>National stability</b>	Policies	<ul style="list-style-type: none"> <li>• Being critical of advocating policies to deal with positive situation regarding national stability (due to asylum/not due to asylum/ due to government)</li> <li>• Advocating policies to deal with negative situation regarding national stability (due to asylum/not due to asylum/ due to government)</li> <li>• Being critical of advocating policies to deal with negative situation regarding national stability (due to asylum/not due to asylum/ due to government)</li> </ul>	<p>goal-natsta-pos-crit (due to asylum/not due to asylum/ due to gov)</p> <p>goal-natsta-neg (due to asylum/not due to asylum/ due to gov)</p> <p>goal-natsta-neg-crit (due to asylum/not due to asylum/ due to gov)</p>
<b>Europe</b> <ul style="list-style-type: none"> <li>• Harmonisation</li> <li>• Bilateral agreements</li> </ul>		<ul style="list-style-type: none"> <li>• Advocating European harmonisation</li> <li>• Being critical of advocating European harmonisation</li> <li>• Advocating bilateral agreements</li> <li>• Being critical of advocating bilateral agreements</li> </ul>	<p>goal-europe-pos (harm)</p> <p>goal-europe-crit (harm)</p> <p>goal-europe-pos (bilat)</p> <p>goal-europe-crit (bilat)</p>

### Normative Principles (np)

Concept	Properties	Dimensions	Codes
<b>Nationalism</b>	Type	<ul style="list-style-type: none"> <li>• Inclusive (liberal)</li> <li>• Crit. inclusive</li> <li>• Exclusive (communitarian, ethnic)</li> <li>• Crit. exclusive</li> </ul>	np-nat-incl  np-nat-critincl  np-nat-excl  np-nat-critexcl
<b>Humanitarianism</b>	Type	<p><b>Internal</b></p> <ul style="list-style-type: none"> <li>• Advocating humanitarianism within Germany</li> <li>• Advocating a limitation of humanitarianism within Germany</li> </ul> <p><b>External</b></p> <ul style="list-style-type: none"> <li>• Advocating humanitarianism outside Germany</li> <li>• Advocating a limitation of humanitarianism outside Germany</li> </ul>	np-hum-pos-intern  np-hum-neg-intern   np-hum-pos-extern  np-hum-neg-extern
<b>Religious beliefs</b>		<ul style="list-style-type: none"> <li>• Advocating religious beliefs</li> <li>• Being critical of advocating religious beliefs</li> </ul>	np-rel-pos  np-rel-crit
<b>Political ideologies</b>		<ul style="list-style-type: none"> <li>• Advocating political ideologies</li> <li>• Being critical of advocating political ideologies</li> </ul>	np-ideol-pos  np-ideol-crit

**Perception of environment (poe)**

<b>Concept</b>	<b>Properties</b>	<b>Dimensions</b>	<b>Codes</b>
<b>Asylum</b>	Perception of situation	<ul style="list-style-type: none"> <li>• Perceiving asylum in a positive way (due to asylum/ not due to asylum/ due to government)</li> <li>• Being critical of perceiving asylum in a positive way (due to asylum/ not due to asylum/ due to government)</li> <li>• Perceiving asylum in a neutral way</li> <li>• Perceiving asylum in a negative way (due to asylum/ not due to asylum/ due to government)</li> <li>• Being critical of perceiving asylum in a positive way (due to asylum/ not due to asylum/ due to government)</li> </ul>	<p>poe-asylum-pos (due to asylum/ not due to asylum/ due to gov)</p> <p>poe-asylum-critpos (due to asylum/ not due to asylum/ due to gov)</p> <p>poe-asylum-neut</p> <p>poe-asylum-neg (due to asylum/ not due to asylum/ due to gov)</p> <p>poe-asylum-critneg (due to asylum/ not due to asylum/ due to gov)</p>
<b>National stability</b>	Perception of situation	<ul style="list-style-type: none"> <li>• Perceiving national stability in a positive way (due to asylum/ not due to asylum/ due to government)</li> <li>• Being critical of perceiving national stability in a positive way (due to asylum/ not due to asylum/ due to government)</li> <li>• Perceiving national stability in a neutral way</li> </ul>	<p>poe-natsta-pos (due to asylum/ not due to asylum/ due to gov)</p> <p>poe-natsta-critpos (due to asylum/ not due to asylum/ due to gov)</p> <p>poe-natsta-neut</p>

<b>Concept</b>	<b>Properties</b>	<b>Dimensions</b>	<b>Codes</b>
<b>National stability</b>	Perception of situation	<ul style="list-style-type: none"> <li>• Perceiving national stability in a negative way (due to asylum/ not due to asylum/ due to government)</li> <li>• Being critical of perceiving national stability in a positive way (due to asylum/ not due to asylum/ due to government)</li> </ul>	<p>poe-natsta-neg (due to asylum/ not due to asylum/ due to gov)</p> <p>poe-natsta-critneg (due to asylum/ not due to asylum/ due to gov)</p>
<b>Socio-economic concerns</b>	Perception of situation	<ul style="list-style-type: none"> <li>• Perceiving the economy in a positive way</li> <li>• Perceiving the economy in a negative way</li> </ul>	<p>poe-econ-pos</p> <p>poe-econ-neg</p>
<b>Politics</b>	Perception of situation	<ul style="list-style-type: none"> <li>• Perceiving politics in a positive way</li> <li>• Perceiving politics in a critical way</li> </ul>	<p>poe-pol-pos</p> <p>poe-pol-crit</p>
<b>Xenophobia</b>	Perception of situation	<ul style="list-style-type: none"> <li>• Perceiving the situation regarding xenophobia in a positive way</li> <li>• Perceiving the situation regarding xenophobia in a negative way (due to asylum/ not due to asylum/ due to government)</li> </ul>	<p>poe-xeno-pos</p> <p>poe-xeno-neg (due to asylum/ not due to asylum/ due to gov)</p>
<b>Humanitarianism</b>	Type	<p><b>Internal</b></p> <ul style="list-style-type: none"> <li>• Perceiving the humanitarian situation within Germany as being positive</li> <li>• Being critical of the positive humanitarian situation within Germany</li> </ul>	<p>poe-hum-pos-intern</p> <p>poe-hum-critpos-intern</p>

Concept	Properties	Dimensions	Codes
<b>Humanitarianism</b>	Type	<ul style="list-style-type: none"> <li>• Perceiving the humanitarian situation within Germany as being negative</li> <li>• Being critical of the negative humanitarian situation within Germany</li> </ul> <p style="text-align: center;"><b>Extern</b></p> <ul style="list-style-type: none"> <li>• Perceiving the humanitarian situation outside Germany as being positive</li> <li>• Being critical of the positive humanitarian situation outside Germany</li> <li>• Perceiving the humanitarian situation outside Germany as being negative</li> <li>• Being critical of the negative humanitarian situation outside Germany</li> </ul>	<p>poe-hum-neg-intern</p> <p>poe-hum-critneg-intern</p> <p>poe-hum-pos-extern</p> <p>poe-hum-critpos-extern</p> <p>poe-hum-neg-extern</p> <p>poe-hum-critneg-extern</p>
<b>Constitutional change</b>	Perception of legislation	<ul style="list-style-type: none"> <li>• Perceiving the constitutional change in a positive way</li> <li>• Perceiving the constitutional change in a positive way (due to changed historical situation regarding asylum, effectiveness)</li> <li>• Perceiving the constitutional change in a critical way (due to its lack of effectiveness, legal concerns)</li> </ul>	<p>poe-const.change-pos</p> <p>poe-const.change-pos (history) (effectiveness)</p> <p>poe-const. change- crit (effectiveness) (legal)</p>

Concept	Properties	Dimensions	Codes
<p><b>Constitutional change</b></p> <p><b>Europe</b></p> <p><b>Harmonisation</b></p>		<ul style="list-style-type: none"> <li data-bbox="568 259 927 405">• Perceiving the constitutional change in a critical way (due to the German history)</li> <li data-bbox="568 562 927 674">• Perceiving harmonisation in a positive way</li> <li data-bbox="568 719 927 831">• Perceiving harmonisation in a negative way</li> <li data-bbox="568 875 927 987">• Perceiving bilateral agreements in a positive way</li> <li data-bbox="568 1032 927 1144">• Perceiving bilateral agreements in a negative way</li> </ul>	<p data-bbox="951 259 1252 327">poe-const. change- crit (history)</p> <p data-bbox="951 595 1252 629">poe-europe-pos (harm)</p> <p data-bbox="951 752 1252 786">poe-europe-neg (harm)</p> <p data-bbox="951 898 1252 931">poe-europe-pos (bilat)</p> <p data-bbox="951 1043 1252 1077">poe-europe-neg (bilat)</p>



