

The Emergence of the ‘Duldung Light’: Managing Deportability, Sanctioning Illegibility

Law, Culture and the Humanities
1–25

© The Author(s) 2026



Article reuse guidelines:
sagepub.com/journals-permissions
DOI: 10.1177/17438721261419501
journals.sagepub.com/home/lch



Kelly Bescherer 

Leuphana Universität Lüneburg, Germany

Abstract

Over the past several decades, immigration authorities in Germany have framed ‘unclarified identity’ as a problem, calling for increasingly complicated methodologies to make migrant bodies legible to state deportation efforts. These efforts include technical devices and information infrastructures, such as fingerprint scanners or databases, but also specific administrative logics, such as the in-between status of the Duldung Light ‘for persons without a clarified identity’, a suspended deportation status that pressures individuals to attend embassy hearings or reveal their identity documents by imposing sanctions such as a ban from employment and a severe reduction of social benefits. This article traces the emergence of the Duldung Light and explores the political function of connected forms of state sanctioning, some aimed at controlling larger movements by discouraging migration, others aimed at pressuring individuals to perform nationality. The findings additionally point to at times contradictory logics within state efforts to produce and manage deportability.

Keywords

deportability, deportation, Duldung, identification, migrant struggles, sanctions

1. Introduction

In 1997, a Bavarian newspaper commented on the case of a West African man whom police discovered with three different identity documents during a raid. To the dismay of the German police, it was unclear which of these documents, if any, was ‘real’:

The authorities are particularly worried. Illegals are normally deported to their country of origin. But what if they can’t be identified? . . . Maybe it can’t be determined [to which country

Corresponding author:

Kelly Bescherer, Leuphana Universität Lüneburg, Universitätsallee 1, Lüneburg 21335, Germany.
Email: kelly.bescherer@stud.leuphana.de

someone should be deported]. African state borders are largely lines drawn arbitrarily onto the map. They are the result of decisions at the green table of the colonial powers . . . David Brown or Ronald Black [a man with a Ghanaian, a Liberian, and a Dutch passport] is the materialised disturbance of the European order in Ingolstadt. For the German justice system, he becomes a problem that it can only solve by clearly assigning him to a more or less fictitious state entity.¹

The article referred to an anxiety that had increasingly troubled German state authorities over the previous years: when migrants who have received a deportation order do not have identity documents clearly tying them to a specific nation state, it is often impossible for immigration officers to organize their deportation.

Many operations of state power rely deeply on practices of naming and categorizing within prevailing identification schemes. As James C. Scott argues in his book *Seeing Like a State*, the project of making human and geographic landscapes ‘legible’ to the state gaze is, therefore, tightly intertwined with the practices of modern nation-states.² In the context of deportation, related practices, devices and infrastructures include things such as birth registration databases or biometric technologies, but also legal assemblages aimed at coercing undocumented migrants to cooperate by actively ‘confessing’ their nationality and producing corresponding evidence, thereby making themselves ‘legible’ within state-based identification schemes. This article explores one such legal regime, the Duldung Light. Introduced in Germany in 2019, the status exemplifies this confessionalary legal logic. As a specific, more punitive sub-form of Germany’s already precarious suspended deportation status (‘Duldung’, literally ‘toleration’),³ the Duldung ‘Light’ penalizes migrants without a ‘clarified identity’ in various ways if they do not cooperate by revealing their nationality and handing in identity documents. This article asks how this confessionalary legal logic of the Duldung Light emerged historically in Germany and what its political functions are, proceeding from a series of observations about the tensions inherent in the status.

Duldung certificates are documents attesting to the temporary unenforceability of a deportation order, thereby granting limited rights such as access to social benefits. The Duldung Light, an even more precarious sub-form of the Duldung specifically for migrants without identity documents, penalizes migrants in various ways if they do not ‘cooperate’ [*mitwirken*] and provide proof of nationality. Penalties include a ban on working, a reduction of social benefits, limitations on movement and place of residence, and exclusion from accessing a better status. The introduction of the status was driven by the state anxieties mentioned above and, as I explore throughout the article, is prefigured

1. R. Kreissl, “Alles Sudan Oder Was? Was Nomaden Mit Ungewisser Herkunft in Bayern Erwartet,” *Süddeutsche Zeitung*, 11 November 1997, p. 13. Author’s translation. As discussion of the Duldung has taken place largely in German-language literature, most of the quotes cited in this paper were likewise translated from German to English and this will subsequently not be explicitly indicated.

2. Cf. J. C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, CT: Yale University Press, 1998).

3. Technically, the ‘Duldung Light’ is not a separate status but rather an ancillary clause attached to the Duldung status leading to specific restrictions, as defined in Section 60b of the current German Residence Act (AufenthG).

by a longer history of sanctions connected to undocumentedness and managing Germany's labour regime. However, the Duldung Light status inhabits a somewhat contradictory position from the state perspective, prompting questions about the intention behind it. Many Duldung Light-holders remain stuck in this in-between state for years in a sort of stalemate: state authorities are often unable to organize their deportation, yet there is also limited incentive to comply with the immigration office's demand to confess and perform nationality, as if migrants reveal their nationality they may be deported as a result. Duldung Light-holders are also generally blocked from accessing regularization statuses – amongst other reasons, this is because regularization usually requires work, something banned for Duldung Light-holders. By barring Duldung Light-holders from working, the status forces them to subsist on social benefits, leading to increased state costs and making its economic logic from a state perspective not obvious.⁴