**Appendix 6.2 An overview of themes with regard to dominant/non-dominant application**

Very dominant (40% and above)	Dominant (30% to below 40%)	Fairly dominant (20% to below 30%)	Not dominant (10 % to below 20%)	Not very dominant (0 to below 10%)
<ul style="list-style-type: none"> <li>• poe-hum-critneg-intern 57%</li> <li>• goal-asylum-neg (due to asylum) 44%</li> <li>• poe-asylum-neg (due to asylum) 44%</li> </ul>	<ul style="list-style-type: none"> <li>• np-hum-pos-intern 38%</li> <li>• np-hum-pos-extern 37%</li> <li>• poe-hum-pos-intern (const. change) 35%</li> <li>• poe-const.change-crit (effectiveness) 31%</li> <li>• poe-pol-crit 30%</li> </ul>	<ul style="list-style-type: none"> <li>• poe-hum-critneg-extern 27%</li> <li>• goal-natsta-neg (due to asylum) 26%</li> <li>• goal-immigr-incl (law) 24%</li> </ul>	<ul style="list-style-type: none"> <li>• poe-hum-pos-intern-general 17%</li> <li>• goal-asylum-critexcl (safe countries) 17%</li> <li>• goal-excl (safe countries) 16%</li> <li>• goal-asylum-excl 13%</li> <li>• poe-asylum-neg (due to gov) 12%</li> <li>• poe-europe-pos (harm) 11%</li> <li>• poe-const.chang e-pos- (history) 10%</li> <li>• poe-europe-pos (bilat) 10%</li> <li>• poe-hum-pos-extern (10%)</li> </ul>	<ul style="list-style-type: none"> <li>• goal-europe-pos (harm) 8%</li> <li>• poe-const.chang -crit (legal) 8%</li> <li>• goal-asylum-excl (benefit) 8%</li> <li>• np-nat-critexcl 7%</li> <li>• poe-xeno (due to asylum) 7%</li> <li>• poe-xeno (not due to asylum) 6%</li> <li>• poe-europe-crit (bilat) 6%</li> <li>• np-hum-neg -intern 6%</li> <li>• np-nat-incl 6%</li> <li>• poe-pol-pos 6%</li> <li>• poe-natsta-neg (due to gov) 6%</li> <li>• np-nat-excl 5%</li> <li>• goal-natsta-neg (due to gov) 5%</li> <li>• goal-asylum-critexcl 4%</li> <li>• goal-</li> </ul>

				<ul style="list-style-type: none"> <li><b>asylum-neg</b> (due to gov) 4%</li> <li>• <b>goal-asylum-critexcl</b> (<b>benefit</b>) 4%</li> <li>• <b>goal-asylum-incl</b> 4%</li> <li>• <b>poe-const.chan</b> g-pos (<b>effectiveness</b>) 3%</li> <li>• <b>poe-asylum-pos</b> 3%</li> <li>• <b>poe-asylum-critexcl</b> 3%</li> <li>• <b>poe-asylum-critneg</b> (due to asylum) 2%</li> <li>• <b>poe-asylum-incl</b> 2%</li> <li>• <b>poe-natsta-neg</b> (not due to asylum) 2%</li> <li>• <b>goal-asylum-critincl</b> 2%</li> <li>• <b>goal-europe-crit</b> (bilat) 1%</li> </ul>
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### Appendix 6.3 The relationship between themes and voting behaviour in principle

Themes consistent with supporters	Themes consistent with rejecters	Themes consistent with supporters or rejecters
<ul style="list-style-type: none"> <li>• goal-asylum-critincl</li> <li>• goal-asylum-excl</li> <li>• goal-asylum-excl (benefit)</li> <li>• goal-asylum-excl-pos (safe countries)</li> <li>• goal-asylum-neg (due to asylum)</li> <li>• goal-europe-pos (bilat)</li> <li>• goal-natsta-neg (due to asylum)</li> <li>• np-hum-neg-intern</li> <li>• np-nat-excl</li> <li>• poe-asylum-excl</li> <li>• poe-asylum-excl (safe countries)</li> <li>• poe-asylum-neg (due to asylum)</li> <li>• poe-constchange-pos (effectiveness)</li> <li>• poe-const.change-pos (history)</li> <li>• poe-europe-pos (bilat)</li> <li>• poe-hum-pos-extern</li> <li>• poe-hum-pos-intern (const.change)</li> <li>• poe-pol-pos</li> <li>• poe-proced-crit</li> <li>• poe-xeno-neg (due to asylum)</li> </ul>	<ul style="list-style-type: none"> <li>• goal-asylum-critexcl</li> <li>• goal-asylum-critexcl (safe countries)</li> <li>• goal-asylum-critneg (due to asylum)</li> <li>• goal-asylum-inclusive (due to asylum)</li> <li>• goal-asylum-neg (due to gov)</li> <li>• goal-asylum-pos</li> <li>• goal-europe-crit (bilat)</li> <li>• goal-immigr-incl (law)</li> <li>• goal-natsta-neg (not due to asylum)</li> <li>• np-hum-pos-intern</li> <li>• np-nat-incl</li> <li>• poe-asylum-critexcl (benefit)</li> <li>• poe-asylum-critexcl (safe countries)</li> <li>• poe-asylum-critneg (due to asylum)</li> <li>• poe-asylum-incl</li> <li>• poe-asylum-neg (due to gov)</li> <li>• poe-asylum-pos</li> <li>• poe-const.change-crit (effectiveness)</li> <li>• poe-const.change-crit (legal)</li> <li>• poe-europe-crit (bilat)</li> <li>• poe-hum-critneg-extern</li> <li>• poe-hum-critneg-intern</li> <li>• poe-natsta-critneg (due to asylum)</li> <li>• poe-natsta-neg (not due to asylum)</li> <li>• poe-xeno-neg (not due to asylum)</li> </ul>	<ul style="list-style-type: none"> <li>• goal-europe-pos (harm)</li> <li>• np-hum-pos-extern</li> <li>• poe-europe-pos (harm)</li> <li>• poe-hum-pos-intern</li> <li>• np-nat-critexcl</li> <li>• poe-pol-crit</li> </ul>

**Appendix 6.4 Significant/non-significant relationships between themes and voting behaviour in practice (significance is based upon t-test)**

<b>Codes showing a significant relationship with a support of the amendment</b>	<b>Codes showing a significant relationship with a rejection of the amendment</b>	<b>Codes showing no significant relationship with a particular voting behaviour</b>
<ul style="list-style-type: none"> <li>• goal-asylum-excl-pos</li> <li>• goal-asylum-excl-pos (safe countries)</li> <li>• goal-asylum-neg (due to asylum)</li> <li>• goal-europe-pos (bilat)</li> <li>• goal-europe-pos (harm)</li> <li>• goal-natsta-neg (due to asylum)</li> <li>• np-hum-neg-intern</li> <li>• np-nat-excl</li> <li>• poe-asylum-excl (benefit)</li> <li>• poe-asylum-excl</li> <li>• poe-asylum-excl (safe countries)</li> <li>• poe-asylum-neg (due to asylum)</li> <li>• poe-const.change-pos (history)</li> <li>• poe-europe-pos (bilat)</li> <li>• poe-hum-pos-extern</li> <li>• poe-hum-pos-intern (const.change)</li> <li>• poe-xeno-neg (due to asylum)</li> </ul>	<ul style="list-style-type: none"> <li>• goal-immigr-incl (law)</li> <li>• np-hum-pos-intern</li> <li>• np-nat-critexcl</li> <li>• poe-asylum-critexcl</li> <li>• poe-asylum-critexcl (benefit)</li> <li>• poe-asylum-neg (due to gov)</li> <li>• poe-const.change-crit (effectiveness)</li> <li>• poe-europe-crit (bilat)</li> <li>• poe-hum-critneg-intern</li> <li>• poe-hum-critneg-extern</li> <li>• poe-xeno-neg (not due to asylum)</li> </ul>	<ul style="list-style-type: none"> <li>• goal-asylum-inclusive</li> <li>• goal-asylum-critincl</li> <li>• goal-asylum-critexcl</li> <li>• goal-asylum-critexcl (benefit)</li> <li>• goal-asylum-critexcl (safe countries)</li> <li>• goal-asylum-excl-pos (benefit)</li> <li>• goal-asylum-neg (due to gov)</li> <li>• goal-asylum-critneg (due to asylum)*</li> <li>• goal-europe-crit (bilat)*</li> <li>• goal-natsta-neg (not due to asylum)</li> <li>• goal-natsta-neg (not due to gov)</li> <li>• np-hum-pos-extern</li> <li>• np-nat-incl</li> <li>• poe-asylum-critneg (due to asylum)</li> <li>• poe-asylum-pos</li> <li>• poe-asylum-critexcl</li> <li>• poe-asylum-incl</li> <li>• poe-const.change-crit (legal)</li> <li>• poe-const.change-pos (effectiveness)</li> <li>• poe-europe-pos (harm)</li> <li>• poe-asylum-critexcl (safe countries)</li> <li>• poe-hum-pos-intern</li> <li>• poe-natsta-neg (not due to asylum)</li> <li>• poe-proced-crit</li> <li>• poe-pol-crit</li> <li>• poe-pol-pos</li> <li>• poe-proced-pos</li> </ul>

\* Codes represent a clear relationship between voting behaviour and the use of the code (over 90 per cent of politicians) but are not significant due to the small frequency with which the code was applied during the debate.

**Appendix 6.5 Themes within the 1991 debate organised by dominant/non dominant application**

<b>Very dominant (40% and above)</b>	<b>Dominant (30% to below 40%)</b>	<b>Fairly dominant (20% to below 30%)</b>	<b>Not dominant (10 % to below 20%)</b>	<b>Not very dominant (0 to below 10%)</b>
<ul style="list-style-type: none"> <li>• np-nat-critexcl (46%)</li> <li>• poe-xeno-neg (not due to asylum) (42%)</li> </ul>	<ul style="list-style-type: none"> <li>• poe-asylum-neg (due to asylum) (35%)</li> <li>• goal-critexcl (31 %)</li> <li>• goal-europe-pos (harm) (31%)</li> <li>• poe-natsta-pos (31%)</li> </ul>	<ul style="list-style-type: none"> <li>• goal-asylum-incl (27%)</li> <li>• goal-asylum-neg (due to asylum) (23%)</li> <li>• np-hum-pos-intern (27%)</li> </ul>	<ul style="list-style-type: none"> <li>• goal-natsta-neg (due to asylum) (11.5%)</li> <li>• goal-natsta-neg (not due to asylum) (8%)</li> <li>• np-hum-pos-extern (11.5%)</li> <li>• poe-hum-pos-intern (19%)</li> <li>• poe-natsta-neg (due to gov)(15%)</li> <li>• poe-pol-crit (19%)</li> </ul>	<ul style="list-style-type: none"> <li>• np-nat-incl (8%)</li> <li>• poe-asylum-neg (due to gov) (8%)</li> <li>• np-nat-critincl (4%)</li> <li>• poe-asylum-excl (4%)</li> <li>• poe-xeno-(due to asylum)(4%)</li> </ul>

**Appendix 6.6 Significant (positive and negative) relationships between themes**

Theme	Significance	Significant relationship with other themes
<b>poe-hum-critneg-intern</b>	.443; p=.000 .378; p=.000 .258; p=.002 -.229; p=.006 -.375; p=.000  -.217; p=.010  -.241; p=.004  .324; p=.000  .183; p=.029 -.176; p=.036  -.264; p=.002 .259; p=.002  -.176; p=.036	<b>Humanitarianism</b> poe-hum-critneg-extern np-hum-pos-intern np-hum-pos-extern poe-hum-pos-extern poe-hum-pos-intern (const.change)  <b>Exclusion/Inclusion</b> goal-asylum-excl-pos  goal-asylum-excl-pos (safe countries)  goal-asylum-incl-pos (law)  <b>Representation</b> poe-asylum-pos poe-asylum-neg (due to asylum)  <b>National cohesion</b> goal-natsta-neg (due to asylum) poe-xeno-neg (not due to asylum)  <b>Nationalism</b> np-nat-pos-excl
<b>np-hum-pos-intern</b>	.378; p=.000 .323; p=.000 -.269; p=.001  -.165; p=.049  .238; p=.004	<b>Humanitarianism</b> poe-hum-critneg-intern np-hum-pos-extern poe-hum-pos-intern (const. change)  <b>National cohesion</b> goal-natcoc-neg (due to asylum)  <b>Effectiveness</b> poe-const.change-crit (effectiveness)

<b>np-hum-pos-extern</b>	.323; .000 .258; p=.002  -.186; p=.027  .272; p=.001	<b>Humanitarianism</b> np-hum-intern poe-hum-critneg-intern  <b>Exclusion/inclusion</b> goal-asylum-critexcl (safe countries) goal-asylum-incl (law)
<b>poe-hum-pos-intern (const.change)</b>	.309; p=.000 .198; p=.018 .588; p=.000  -.219; p=.009  -.375; p=.000 -.223; p=.008 -.375; p=.000 .167; p=.047  .257; p=.002  .299; p=.000  .196; p=.019  .194; p=.021	<b>Exclusion</b> goal-asylum-excl goal-asylum-excl (benefit) goal-asylum-excl (safe countries) goal-asylum-incl-pos (law)  <b>Humanitarianism</b> poe-hum-critneg-intern poe-hum-critneg-extern np-hum-pos-intern poe-hum-pos-extern  <b>Representation</b> goal-asylum-neg (due to asylum) poe-asylum-neg (due to asylum)  <b>National cohesion</b> goal-natsta-neg (due to asylum)  <b>Nationalism</b> np-nat-pos-excl
<b>poe-hum-critneg-extern</b>	-.223; p=.008  .443; p=.000  .273; p=.001  .224; p=.007	<b>Humanitarianism</b> poe-hum-pos-intern (const. change) poe-hum-critneg-intern  <b>Immigration law</b> goal-immigr-incl (law)  <b>Const. Change</b> poe-const.change-crit (effectiveness)

<b>goal-asylum-neg (due to asylum)</b>	<p>.257; p=.002</p> <p>.325; p=.000 .223; p=.008 .206; p=.014</p> <p>.282; =.001</p> <p>.332; p=.000</p>	<p><b>Humanitarianism</b> poe-hum-pos-intern (const.change)</p> <p><b>Exclusion/inclusion</b> goal-asylum-excl goal-asylum-excl (benefit) goal-asylum-excl (safe countries)</p> <p><b>National cohesion</b> goal-natsta-neg (due to asylum)</p> <p><b>Nationalism</b> np-nat-excl</p>
<b>poe-asylum-neg (due to asylum)</b>	<p>.299; p=.000</p> <p>-.176; p=.036 -.223, p=.008</p> <p>.198; p=.018</p> <p>.196; p=.020</p>	<p><b>Humanitarianism</b> poe-hum-pos-intern (const.change) poe-hum-critneg-intern np-hum-pos-extern</p> <p><b>Exclusion/inclusion</b> goal-asylum-excl (safe countries)</p> <p><b>National cohesion</b> poe-xeno-neg (due to asylum)</p>
<b>goal-natsta-neg (due to asylum)</b>	<p>.196; p=.019</p> <p>-.264; p=.002 -.165; p=.049</p> <p>.249; p=.003</p> <p>.282; p=.001</p> <p>.272; p=.001 .394; p=.000</p>	<p><b>Humanitarianism</b> poe-hum-pos-intern (const.change) poe-hum-critneg-intern np-hum-pos-intern</p> <p><b>Exclusion/inclusion</b> goal-asylum-excl</p> <p><b>Representation</b> goal-asylum-neg (due to asylum)</p> <p><b>Nationalism</b> np-nat-excl poe-xeno-neg (due to asylum)</p>



<p><b>poe-const.change-crit (effectiveness)</b></p>	<p>.224; p=.007 .357; p=.000 .238; p=.004 .366; p=.000 -.283; p=.001</p> <p>.613; p=.000 -.191; p=.023</p>	<p><b>Humanitarianism</b> poe-hum-critneg-extern poe-hum-critneg-intern np-hum-pos-intern np-hum-pos-extern poe-hum-pos-intern (const.change)</p> <p><b>Exclusion/ inclusion</b> goal-immigr-incl (law) goal-asylum-excl (safe countries)</p>
<p><b>goal- immigr-incl (law)</b></p>	<p>.273; p=.001 .324; p=.000 .272; p=.001 -.219; p=.009</p> <p>.613; p=.000</p> <p>.203; p=.016</p>	<p><b>Humanitarianism</b> poe-hum-critneg-extern poe-hum-critneg-intern np-hum-pos-extern poe-hum-pos-intern (const.change)</p> <p><b>Const. change</b> poe-const.change-crit (effectiveness)</p> <p><b>Exclusion/inclusion</b> goal-asylum-critexcl (safe countries)</p>
<p><b>goal-excl-pos (safe country)</b></p>	<p>.268; p=.000</p> <p>.588; p=.000</p> <p>-.241; p=.004</p> <p>.206; p=.014</p> <p>.184; p=.028</p> <p>-.191; p=.023</p>	<p><b>Exclusion</b> goal-asylum-critexcl (safe countries)</p> <p><b>Humanitarianism</b> poe-hum-pos-intern (const.change) poe-hum-critneg-intern</p> <p><b>Representation</b> goal-asylum-neg (due to asylum)</p> <p><b>Nationalism</b> np-nat-inclusive</p> <p><b>Const. change</b> poe-const.change-crit (effectiveness)</p>

<b>goal-asylum-critexcl (safe countries)</b>	-.186; p=.027  .368; p=.000  .203; p=.016  .297; p=.000	<b>Humanitarianism</b> np-hum-pos-extern  <b>Exclusion/inclusion</b> goal-asylum-excl (safe countries) goal-immigr-incl (law)  <b>Nationalism</b> np-nat-incl
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## Appendix 6.7 Semantic links between themes

Figure 1 The semantic context of the code 'criticism of the lack of humanitarianism within Germany'

(Continuous lines indicate a positive significant relationship between themes while perforated lines define a negative significant relationships. This rule applies to all figures in this section).

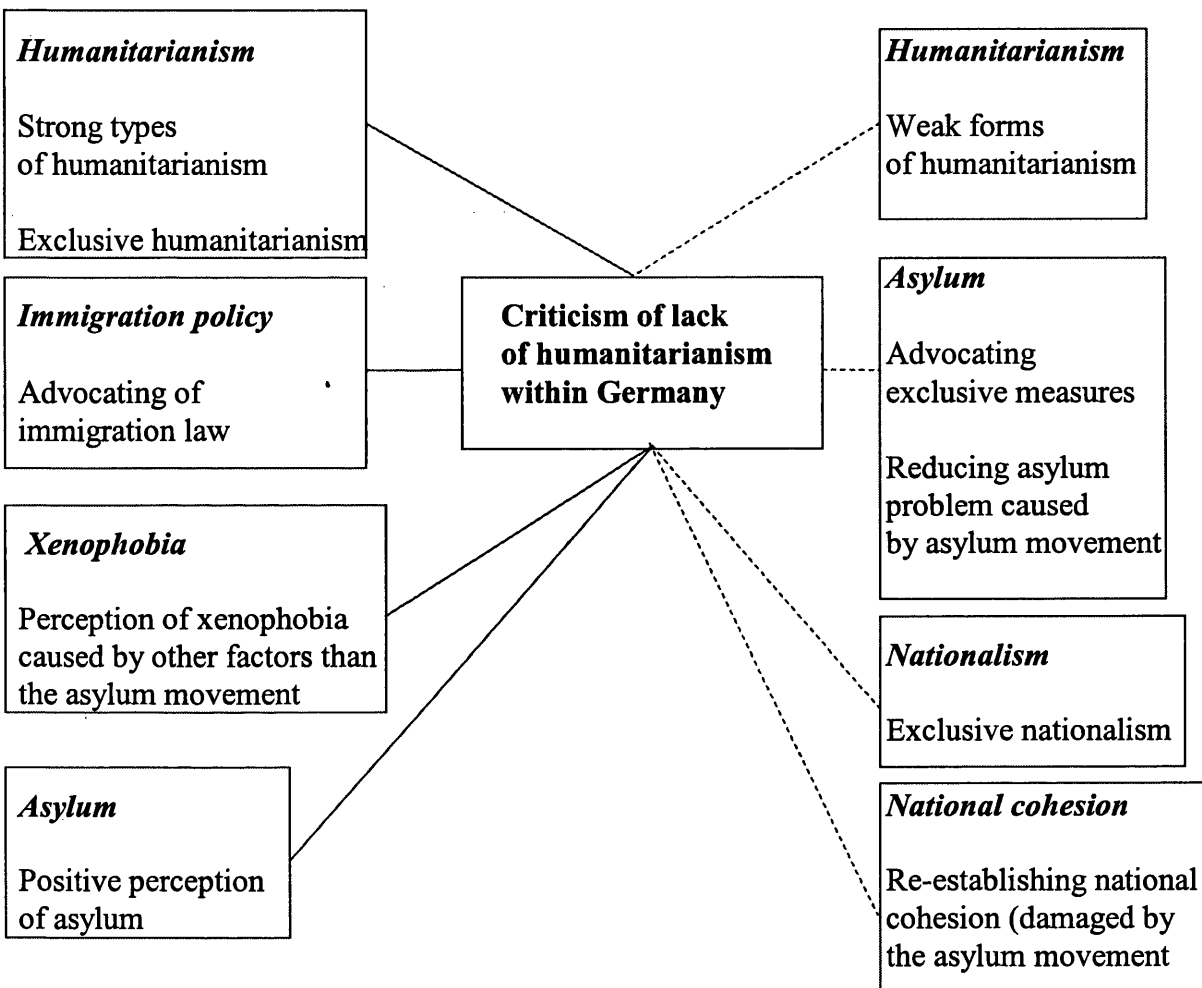


Figure 2 The semantic context for the code 'advocating humanitarianism within Germany'