In this article, I attempt to better understand the political function of the precarious (non-)status of the 'Duldung Light' by tracing its historical emergence in post-war (West) Germany.⁵ I also trace the related emergence of state anxieties around 'unclarified identity'. While not exclusively looking at deportations to West Africa, I focus especially on German authorities' targeting of the region for deportation, as West African authorities have, for several decades, been accused by German and EU authorities of non-cooperation on deportation-related identification and the region has been set as a priority for deportations. German state authorities' attempts to impose nationality upon West African migrants are also particularly contentious, as pointed out by the author of the newspaper article cited above. This is due not only to the link between identification and deportation, which is often contested by both the West African diaspora as well as state actors,⁶ but also because the state identities imposed through deportation are often difficult to disentangle from the coloniality of the history of nation-making in the African continent, with divisions often forged through the 'borders of Berlin'.⁷

-
4. Duldung Light-holders are typically still eligible for social assistance including housing, medical care and a small monthly stipend (albeit at a level significantly below that considered the 'minimum for existence' for German citizens, and also far lower than the already smaller amount granted to asylum seekers and 'regular' Duldung holders).
 5. This paper looks only at the deportation regime in West Germany in the period prior to reunification. The migration regime in East Germany followed a different trajectory, which is unfortunately outside of the scope of this paper.
 6. F. Zanker et al. *Challenges in EU-African Migration Cooperation: West African Perspectives on Forced Return*, Mercator Dialogue on Asylum and Migration (Arnold-Bergstraesser-Institute, 2019), <https://www.arnold-bergstraesser.de/publications/challenges-eu-african-migration-cooperation-west-african-perspectives-forced-return>.
 7. A. Korvensyrjä, "The 'Borders of Berlin': West African Protests and the Coloniality of Euro-African Deportation Cooperation," *Geoforum* 161 (2025): 104205, <https://doi.org/10.1016/j.geoforum.2025.104205>. On the coloniality of return practices, see also: N. E. Qadim, "Postcolonial Challenges to Migration Control: French–Moroccan Cooperation Practices on Forced Returns," *Security Dialogue* 45, no. 3: 242–61, <https://doi.org/10.1177/0967010614533139>; B. Kalir, "Departheid: The Draconian Governance of Illegalized Migrants in Western States," *Conflict and Society* 5, no. 1 (2019): 19–40, <https://doi.org/10.3167/arcs.2019.050102>; A. Sylla and S. U. Schultz, "Mali: Abschiebungen als postkoloniale Praxis," *PERIPHERIE – Politik • Ökonomie • Kultur* 3 (2019): 389–411.

Competing state imperatives to produce labour and make migrants ‘legible’⁸ to the state gaze have led it to pursue often contradictory objectives, as demonstrated by the history of related work sanctions imposed by German authorities on Duldung-holders. Through sanctions, immigration officers aim to push migrants to cooperate in organizing their own deportation by attending embassy hearings or procuring identity documents. Yet the state project of producing a confessional subject by pursuing a complicated regime of sanctions – with the aim of making migrants ‘legible’ within the German deportation regime – at times clashed with competing state logics aimed at producing labour. The history of the Duldung Light and related sanctions mechanisms follows a complicated and at times contradictory trajectory, shifting between different logics across time. Moreover, the history of the Duldung Light demonstrates that compromises around legal categories and sanctions are also significantly shaped by struggle. Tactics of persistence, withdrawal and subversion employed by Duldung-holders also constitute a significant force over the category’s history, something evident in the continuation of the category of the Duldung itself and of regularization possibilities across several decades.

In the following sections, I first describe a tension between the state imperative to generate legibility through creating a confessional subject and the role of deportability within flexible labour regimes in Germany, situating the article within existing literature on the Duldung and the production of deportability. After a brief methodological note, I proceed to trace the historical trajectory of German state actors’ problematization of ‘unclarified identity’ and related sanctions across three sections. First, I look at emerging state concerns with ‘unclarified identity’ in the late 1980s and 1990s in Germany. I trace how related state initiatives, such as a state working group aimed at facilitating deportation (AG Rückführung), pushed for databases, nationality-evidence-gathering mechanisms in the asylum procedure, and biometric identification technologies, but also specific legal sanctions to make migrants transnationally legible within the German deportation regime. Second, I look at how the Duldung category preceded the increasing push for deportation in these years. The status was initially introduced to facilitate work, yet was linked to different modes of sanctioning across the decades of its existence. I distinguish between group-based sanctions aimed at discouraging larger migratory movements and individual sanctions aimed at producing cooperation on deportation and a confessional subject. Importantly, the Duldung Light ‘for persons with an unclarified identity’ often clashed with the more economic goals pursued by sanctions and specific sub-forms of the Duldung at other times. Third, I argue that the continuation of the Duldung status over half a century despite lawmakers frequent considerations of abolishing it attests not only to these conflicting logics but also to the often successful politics of persistence of migrants cast as undesirable by German state authorities, and that the sanctions regime around undocumentedness in Germany must, therefore, also be understood in terms of compromise between various forces.

II. Between Legibility and Deportability: Conflicting Logics of the Duldung in the German Deportation Regime

German immigration authorities tend to systematically distrust the identity claims of migrants, especially those who are racialized or come from countries in the Global

8. Scott, *Seeing Like a State*.

South,⁹ declaring their statements to be an insufficient and unreliable source of truth. This fundamental distrust has driven a growing use of identification technologies over the past decades, allowing authorities to link migrant bodies to state-bound identities even in the absence of documents. State actors thereby aim to bypass the need for self-reporting as a source of truth by substituting it with various technological forms of truth-making, such as biometric databases.¹⁰ However, in the case of deportation – a necessarily transnational procedure – state authorities regularly find themselves unable to unilaterally enforce such truth claims. Unlike in their own territory, German state authorities' insistence that a given person is, for instance, Senegalese must also be validated by the Senegalese authorities before a deportation can take place. Senegalese authorities may, in turn, contest German authorities' claims, referring to their own records, or insist on statements and evidence provided by the person themselves. Legal logics aimed at coercing confession constitute one response of German authorities to this dilemma of transnational conflicts over legibility.