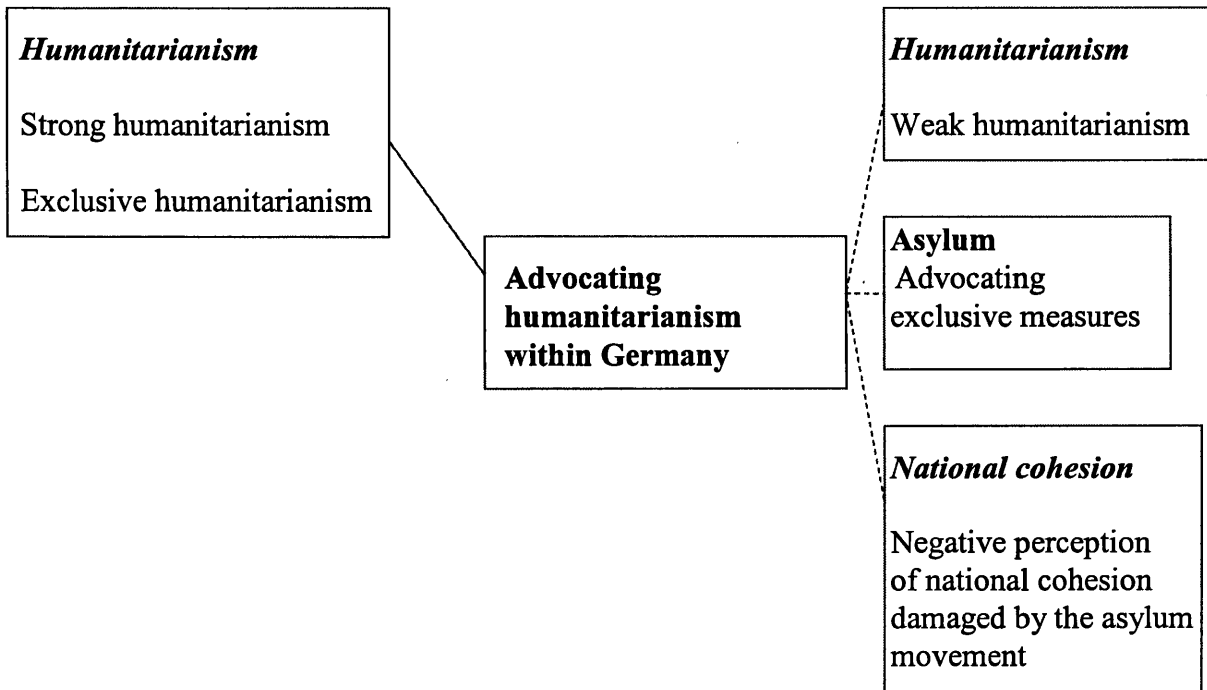


Figure 3 The semantic context of the code 'advocating humanitarianism outside Germany'

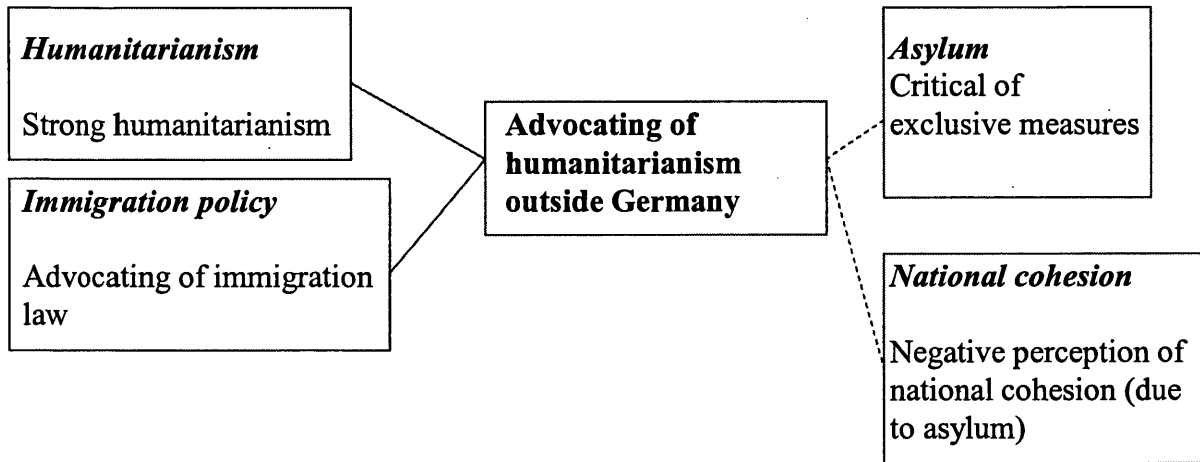


Figure 4 The semantic context of the code 'the perception of humanitarianism within the constitutional amendment'

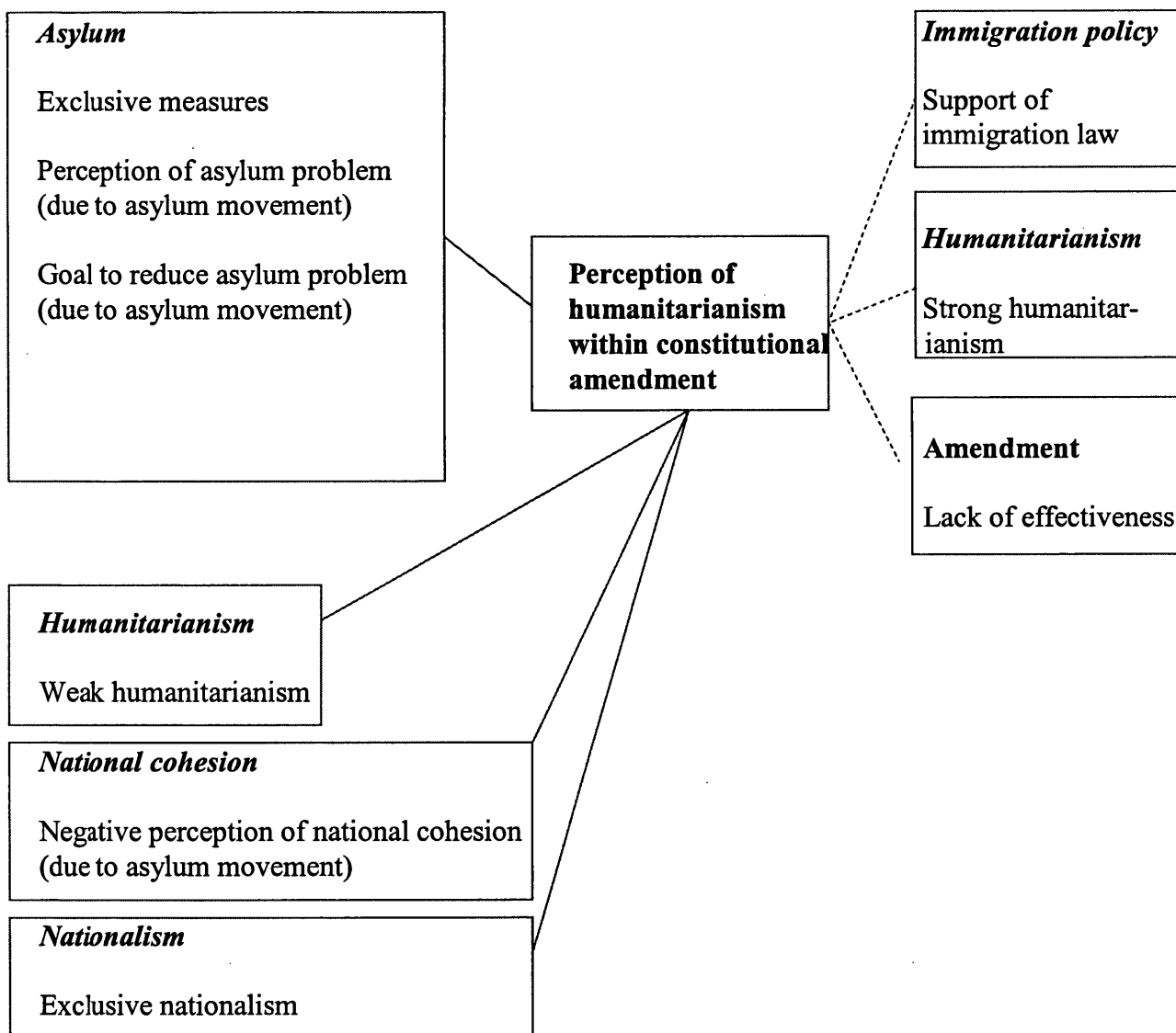


Figure 5 The semantic context for the code 'the critique of a violation of humanitarianism outside Germany'

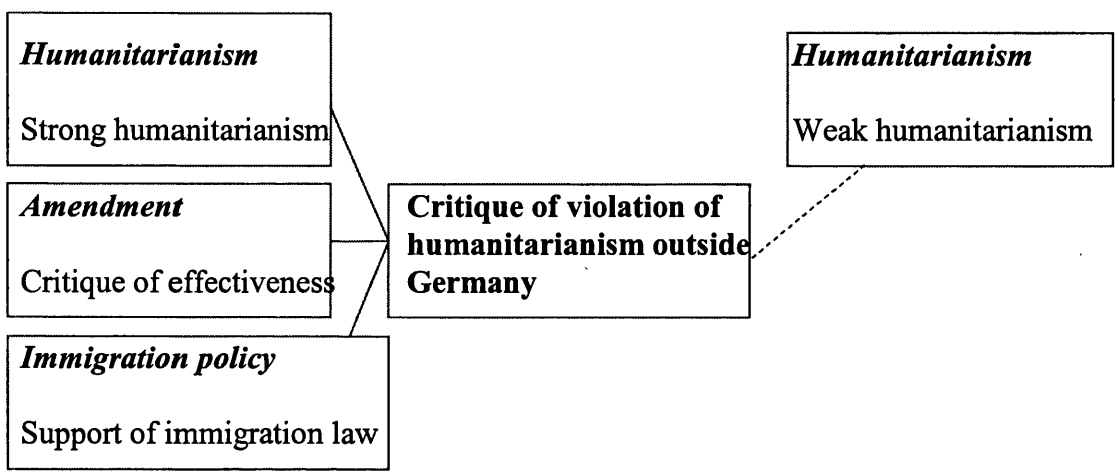


Figure 6 The semantic context for the code 'the goal to reduce the asylum problem'

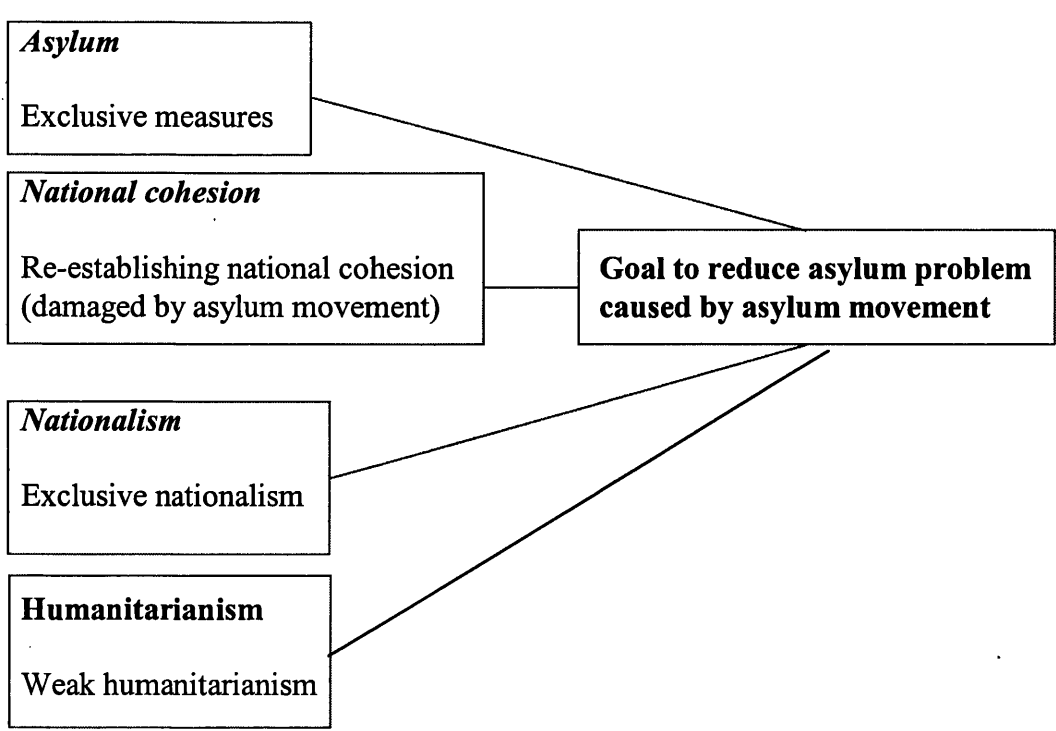


Figure 7 The semantic context for the code 'the perception of an asylum problem'

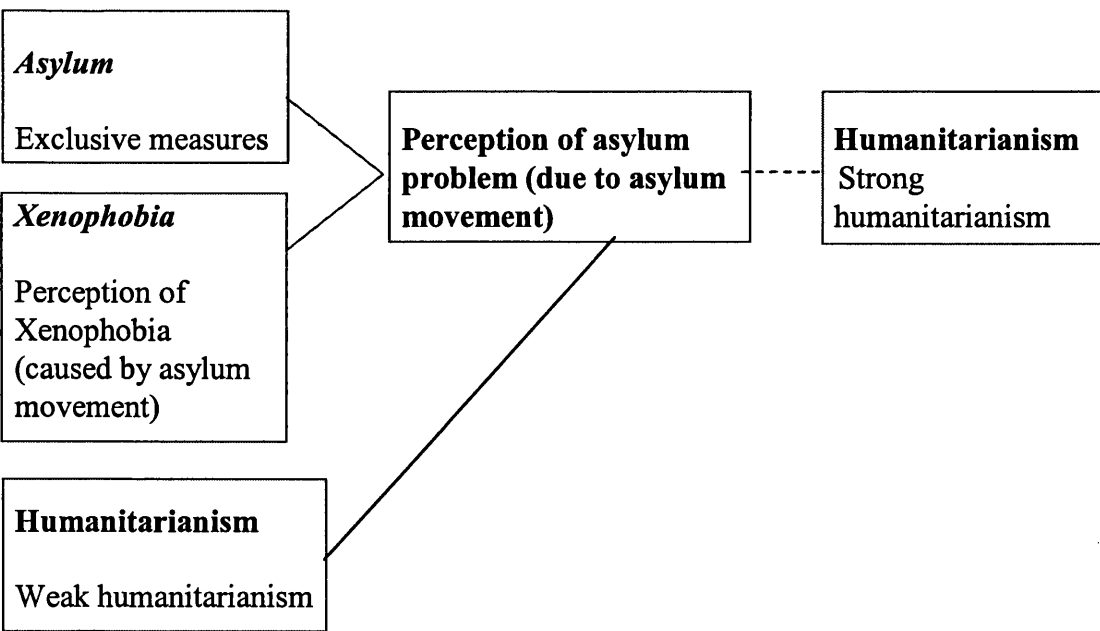


Figure 8 The semantic context for the code 'the goal to re-establish national cohesion'

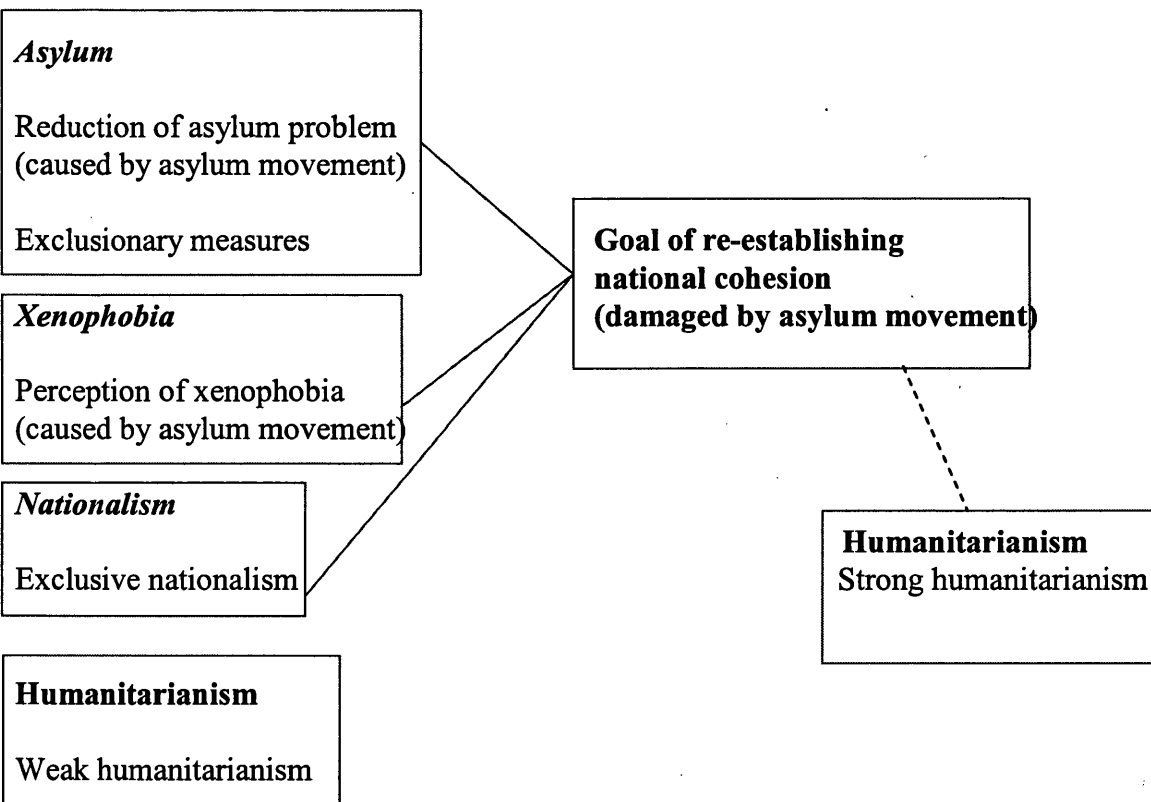


Figure 9 Semantic context for the code 'the critique of the amendment regarding its effectiveness'