Such efforts connect to an important contradiction raised by Daniele Lorenzini and Martina Tazzioli in an article on the 'confessional subject' in the post-colonial present: although European state authorities often cast migrants coming from Europe's former colonies as subjects incapable of telling the truth, frequently accusing them of falsehood and deception, they may at the same time require them to continuously perform truth in various ways through the act of confession.¹¹ Lorenzini and Tazzioli explain this tension with reference to the asylum procedure, during which applicants are required to undergo lengthy interviews in which they must tell asylum officers a detailed, contradiction-free story and perform their belonging within the various protection categories foreseen by the asylum system. Despite the great pressure put on asylum applicants to perform their story truthfully, however, this performance may ultimately matter little, since other factors such as nationality often predetermine the outcome of asylum procedures.

A similar tension becomes evident in procedures around 'revealing' identity. State actors regularly accuse migrants of being unreliable narrators and often do not accept the identity claims they make, yet may nevertheless insist that they undertake various actions to perform their identity and nationality, such as attending embassy hearings or providing lengthy statements about their country of origin. Since migrants are at once demanded to tell the truth, yet their speech is also regularly disregarded, this can lead to a conundrum, creating an essentially unfulfillable demand that must be performed over and over again. The Duldung Light status embodies this sort of often Sisyphean obligation.

According to Section 60b of the Residence Act, the status is issued as a penalty to a migrant when 'deportation cannot be carried out for reasons for which they themselves

-
9. K. Bescherer and S. Scheel, "Regimes of Proof: On Contested Identities in Border and Migration Control," *International Migration* 63, no. 6 (2025): e70099.
 10. M. Leese, "Fixing State Vision: Interoperability, Biometrics, and Identity Management in the EU," *Geopolitics* 27, no. 1 (2022): 113–33; G. Glouftsiou and S. Scheel, "An Inquiry into the Digitisation of Border and Migration Management: Performativity, Contestation and Heterogeneous Engineering," *Third World Quarterly* 42, no. 1 (2021): 123–40.
 11. D. Lorenzini and M. Tazzioli, "Confessional Subjects and Conducts of Non-Truth: Foucault, Fanon, and the Making of the Subject," *Theory, Culture & Society* 35, no. 1 (2018): 71–90, <https://doi.org/10.1177/0263276416678291>.

are responsible, because they created the obstacle to deportation through deception about their identity or nationality or false statements or [do] not fulfill reasonable actions for obtaining a passport'. Although the law in theory foresees that actions other than obtaining a passport, such as providing a statement or appearing at an embassy, can be accepted as a reasonable effort (as there are often practical hurdles to obtaining a passport), many practitioners report that evidence other than a biometric passport is often not accepted as sufficient to escape the sanctions regime of the Duldung.¹² And even if migrants can fulfill the lengthy requirements demanded of them by the immigration office and present a passport, they may be deported as a result, leading to a situation of stalemate that can often continue for years.

A growing body of literature has explored the wider importance of Germany's suspended deportation status (Duldung) – of which the Duldung Light is just one sub-form – and the connected important role of ambivalence in the German deportation regime.¹³ As a status, the Duldung has been characterized variously as an 'uncertain residence status, particularly in a temporal sense',¹⁴ a 'flexible container' and 'non-status' of 'limitless temporariness',¹⁵ and a denial of 'legal certainty'.¹⁶ However, the Duldung is a relatively broad category that can be applied in many cases where deportation is not possible, also including medical causes, a lack of flight connections or family ties. The emergence of the more punitive Duldung Light status, specifically 'for persons with an unclarified identity' remains relatively under-explored, as well as the interaction between legal sanctions and broader shifts towards the introduction of digital identification technologies. Antje Ellermann and Aino Korvensyrjä's important works on migrant struggles around the Duldung and return papers are important exceptions in this regard;¹⁷ however, in this article, I trace more specifically the history of sanctions connected to the Duldung and their ambivalent political function.

12. A. Fischer-Uebler, "Sag Mir, Wer Du Bist" – Identität Als Schlüssel Zum Recht: Hürden Für Die Identitätsklärung Aus Menschenrechtlicher Perspektive (Deutsches Institut für Menschenrechte, 2025), https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Analyse_Studie/Analyse_Identitaetsklaerung_aus_menschenrechtlicher_Perspektive.pdf.
13. A. McNevin, "Ambivalence and Citizenship: Theorising the Political Claims of Irregular Migrants," *Millennium* 41, no. 2 (2013): 182–200, <https://doi.org/10.1177/0305829812463473>.
14. P. Riecken, *Die Duldung Als Verfassungsproblem: Unrechtmäßiger, Nicht Sanktionierter Aufenthalt von Ausländern in Der Bundesrepublik Deutschland*, Schriften Zum Öffentlichen Recht (SÖR) (Berlin: Duncker & Humblot, 2006), 178.
15. T. Schütze, 'The (Non-)Status of "Duldung": Non-Deportability in Germany and the Politics of Limitless Temporariness,' *Journal of Refugee Studies* 36, no. 3 (2023): 409–29; Riecken, *Die Duldung Als Verfassungsproblem*.
16. A. Ellermann, "The Rule of Law and the Right to Stay: The Moral Claims of Undocumented Migrants," *Politics & Society* 42, no. 3 (2014): 293–308.
17. A. Ellermann, "Undocumented Migrants and Resistance in the Liberal State," *Politics & Society* 38, no. 3 (2010): 408–29, <https://doi.org/10.1177/0032329210373072>; A. Korvensyrjä, *Conflicts over Duldung and Deportation: West African Perspectives on German Immigration Enforcement and European Borders* (unpublished PhD, University of Helsinki, 2024), accessed October 29, 2024, <https://helda.helsinki.fi/items/650ca8ee-9862-451d-b127-fdca7be4cd53>.