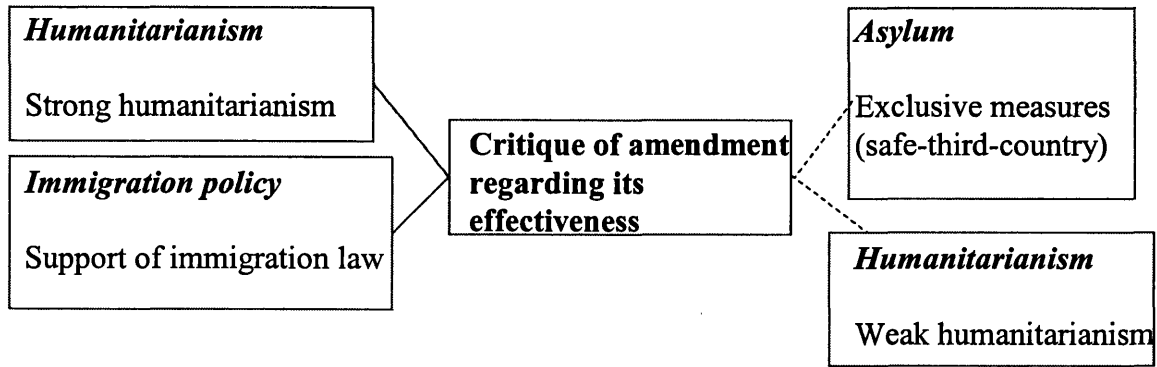


Figure 10 The semantic context for the code 'the advocating of an immigration law'

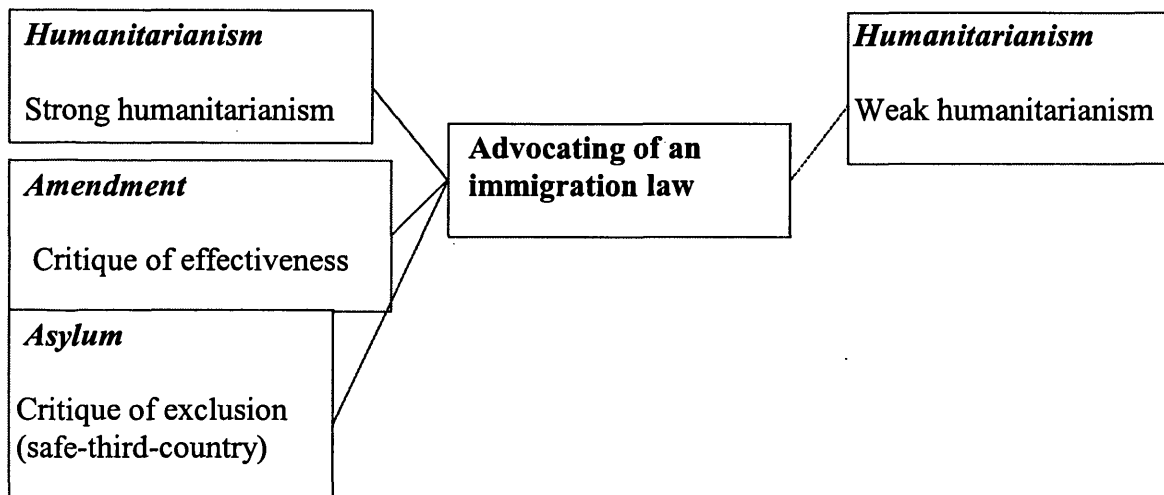




Figure 11 The semantic context for the code 'the advocating of exclusionary measures (safe-third-country rule)'

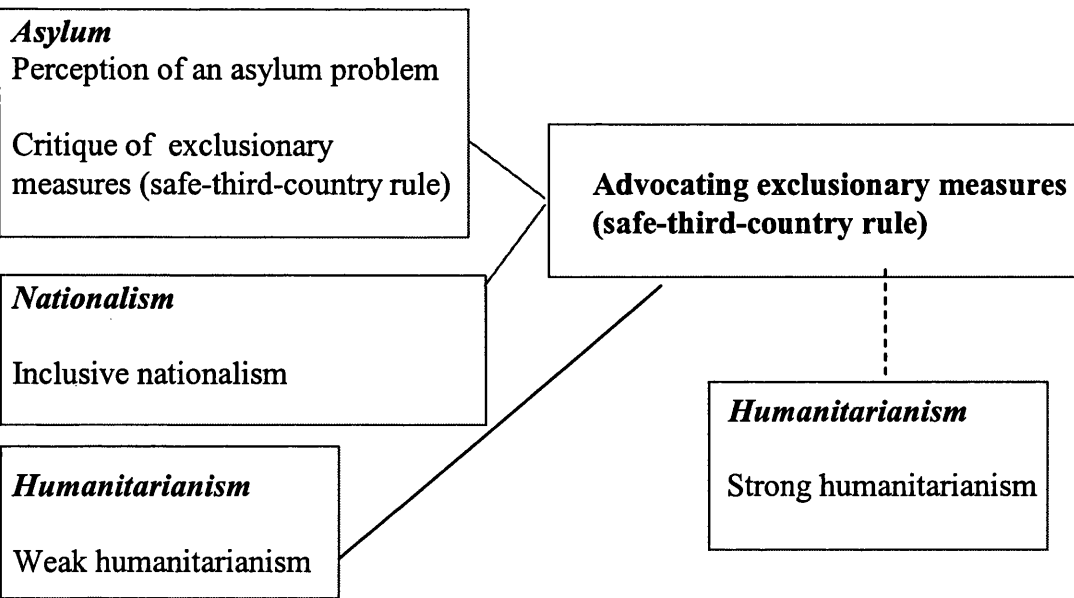
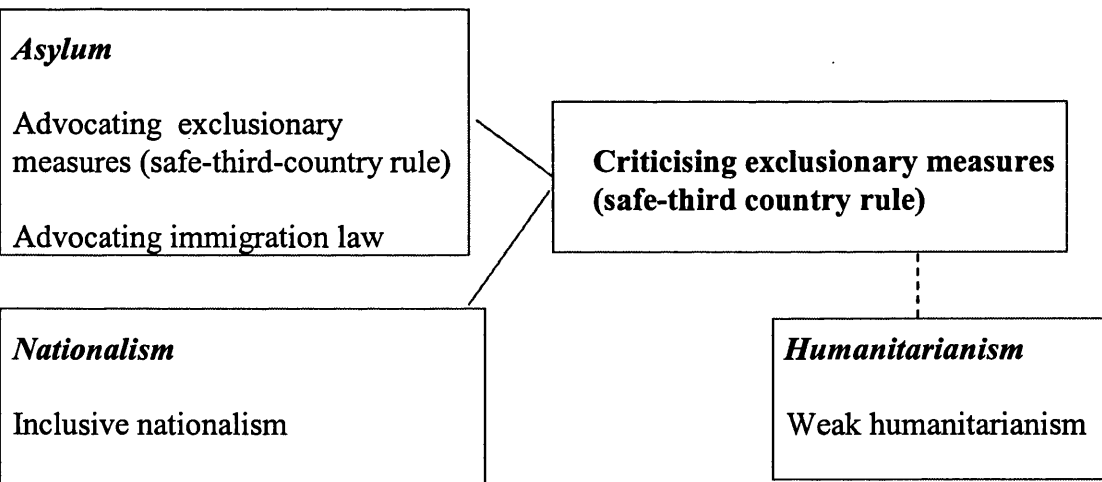


Figure 5.12: The semantic context for the code 'criticising exclusionary measures (safe-third-country rule)'



**Appendix 6.8 Political profiles in 1993**

	<b>Far Left</b>	<b>SPD</b>	<b>FDP</b>	<b>CDU/CSU</b>
<b>Very dominant</b>  <b>(40 % and above)</b>	<ul style="list-style-type: none"> <li>• <b>poe-hum-critneg-intern</b> 83%</li> <li>• <b>np-hum-pos-intern</b> 58%</li> <li>• <b>poe-hum-crit-extern</b> 50%</li> <li>• <b>poe-pol-crit</b> 50%</li> <li>• <b>poe-asylum-neg</b> (due to gov) 50%</li> <li>• <b>poe-hum-pos-intern</b> 42%</li> </ul>	<ul style="list-style-type: none"> <li>• <b>poe-hum-critneg-intern</b> 72%</li> <li>• <b>goal-asylum-neg</b> (due to asylum) 46%</li> <li>• <b>poe-const. change-crit</b> (effectiveness) 43%</li> <li>• <b>np-hum-pos-intern</b> 43%</li> <li>• <b>poe-asylum-neg</b> (due to asylum) 40%</li> </ul>	<ul style="list-style-type: none"> <li>• <b>poe-asylum-neg</b> (due to asylum) 61%</li> <li>• <b>np-hum-pos-intern</b> 56%</li> <li>• <b>goal-asylum-critexcl</b> (safe-countries) 50%</li> <li>• <b>goal-natsta-neg</b> (due to asylum) 50%</li> <li>• <b>goal-asylum-neg</b> (due to asylum) 44%</li> <li>• <b>poe-hum-crit-intern</b> 44%</li> <li>• <b>poe-pol-crit</b> 44%</li> </ul>	<ul style="list-style-type: none"> <li>• <b>poe-hum-pos-intern</b> (const. change) 77%</li> <li>• <b>goal-asylum-neg</b> (due to asylum) 57%</li> <li>• <b>goal-natsta-neg</b> (due to asylum) 53%</li> <li>• <b>goal-asylum-excl</b> 50%</li> <li>• <b>goal-europe-pos</b> (harm) 50%</li> </ul>