The article thus connects a specific analysis of the interplay between deportability and identification regimes to literature on the Duldung and the role of ambivalence. As existing work on the Duldung has explored, the status operates at the threshold of several boundaries, between legality and illegality,¹⁸ temporariness and permanence,¹⁹ registration and undocumentedness,²⁰ inclusion and exclusion, control and resistance. This focus on ambivalence is productive for thinking through state practices of generating legibility and deportability. The Duldung Light and its coercive provisions aim to generate legibility by coercing undocumented migrants to hand in identity papers if they do not comply with so-called ‘duties to cooperate’ [*Mitwirkungspflichten*], such as going to the embassy to apply for identity documents.²¹ Yet related sanctions at times also conflict with competing state initiatives aimed at generating labour power, such as an improved status for migrants who complete a vocational training [*Ausbildungsduldung*] in sectors in which Germany lacks workers, from which Duldung Light-holders are often blocked since they are not allowed to work.

This paper charts out historical developments around conflicting state imperatives of generating labour and legibility through the Duldung, as made evident through Germany’s evolving sanctions regime. The history of the Duldung Light nuances understandings of deportability, which a major strand of literature has explained in terms of its economic function. David Moffette, for instance, describes *arraigo social* in the Spanish context as a ‘probationary period’, arguing that a transitional period of illegality functions as a sifting mechanism within a flexible labour regime.²² Nicholas De Genova, similarly, refers in the US context to what he calls an ‘apprenticeship in “illegality”’, arguing that ‘the legal production of “illegality” provides an apparatus for sustaining Mexican migrants’ vulnerability and tractability – as workers – whose labour-power, inasmuch as it is deportable, becomes an eminently disposable commodity’.²³ Yet competing forms of state racism aimed at squeezing out labour from deportable migrants and squeezing out ‘legibility’ lead to conflicting logics within the Duldung status.

For some Duldung-holders, working bans lead to work in the informal sector.²⁴ However, for many, a working ban leads to prolonged periods of forced inactivity during which they must subsist on extremely reduced social benefits, especially since working bans are often coupled with restrictions on living place, forcing Duldung-holders to live in remote areas where it can be difficult to access informal economies. While no official figures exist on the number of Duldung-holders working in informal economies, my

18. Ellermann, “The Rule of Law and the Right to Stay.”

19. Schütze, “The (Non-)Status of ‘Duldung’.”

20. H. Castañeda, “Deportation Deferred: ‘Illegality’, Visibility, and Recognition in Contemporary Germany,” in *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*, eds. De Genova and Peutz (Durham, NC: Duke University Press, 2010), 245–61.

21. Fischer-Uebler, “‘Sag Mir, Wer Du Bist’.”

22. D. Moffette, “Governing Immigration through Probation,” *Security Dialogue* 45, no. 3 (2014): 262–78.

23. N. De Genova, “The Legal Production of Mexican/Migrant ‘Illegality’,” *Latino Studies* 2, no. 2 (2004): 161.

24. cf. Korvensyrjä, *Conflicts over Duldung and Deportation*.

assertion that many do not find significant forms of informal income comes from observations speaking to hundreds of Duldung-holders while working as an advisor at a legal aid organization in Berlin for seven years, where many to whom I spoke lived in remotely located state housing facilities in the surrounding Brandenburg countryside and often found it highly difficult to commute to Berlin given the extremely limited monthly allowance they received. As Emily Frank argues, labour market exclusion often implies that Duldung-holders are not given even the possibility to ‘demonstrate their economic performance to fulfill the criteria of deservingness’²⁵ within a neoliberal logic of differential inclusion.

The article thus highlights these ambivalences around sanctions regimes in Germany, following the observation of Stuart Hall that:

The ideologies of racism remain contradictory structures, which can function both as the vehicles for the imposition of dominant ideologies, and as the elementary forms for the cultures of resistance. Any attempt to delineate the politics and ideologies of racism which omit these continuing features of struggle and contradiction win an apparent adequacy of explanation only by operating a disabling reductionism.²⁶

In this sense, struggles around legibility and deportability in Germany reveal not only a conjuncture of at times contradictory state objectives, but also the role of migrant resistance. The persistence of the Duldung status across over sixty years attests not only to state attempts to make migrants legible and generate labour, but also to the persistent tactics of migrants seeking to evade state rubrics for legibility.

III. Methodology

Although this article forms part of a larger research project on deportation-related identification practices in Germany that also included ethnographic research, the sources drawn on in this text are primarily of a historical nature. Source material on deportation, the Duldung, and undocumentedness was compiled during two research stays at the German state archive in Koblenz and while consulting the materials held in the Berlin State Library, as well as through searches of the online archives of several German newspapers. My research focused on immigration law in post-war (West) Germany, and particularly the period from 1965, when the Duldung category was first introduced. Within this larger research project, this historical research was aimed at investigating the Duldung Light and state actors’ contemporary concern with ‘identity clarification’ from a genealogical perspective.²⁷

25. E. Frank, “‘Why It’s Different?’: Hierarchies of (Non-) Belonging in German Refugee Categorizations,” *Journal of Immigrant & Refugee Studies* (2025): 9, <https://doi.org/10.1080/15562948.2025.2529497>.

26. S. Hall, “Race, Articulation, and Societies Structured in Dominance,” in *Sociological Theories: Race and Colonialism*, ed. Mary O’Callaghan (Paris: Unesco Press, 1980), 342.

27. M. Foucault, *The Archaeology of Knowledge and the Discourse on Language*, trans. A. M. Sheridan Smith (New York, NY: Pantheon Books, 1972).

The materials consulted primarily consisted of the documents held in the state archive – such as directives from the Ministry of Interior or memos from the border police, or the protocols of different state meetings – as well as contemporary legal commentaries, legal specialist publications and court decisions. Although the aspect of migrant resistance is often not directly visible in state archival materials, it is implicitly present in the persistence of state anxieties around undocumentedness and the legal category of the *Duldung*. Rather than working with material directly speaking to protests against deportations, however, recognizing the role of practices of resistance in state archives often requires a process of reading material against ‘the grain’²⁸ and, to some extent, imagining the realities often left out of the text visible in the archive itself.²⁹ The intense struggles and violence that surround deportation are often only indirectly visible in the archive, as in the seemingly perfunctory comments I found by detention officers who remarked in technical language that it was difficult to organize deportations when prisoners swallowed razor blades.

As shortly alluded to, my perplexity with the *Duldung* Light status was also initially motivated and informed by my work in a legal aid organization in Berlin, where I provided legal consultation and spoke to hundreds of *Duldung*-holders over a period of seven years, in particular from many (officially) French-speaking West and Central African countries.³⁰ While these conversations were not part of my research, they motivated my initial bafflement at the *Duldung* Light status, which often leads to interminable periods of limbo and blocks *Duldung* Light-holders from working even if they would like to, motivating the papers’ initial research question about how and why the status came to exist.

IV. Codifying Deportation, ‘Clarifying’ Identity

In an archival review of jurisprudence connected to the *Duldung*, German state archive documents related to deportation, and newspaper articles from the 1960s, I increasingly encountered a concern with issues referred to by state actors as ‘procuring a passport’ [*Passbeschaffung*] and ‘identity clarification’ [*Identitätsklärung*] in documents beginning from the late 1980s and early 1990s. This was accompanied by an increasing regularization of deportation procedures over a similar period.

Following the Second World War, migration law in Germany was significantly less codified than in the present. In 1962, a journal for police studies described deportation as ‘a centuries old, barely codified institution’.³¹ The continued applicability of National Socialist laws on immigration, the 1938 Foreigner’s Police Regulation [*Ausländerpolizeiverordnung*], was upheld in 1951 and these laws remained in principle in effect in West Germany despite changes of government for roughly two decades. Though recruitment treaties with several

28. A. L. Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (New Haven, CT: Princeton University Press, 2009).

29. S. Hartman, “Venus in Two Acts,” *Small Axe* 12, no. 2 (2008): 1–14.

30. I provided counselling in English, French and German and worked with translators for several other languages, however French was the most prominent language in my work at the organization.

31. Screener, ‘Kriminaltaktisches Spiegelbild’, *Die Polizei*, 23.53 (1962), p. 355.

countries were signed beginning from 1955, only relatively late that there was a move to recast the immigration system as a whole, with the Foreigner's Act entering into force in 1965 after over five years of discussion. The new law, which appears sparse in comparison to today's lengthy catalogue-like Residence Act, didn't list out specific reasons for which individuals could receive a residence permit, stating simply that a residence permit could be issued 'when the presence of the foreigner does not adversely affect the interests of the Federal Republic of Germany'.³²

While deportation was a comparatively less central concern in the first years following the Foreigner's Act, it gradually took on greater medial importance following the 1973 recruitment freeze. Germany's existing worker recruitment practices were largely halted as its' years of post-war 'economic miracle' turned to recession. As a result, the possibilities for obtaining a work permit were greatly restricted, and informal work was increasingly criminalized. This shift was also accompanied by an increase in the number of people without legal residency status – estimates place the number at around 200,000 in 1974.³³ The police grounded a 'foreigners' special unit around this time, with raids and arrests leading to weekly deportation flights from major German airports. In 1974, several thousand deportations took place by air.³⁴

Following a rise in asylum applications, the topic pushed further into public attention in the 1980s, as it became an endlessly repeated political mantra that Germany was 'not a land of immigration'. At the same time, significant, often migrant-led protest movements formed against mounting deportations,³⁵ and pointed to the fact that migrants were often penalized for their political activity and delivered into the hands of persecuting states by German authorities. One prominent case, amongst many others, was that of the politically active student Cemal Kemal Altun, who committed suicide while awaiting deportation to Turkey. German authorities cooperated with the Turkish military government, which had sought Altun for suspected involvement in the death of a politician, despite their knowledge of widespread practices of torture used against political dissidents by the regime.³⁶

Faced with significant opposition to deportation, state authorities also sought new, less obviously repressive modalities to encourage return. In 1983, the so-called Return Help Law [*Rückkehrhilfegesetz*] introduced premiums for 'voluntary' return, offering 10,500 DM plus 1,500 DM per child for people who left Germany by 30 September 1984.³⁷ The measure, however, did not ultimately motivate many people to leave,³⁸ and

32. Riecken, *Die Duldung Als Verfassungsproblem*, 173–7. Riecken points out that this vague formulation left considerable room for interpretation to individual bureaucrats and therefore actually often resulted effectively in a more restrictive praxis compared to the preceding years.