<p><b>Dominant</b> <b>(30% and below 40%)</b></p>		<ul style="list-style-type: none"> <li>• poe-hum-critneg-extern 35%</li> <li>goal-immigr-incl (law) 33%</li> </ul>	<ul style="list-style-type: none"> <li>• goal-immigr-incl (law) 39%</li> <li>• poe-const.change-crit (effectiveness) 39%</li> <li>• goal-proced-pos 33%</li> <li>• poe-europe-pos (harm) 33%</li> <li>poe-hum-pos-intern (const.change) 33%</li> <li>• poe-pol-pos 33%</li> </ul>	<ul style="list-style-type: none"> <li>• np-hum-neg-intern 38%</li> <li>• np-nat-excl 38%</li> <li>• goal-asylum-excl (safe-countries) 30%</li> <li>• poe-asylum-neg (due to asylum) 30%</li> </ul>
<p><b>Fairly dominant</b> <b>(20% to below 30%)</b></p>	<ul style="list-style-type: none"> <li>• poe-europe-crit (bilat) 25%</li> </ul>	<ul style="list-style-type: none"> <li>• poe-pol-crit 27%</li> <li>• poe-hum-pos-intern (const.change) 26%</li> </ul>	<ul style="list-style-type: none"> <li>• goal-asylum-excl 22%</li> <li>• poe-hum-pos-intern 22%</li> <li>• np-hum-pos-extern 22%</li> </ul>	<ul style="list-style-type: none"> <li>• np-hum-pos-extern 29%</li> <li>• poe-pol-crit 23%</li> <li>• goal-asylum-excl (benefits) 20%</li> <li>• poe-hum-pos-extern 20%</li> </ul>

<p><b>Not dominant (10% to below 20%)</b></p>	<ul style="list-style-type: none"> <li>• <b>poe-natsta-neg</b> (not due to asylum) 17%</li> <li>• <b>poe-xeno-neg</b> (not due to asylum) 17%</li> </ul>	<ul style="list-style-type: none"> <li>• <b>goal-asylum-critexcl</b> (safe-countries) 17%</li> <li>• <b>goal-proced-pos</b> 16%</li> <li>• <b>goal-natsta-neg</b> (due to asylum) 15%</li> <li>• <b>goal-asylum-excl</b> (safe countries) 12%</li> <li>• <b>poe-asylum-neg</b> (due to government) 13%</li> <li>• <b>poe-hum-pos-intern</b> 12%</li> </ul>	<ul style="list-style-type: none"> <li>• <b>poe-hum-crit-extern</b> 17%</li> <li>• <b>np-nat-incl</b> 11%</li> </ul>	<ul style="list-style-type: none"> <li>• <b>poe-const. change-pos (history)</b> 17%</li> <li>• <b>poe-hum-pos-intern</b> 17%</li> <li>• <b>poe-xeno-neg</b> (due to asylum) 17%</li> <li>• <b>poe-europe-pos (bilat)</b> 13%</li> <li>• <b>poe-europe-pos (harm)</b> 13%</li> <li>• <b>poe-hum-crit-intern</b> 13%</li> </ul>
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**Appendix 6.9 Profiles of justification schemes of supporters and rejecters of SPD and FDP (1993)**

	<b>SPD</b>	<b>FDP</b>
<b>Supporters</b>	<ul style="list-style-type: none"> <li>• poe-hum-pos (const.change) 63%</li> <li>• poe-asylum-neg (due to asylum) 40 %</li> <li>• poe-hum-critneg-intern 33 %</li> <li>• goal-natsta-neg (due to asylum) 33 %</li> <li>• goal-asylum-excl 27 %</li> <li>• np-hum-pos-extern 27 %</li> </ul>	<ul style="list-style-type: none"> <li>• poe-asylum-neg (due to asylum) 64 %</li> <li>• gal-asylum-neg (due to asylum) 64 %</li> <li>• goal-natsta-neg (due to asylum) 55 %</li> <li>• poe-hum-pos-ca 45 %</li> <li>• np-hum-pos-intern 45 %</li> <li>• np-hum-pos-extern 36%</li> <li>• goal-asylum-critexcl (safe countries) 36%</li> <li>• goal-asylum-excl (safe countries) 36%</li> <li>• poe-const.change-crit (effectiveness) 27%</li> <li>• goal-immigr-incl (law) 27%</li> <li>• poe-europe-pos (harm) 27%</li> <li>• poe-hum-pos-intern 27%</li> </ul>
<b>Rejecters</b>	<ul style="list-style-type: none"> <li>• poe-hum-critneg-intern 94%</li> <li>• poe-const.change-crit (effectiveness) 63%</li> <li>• poe-hum-critneg-extern 56 %</li> <li>• np-hum-pos-intern 50 %</li> <li>• goal-immigr-incl (law) 48%</li> <li>• poe-asylum-neg (due to asylum) 40 %</li> <li>• goal-asylum-neg (due to asylum) 40%</li> <li>• goal-proced-pos 21 %</li> </ul>	<ul style="list-style-type: none"> <li>• poe-hum-critneg-intern 86%</li> <li>• np-hum-pos-intern 71%</li> <li>• poe-asylum-critexcl (safe countries) 71%</li> <li>• poe-const.change-crit (effectiveness) 57%</li> <li>• poe-asylum-neg (due to asylum) 57%</li> <li>• poe-hum-critneg-extern 43%</li> <li>• goal-immigr-incl(law) 57%</li> <li>• goal-proced-pos 57%</li> <li>• goal-natsta-neg (due to asylum) 43%</li> <li>• poe-europe-pos (harm) 43%</li> </ul>

**Appendix 6.10 Significant links between ‘dominant’ and ‘fairly dominant’ themes controlled by party membership**

<b>Political party</b>	<b>Dominant themes</b>	<b>Significance</b>
<b>Far Left</b>		no significant links between themes
<b>SPD (supporters)</b>	<p><b>np-hum-pos-extern</b> and poe-hum-pos-intern (const. change)</p> <p><b>poe-hum-pos-intern (const. change)</b> and np-hum-pos-extern</p>	<p>.413; p=.023</p> <p>.413; p=.023</p>
<b>SPD (rejecters)</b>	<p><b>poe-asylum-neg (due to asylum)</b> and poe-hum-critneg-intern np-hum-pos-extern np-hum-pos-intern goal-asylum-neg (due to asylum) poe-const.change-crit (effectiveness) goal-immigr-incl (law)</p> <p><b>poe-hum-critneg-intern</b> and poe-asylum-neg (due to asylum) np-hum-pos-extern goal-asylum-neg (due to asylum) poe-hum-critneg-extern goal-immigr-incl (law)</p> <p><b>np-hum-pos-intern</b> and poe-asylum-neg (due to asylum) goal-asylum-neg (due to asylum)</p>	<p>.449; p=.001</p> <p>.783; p=.000</p> <p>.385; p=.005</p> <p>.723; p=.000</p> <p>.347; p=.012</p> <p>.274; p=.050</p> <p>.449; p=.001</p> <p>.476; p=.000</p> <p>.558; p=.000</p> <p>.398; p=.003</p> <p>.477; p=.000</p> <p>.385; p=.005</p> <p>.360; p=.009</p>

Political party	Dominant themes	Significance
SPD (rejecters)	<b>goal-asylum-neg (due to asylum)</b>	
	and	
	poe-asylum-neg (due to asylum)	.723; p=.000
	poe-hum-critneg-intern	.558; p=.000
	np-hum-pos-intern	.360; p=.009
	<b>poe-const. change-crit (effectiveness)</b>	
	and	
	poe-asylum-neg (due to asylum)	.347; p=.012
	goal-asylum-neg (due to asylum)	.322; p=.020
	goal-immigr-incl (law)	.454; p=.001
	<b>poe-hum-critneg-extern</b>	
	and	
	poe-hum-critneg-intern	.398; p=.003
	goal-immigr-incl (law)	.304; p=.029
	goal-proced-pos	.296; p=.033
	<b>goal-asylum-incl (law)</b>	
	and	
	poe-asylum-neg (due to asylum)	.274; p=.050
poe-hum-critneg-intern	.477; p=.000	
goal-asylum-neg (due to asylum)	.553; p=.000	
poe-const.change-crit (effectiveness)	.454; p=.001	
poe-hum-critneg-extern	.304; p=.029	
<b>goal-proced-pos</b>		
and		
poe-hum-critneg-extern	.296; p=.033	

Political party	Dominant themes	Significance
FDP (supporters)	<p><b>poe-hum-pos-intern (const.change)</b> and poe-europe-pos (harm)</p>	.742; p=.009
	<p><b>poe-europe-pos (harm)</b> and poe-hum-pos-intern (const.change)</p>	.742; p=.009
	<p><b>goal-immigr-incl (law)</b> and poe-const.change-crit (effectiveness)</p>	.920; p=.000
	<p>goal-asylum-critexcl (safe countries)</p>	.888; p=.000
	<p><b>goal-natsta-neg (due to asylum)</b> and poe-const.change-crit (effectiveness)</p>	.667; p=.025
	<p><b>goal-asylum-critexcl (safe countries)</b> and poe-const.change-crit (effectiveness)</p>	.939; p=.000
	<p><b>poe-const.change-crit (effectiveness)</b> and</p>	.920; p=.000
	<p>goal-immigr-incl (law)</p>	.667; p=.025
	<p>goal-asylum-critexcl (safe countries)</p>	.939; p=.000
	<p>poe-hum-critneg-intern</p> <p><b>goal-natsta-neg (due to asylum)</b> and goal-asylum-neg (due to asylum)</p>	.877; p=.000  .899; p=.000