33. While such numbers are necessarily uncertain, this figure appears in numerous press articles from the time, for instance: "Ich hier Bruder besuchen," *Der Spiegel*, 1 June 1975, <https://www.spiegel.de/politik/ich-hier-bruder-besuchen-a-a80d0882-0002-0001-0000-000041483803>.

34. N. Seibert, *Vergessene Proteste: Internationalismus und Antirassismus 1964-1983* (Münster: Unrast, 2008), 134.

35. Ibid.; J. Panagiotidis and F. Wagner, "Migration umkehren? Ausweisungen und Abschiebungen im liberalen Deutschland," *Zeithistorische Forschung* 20 (2023): 7–22.

36. Seibert, *Vergessene Proteste*, 137.

37. K.-H. Meier-Braun, *Integration Und Rückkehr? Zum Ausländerpolitik des Bundes und der Länder, Insbesondere Baden-Württembergs* (Mainz: Grünewald-Kaiser Verlag, 1988), 67–8.

38. Seibert, *Vergessene Proteste*, 135; Meier-Braun, *Integration Und Rückkehr?*, 69.

migrant workers organized against the law, rejecting state demands that they return.³⁹ At the latest from the early 1980s, there was also an observable tendency of enacting migration politics by means of the restrictions of social benefits or replacing cash payments with goods-in-kind, seen as a tool for discouraging migration to Germany in the first place through disincentive.⁴⁰

This mounting state interest in return and managing migratory movements through (dis)incentives was accompanied by an increasing attention to the deportation procedure and the modalities through which other states could be convinced to accept deportations, as well as a growing use of biometric technology in international travel documents. Like deportation itself, however, such procedures increasingly became a site of contestation. German authorities stated that other nations are obliged to accept deportations under international law as a consequence of the principle of sovereignty,⁴¹ which they argued implies that states should necessarily mutually recognize one another's enforcement of who is permitted to reside on their territory, and that they are obliged to readmit their own nationals. Who held the ultimate authority to decide someone's nationality when it was unknown, and how this determination should take place, however, remained rather unclear in its specifics. The states to which German authorities tried to organize deportations, as well as targeted communities, therefore, often rejected authorities' insistence on the straightforwardness of such procedures.⁴²

In documents in the German state archive from the late 1980s, a growing concern with such deportation-related identification procedures can be observed. This is a procedure that, at the time to have not yet been entirely standardized. In a 1988 memo from the German Foreign Office to the Ministry of Interior, for instance, the question of whether Germany could itself issue a document to deport someone to Ghana was discussed with some uncertainty. The Foreign Office doubted whether documents issued by Germany would be accepted by Ghanaian authorities for a deportation as:

the decision as to whether a foreigner's passport [Fremdenpass] should be issued remains at the discretion of the embassy. The position of the Ghanaian authorities regarding the recognition of the foreigner's passport for repatriation is unclear. However, the German Foreign Office doubts whether a German foreigner's passport would be considered sufficient, since under international law only a country's own nationals have to be taken back by the respective home country. The Federal Republic of Germany would have to accept the refusal of the foreigner's passport, since this recognition is examined and decided by each sovereign state.⁴³

-
39. K. Schoenes, "Politiken der freiwilligen Rückführung: Eine Analyse aus der Perspektive der Migration" (unpublished M.A. thesis, Humboldt Universität zu Berlin, 2013), <https://edoc.hu-berlin.de/server/api/core/bitstreams/103386f7-8c47-45c6-b49b-71aac98ca7bf/content>.
 40. R. Ghadban, *Die Libanon-Flüchtlinge in Berlin: zur Integration ethnischer Minderheiten* (Berlin: Das Arabische Buch, 2008), 162–3.
 41. K. Hailbronner, "Readmission Agreements and the Obligation on States Under Public International Law to Readmit Their Own and Foreign Nationals," *Zeitschrift Für Ausländisches Öffentliches Recht Und Völkerrecht* 57 (1997): 1–49.
 42. Aino Korvensyrjä describes such struggles well, contextualizing them as struggles over a continuation of colonial era 'borders of Berlin'. Her work, however, focuses on a somewhat later period beginning from 2015. Cf. Korvensyrjä, "The 'Borders of Berlin'."
 43. Auswärtiges Amt, *Betr.: Ausstellung von Heimreisedokumenten durch die ghanaische Botschaft* (Koblenz: Bundesarchiv, 1988).

Documents issued by the German authorities alone were not sufficient to deport someone to another country. Rather, the state in question needed to acknowledge the person's nationality and issue return papers. To clarify the matter of which nationality someone had, and therefore which state should accept their deportation, procedures such as embassy hearings were gradually established in which representatives of a given state posed migrants questions to assess their nationality. The same memo states that it is:

the task of the immigration authority to present Ghanaian nationals in custody pending deportation at the Ghanaian Embassy if the Embassy finds that the documents submitted by the immigration authority are insufficient for a determination of nationality [. . .] As the Federal Ministry of the Interior confirmed in 1987, personal interviews may be required of embassies in exceptional cases. This is in line with international law and is also practised by other embassies.