<b>Political party</b>	<b>Dominant themes</b>	<b>Significance</b>
<b>FDP (supporters)</b>	<b>goal-asylum-critexcl (safe countries)</b> and <b>goal-immigr-incl (law)</b>	.833; p=.001
	<b>goal-asylum-excl (safe countries)</b> and <b>np-hum-pos-extern</b>	.728; p=.011
	<b>np-hum-pos-extern</b> and <b>goal-asylum-excl (safe countries)</b>	.728; p=.011
<b>FDP (rejecters)</b>	<b>goal-natsta-neg (due to asylum)</b> and <b>poe-asylum-neg (due to asylum)</b>	.766; p=.045
	<b>goal-asylum-critexcl (safe countries)</b> and <b>poe-const.change-crit (effectiveness)</b>	.926; p=.003
	<b>poe-hum-critneg-intern</b> and <b>poe-europe-pos (harm)</b>	.756; p=.049
	<b>poe-hum-critneg-extern</b> and <b>poe-const.change-crit (effectiveness)</b>	.898; p=.006
	<b>goal-proced-pos</b> and <b>goal-immigr-incl (law)</b> <b>poe-hum-critneg-intern</b>	.891; p=.007 -.864; p=.012
	<b>goal-immigr-incl (law)</b> and <b>poe-hum-critneg-intern</b> <b>goal-proced-pos</b>	-.834; p=.020 .891; p=.007

Political party	Dominant themes	Significance
<b>FDP (rejecters)</b>	<b>poe-asylum-neg (due to asylum)</b> and <b>goal-natsta-neg (due to asylum)</b>	.766; p=.045
	<b>poe-europe-pos (harm)</b> and <b>poe-hum-critneg-intern</b>	.756; p=.049
	<b>poe-const.change-crit (effectiveness)</b> and <b>poe-hum-critneg-extern</b>	.898; p=.006
<b>CDU/CSU</b>	<b>goal-asylum-excl (safe countries)</b> and <b>poe-hum-pos-intern (const.change)</b>	.653; p=.000
	<b>poe-hum-pos-intren (const.change)</b> and <b>goal-asylum-excl (safe countries)</b>	.653; p=.000
	<b>goal-asylum-neg (due to asylum)</b> and <b>goal-asylum-excl</b>	.426; p=.019

### Appendix 6.11 Findings of factor analysis for 1993 debate

Cluster	Associated codes	Reliability test
Humanitarian opposition	poe- <b>const.change.crit</b> (effectiveness) goal- <b>natsta-critneg</b> (due to asylum) poe- <b>hum-crit-int</b> poe- <b>hum-crit-ext</b> poe- <b>hum-pos-intern</b> (const.change)	$\alpha = .6$
Anti-government	goal- <b>immigr-incl</b> (law) goal- <b>natsta-neg</b> (due to gov) poe- <b>asylum-critneg</b> (due to asylum) poe- <b>natsta-neg</b> (not due to asylum)	$\alpha = .79$
Ambiguous opposition	goal- <b>asylum-critexcl</b> (safe countries) goal- <b>asylum-excl</b> (safe countries) np- <b>nat-incl</b> poe- <b>hum-pos-extern</b> poe- <b>hum-pos-intern</b> (const.change) poe- <b>natsta-neg</b> (due to gov)	$\alpha = .59$
Anti-exclusionists	goal- <b>asylum-crit-excl</b> poe- <b>asylum-crit-excl</b>	$\alpha = .74$

**Appendix 6.12 Political profiles in 1991**

<b>Far Left</b>	<b>SPD</b>	<b>FDP</b>	<b>CDU/CSU</b>
<ul style="list-style-type: none"> <li>• poe-xenophobia (not due to asylum) (100%)</li> <li>• goal-asylum-critexcl (77%)</li> <li>• goal-asylum-incl (67%)</li> <li>• np-hum-pos-intern (67%)</li> <li>• np-nat-critexcl (33%)</li> <li>• poe-asylum-neg (due to asylum) (33%)</li> <li>• poe-natsta-neg (due to gov) (33%)</li> <li>• poe-pol-crit (33%)</li> </ul>	<ul style="list-style-type: none"> <li>• poe-natsta-pos (50%)</li> <li>• poe-xeno-neg (not due to asylum) (50%)</li> <li>• goal-asylum-critexcl (37%)</li> <li>• goal-asylum-incl (37%)</li> <li>• np-nat-critexcl (37%)</li> <li>• poe-natsta-neg (due to gov) (37%)</li> <li>• np-hum-pos-intern (25%)</li> <li>• poe-asylum-neg (due to gov) (25%)</li> <li>• poe-asylum-pos (25%)</li> <li>• poe-pol-crit (25%)</li> <li>• goal-asylum-neg (due to asylum) (12%)</li> <li>• poe-asulim-neg (due to asylum) (12%)</li> <li>• poe-asylum-excl (12%)</li> </ul>	<ul style="list-style-type: none"> <li>• np-nat-critexcl (71%)</li> <li>• goal-europe-pos (harm) (43%)</li> <li>• poe-xeno-neg (not due to asylum) (43%)</li> <li>• goal-asylum-critexcl (14%)</li> <li>• goal-asylum-incl (14%)</li> <li>• goal-asylum-neg (due to asylum) (14%)</li> <li>• goal-natsta-neg (due to asylum) (14%)</li> <li>• np-hum-pos-intern (14%)</li> <li>• np-nat-critincl (14%)</li> <li>• poe-asylum-neg (due to asylum) (14%)</li> <li>• poe-pol-crit (14%)</li> </ul>	<ul style="list-style-type: none"> <li>• poe-asylum-neg (due to asylum) (75%)</li> <li>• goal-asylum-neg (due to asylum) (50%)</li> <li>• goal-asylum-excl (37%)</li> <li>• goal-europe-pos (harm) (37%)</li> <li>• np-nat-critexcl (37%)</li> <li>• poe-natsta-pos (37%)</li> <li>• goal-asylum-critexcl (25%)</li> <li>• goal-natsta-neg (not due to asylum) (25%)</li> <li>• np-hum-pos-extern (25%)</li> <li>• np-hum-pos-intern (25%)</li> <li>• poe-natsta-neg (due to asylum)(25%)</li> <li>• goal-asylum-incl (13%)</li> <li>• goal-natsta-neg (due to asylum) (13%)</li> <li>• np-nat-incl (13%)</li> <li>• poe-pol-crit (13%)</li> <li>• poe-xeno-neg (not due to asylum) (13%)</li> <li>• poe-xeno-neg (due to asylum) (13%)</li> </ul>

**Appendix 6.13 Significant links between ‘dominant’ and ‘fairly dominant’ themes controlled by voting behaviour**

Voting behaviour	Dominant themes	Significance
<b>Supporters</b>	<b>poe-hum-critneg-intern</b> and <b>poe-asylum-neg (due to asylum)</b>	-.234; p=.05
	<b>poe-asylum-neg (due to asylum)</b> and <b>poe-hum-critneg-intern</b> <b>goal-asylum-excl</b>	-.234; p=.05 .277; p=.019
	<b>np-hum-pos-intern</b> and <b>poe-hum-pos-intern (const.change)</b>	-.251; p=.035
	<b>goal-asylum-excl (safe countries)</b> and <b>poe-hum-pos-intern (const. change)</b> <b>poe-hum-pos-extern</b>	.520; p=.000 .448; p=.000
	<b>poe-hum-pos-intern (const.change)</b> and <b>np-hum-pos-intern</b> <b>goal-asylum-excl (safe countries)</b>	-.251; p=.035 .520; p=.000
	<b>goal-asylum-excl</b> and <b>goal-asylum-neg (due to asylum)</b>	.277; p=.019
	<b>poe-hum-pos-extern</b> and <b>goal-asylum-excl (safe countries)</b>	.448; p=.000
	<b>goal-asylum-neg (due to asylum)</b> and <b>goal-asylum-excl</b>	.277, p=.019

Voting behaviour	Dominant themes	Significance
<b>Rejecters</b>	<b>poe-hum-critneg-intern</b> and	
	goal-asylum-neg (due to asylum)	.267; p=.024
	poe-asylum-neg (due to asylum)	.274; p=.021
	np-hum-pos-intern	.257; p=.031
	np-hum-pos-extern	.319; p=.007
	poe-hum-critneg-extern	.289; p=.014
	<b>goal-asylum-neg (due to asylum)</b> and	
	poe-asylum-neg (due to asylum)	.730; p=.000
	np-hum-pos-intern	.308; p=.009
	np-hum-pos-extern	.683; p=.000
	poe-const. change-crit (effectiveness)	.284; p=.016
	goal-immigr-incl (law)	.582; p=.000
	<b>poe-asylum-neg (due to asylum)</b> and	
	np-hum-pos-extern	.733; p=.000
	poe-const. change-crit (effectiveness)	.416; p=.000
	goal-immigr-incl (law)	.362; p=.002
	<b>np-hum-pos-intern</b> and	
	poe-asylum-neg (due to asylum)	.365; p=.002
	np-hum-pos-extern	.401; p=.001
	<b>np-hum-pos-extern</b> and	
	poe-hum-critneg-intern	.319; p=.007
	goal-asylum-neg (due to asylum)	.683; p=.000
	poe-asylum-neg (due to asylum)	.733; p=.000
	np-hum-pos-intern	.401; p=.001
	poe-const. change-crit (effectiveness)	.471; p=.000
	goal-immigr-incl (law)	.347; p=.003
	<b>poe-const. change-crit (effectiveness)</b> and	

goal-asylum-neg (due to asylum)	.284; p=.016
poe-asylum-neg (due to asylum)	.416; p=.000
np-hum-pos-extern	.471; p=.000
goal-immigr-incl (law)	.465; p=.000
<b>poe-critneg-external</b> and poe-critneg-internal	.289; p=.014
<b>goal-immigr-incl (law)</b> and goal-asylum-neg (due to asylum)	.582; p=.000
poe-asylum-neg (due to asylum)	.362; p=.002
np-hum-pos-extern	.347; p=.003
poe-const. change-crit (effectiveness)	.465; p=.000
poe-asylum-neg (due to gov)	-.251; p=.035

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## Newspapers and journals

ASB Magazin (*Arbeiter Samariter Bund*)

BILD Zeitung  
Frankfurter Allgemeine Zeitung  
Frankfurter Rundschau  
Prospect Magazine  
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Süddeutsche Zeitung  
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Die Zeit