Throughout the 1990s, return procedures became increasingly codified through return agreements and clauses in inter-state agreements, and nationality hearings were established as a more standard practice.⁴⁴ In the 1997 article cited in this paper's introduction about a man with Liberian, Ghanaian and Dutch identity documents, the author stated that German authorities planned to organize an identity hearing in Bonn with representatives of the Liberian or Ghanaian embassy to determine the man's 'true' nationality 'on the basis of language knowledge or biological racial [*rassenbiologischen, sic!*] features',⁴⁵ making explicit reference to the racializing practices of such hearings, which critics have often accused of echoing colonial era physiognomy tests.⁴⁶

This growing concern with deportation and the procedures surrounding it in the 1990s took place against an increase in asylum seekers (especially from Eastern Europe following the fall of Communist regimes in the region) and the backdrop of the radical reformulation of the German asylum system in 1993. Post-reunification Germany was shaped by general uncertainty and shaken by widespread incidents of racist violence, such as the infamous 1992 Rostock riot in which a tower block where Vietnamese and Roma communities lived was attacked by a mob and set on fire. Deportations reached a peak with an estimated 50,000 deportations in 1994 (a number significantly higher than in recent years),⁴⁷ or 100,000 in 1993 if also including direct pushbacks [*Zurückschiebungen*] of

44. Korvensyrjä, *Conflicts over Duldung and Deportation*; S. Scheel, *Autonomy of Migration? Appropriating Mobility within Biometric Border Regimes* (Abingdon, UK: Routledge, 2019). See also: C. Lecadet, "Accords de readmission : tensions et ripostes," *Plein droit* 114, no. 3 (2017): 15–18, <https://doi.org/10.3917/pld.114.0015>; J.-P. Cassarino, "Informalising Readmission Agreements in the EU Neighbourhood," *The International Spectator* 42, no. 2 (2007): 179–96; F. Wolf, *Rückübernahmeabkommen Der EU Mit Drittstaaten*, Hallesche Studien Zum Migrationsrecht (Halle: Universitätsverlag Halle-Wittenberg, 2018).

45. Kreissl, "Alles Sudan Oder Was?"

46. A. Korvensyrjä and R. Osa, "Deportation Monitoring in Germany and Nigeria: Asymmetric Strategies, Solidarity and Activist Knowledge Production," *AntiAtlas Journal* 5 (2022), 7.

47. Figure cited in A. Ellermann, *States Against Migrants. Deportation in Germany and the United States* (Cambridge: Cambridge University Press, 2009), 19.

people denied entry.⁴⁸ It was in this context that, in 1993, a federal-state working group on returns was founded ('AG Rückführung' i.e. 'Working Group Return') to increase deportations and look for ways to facilitate and streamline the return procedure.

Mass displacement caused by the Yugoslav Wars was amongst the top discussion points within the working group in its early years, followed closely by the topic of identification procedures and obtaining return documents.⁴⁹ Amongst the issues often discussed in their meetings was the reality that the authorities of countries to which deportations were organized were not always keen to cooperate with German authorities on identification procedures. Already from the early years of the AG Rückführung, the difficulty of organizing deportations to West Africa in particular featured as one of their recurrent concerns. In the 1980s, Ghana, which was struggling with a prolonged period of crisis, was one of the most important countries of origin for asylum seekers.⁵⁰ In the early 1990s, wars and political violence throughout West Africa led to an increasing number of asylum seekers from Liberia, Sierra Leone, Nigeria, Guinea-Bissau and elsewhere.⁵¹ However, despite the serious conflicts many people fled from, recognition rates remained generally extremely low and West African applicants were widely dismissed by asylum authorities as not credible. Despite a series of military regimes and widespread political repression in Nigeria, for instance, not a single person from Nigeria was granted asylum in 1991, of the 8,358 who applied.⁵² Ghana, Senegal, and, initially, Gambia were introduced in 1993 as the first non-European countries deemed 'safe countries of origin' in Germany alongside systematic changes weakening the asylum system in the same year. This led to a general discrediting of the asylum applications of people from these countries. The status was justified by politicians with low recognition rates and vague claims about the purported criminality of West African migrants.⁵³

While several West and Central African countries were regularly approached to ask for cooperation on accepting deportations of undocumented migrants, notes from the working

48. Figure cited in M. Kirchhoff and D. Lorenz, "Between Illegalization, Toleration, and Recognition: Contested Asylum and Deportation Policies in Germany," in *Protest Movements in Deportation and Asylum*, eds. S. Rosenberger, V. Stern, and N. Merhaut (Heidelberg: Springer, 2018), 54.

49. These two topics also overlapped considerably, since Yugoslavia's dissolution into successor states often led to unclarity about the nationalities of migrants from former Yugoslavia and over which authorities were responsible for deportation procedures.

50. Population Data Unit UNHCR, *Asylum Application in Industrialized Countries: 1980–1999. Trends in 37, Mostly Industrialized Countries* (Geneva: UNHCR, 2001), www.unhcr.org/sites/default/files/legacy-pdf/3c3eb40f4.pdf.

51. *Ibid.*

52. Deutscher Bundestag, "Drucksache 12/3589, Antwort der Bundesregierung, Asylbeschleunigung," 30 October 1992, p. 7, <https://dserver.bundestag.de/btd/12/035/1203589.pdf>. The document cites 0 recognitions in 1991, and only 2 in 1992. The 1992 recognition rate for Ghana is cited as 0.3 percent (9 people total).

53. See example the following plenary discussion: Deutscher Bundestag, "Plenarprotokoll 12/160," 26 May 1993, p. 13531, <https://dserver.bundestag.de/btp/12/12160.pdf>. On the role of discourses around migration and criminality in post-reunification Germany, see: C. A. Molnar, "'Greetings from the Apocalypse': Race, Migration, and Fear after German Reunification," *Central European History* 54, no. 3 (2021): 491–515, <https://doi.org/10.1017/S0008938920001090>.

group state that countries it approached were generally not interested in cooperating. A 1997 report states that ‘The Foreign Office does not currently see a realistic possibility to find an African state willing to take in third country nationals. Angola, Benin, Côte d’Ivoire, Guinea, Mali and Senegal have rejected accepting nationals with unclarified identity with reference to the lack of acceptance from their own populations’.⁵⁴

Faced with pushback from the authorities of states to which deportations were organized, German state authorities therefore sought, in parallel, to pursue various methodologies that would allow them to amass additional evidence of nationality, thereby forcing embassies, through a weight of evidence, to acknowledge the identities of deportable people. To this end, ever more measures were included throughout the asylum procedure with the aim of preemptively gathering nationality-related information in order to later be able to establish rejected asylum seekers’ nationalities. The agendas of the AG Rückführung regularly feature various pilot projects in the realm of identity clarification and obtaining passports. At regular meetings, the group discussed measures that would increase their ability to carry out more deportation-related identifications by generating evidence about identity already during asylum seekers’ asylum procedures or even before they entered German territory.

‘From a technical perspective, efforts should be made to improve identity verification at the earliest possible stage after entry’,⁵⁵ the group noted in the protocol of one of their regular meetings. Amongst other measures, the working group pushed for the standard catalogue of questions posed to asylum applicants during their interviews to include ‘several questions whose answers can facilitate a later request for a passport’,⁵⁶ as such information might be useful for later determining someone’s nationality in the case that their asylum claim was later rejected. Today, there is still a list of standard questions posed by the German asylum authorities at the beginning of each asylum interview that include questions such as ‘Can you present me with any other documents about your person (e.g. diplomas, birth certificates, military ID card, drivers licence)?’ and seemingly highly specific questions without obvious relevance for the asylum procedure such as ‘What are the personal details [*Personalien*, e.g. name, date of birth, address, etc.] of your paternal grandfather?’

The asylum procedure was thus increasingly interwoven with the project of deportation, as the knowledge-gathering practices of asylum authorities were increasingly made reference to as a means of producing evidence of nationality. Language analysis used for determining nationality in the asylum procedure was similarly seen by the working group as a source of potential evidence in a subsequent deportation procedure.⁵⁷ In 1997, they pushed to additionally gather data on visa applicants by including visa application information in the Central Foreigners Register (AZR),⁵⁸ prefiguring present-day information

54. B 106/353555, Volume 1, “Stellungnahme Arbeitsgruppe Rückführung,” Bundesarchiv, Koblenz, p. 305.

55. B 106/353555, Volume 1, “Protokoll zur Sitzung der AG ‘Rückführung’ zur ‘Möglichkeiten zur Verbesserung von Verwaltungsabläufe’,” Bundesarchiv, Koblenz, p. 479.

56. *Ibid.*, 480.

57. B 106/353555, Volume 1, “Stellungnahme AG Rückführung,” Bundesarchiv, Koblenz, p. 322.

58. *Ibid.*, 309.

gathering through the Visa Information System.⁵⁹ In 2001, the working group also pushed for access to biometric data held in the fingerprint database of INPOL (a German police information system).⁶⁰

The working group sometimes complained, however, that despite the widespread sources of nationality-related evidence state authorities tried to generate, it was often ultimately still not possible to ‘prove’ someone’s identity without their own cooperation. In 2001, for instance, the AG Rückführung discussed a complaint from Hamburg that the Burkinabe embassy only agreed to identify nationals ‘exclusively over witnesses. For this, the affected person must (voluntarily) appear at the embassy accompanied by two witnesses with Burkinabe nationality’.⁶¹ The plethora of technological modes of evidence-making pursued by German authorities thus remained without success in many cases: migrants’ nationality could frequently not be confirmed without their own participation.

It is in this context that creating pressure on individuals to cooperate with their own deportation was increasingly pursued, particularly by means of sanctions. In parallel to more technical means of identification, so-called ‘duties to cooperate’ [*Mitwirkungspflichten*] gradually became more prevalent within German law as a means of coercing individuals without papers to reveal their identity, as discussed further in the next section. Legal logics coercing migrants to identify themselves, thus, featured as a key accompaniment to broader shifts towards digital identification technologies in the context of deportation. ‘Restrictive conditions concerning taking up work for non-identified Duldung-holders and formulation of the Duldung’ were a topic addressed on several occasions by the AG Rückführung, for instance, in its 2001 meeting.⁶² Similar discussions about penalizing Duldung-workers through work bans also appear in meetings throughout the 1990s,⁶³ though as I explore further in the next section, the framing used to justify these sanctions shifts across time to gradually include an increasing language of individual blame.

V. Work Sanctions, the Duldung and the Production of Labour

Duldung-related working sanctions were thus increasingly pursued in the 1990s as a means of coercing migrants to identify themselves, culminating in the 2019 Duldung Light. These emerged alongside a variety of other state strategies to generate evidence of nationality. As a wider legal status, however, the Duldung predated the increasing pushes for deportation from the mid-1970s and has held shifting functions throughout German

59. Cf. Scheel, *Autonomy of Migration?*

60. B 106/361517, Volume 1, Bundesarchiv, Koblenz, p. 149.

61. *Ibid.*, 143.

62. B 106/361517, Volume 1, “Tagesordnung für die Sitzung der AG ‘Rückführung’ am 15.-16.05.2001,” Bundesarchiv, Koblenz, p. 191.

63. Example, B 106/353555, Volume 1, “Stellungnahme AG Rückführung,” Bundesarchiv, Koblenz, p. 318.

history. While its precise use as a legal instrument has shifted significantly over time, the Duldung has remained a persistent feature across post-war German immigration law and was already present in the first immigration legislation following the Second World War. The 1965 Foreigner's Act [*Ausländergesetz*] first introduced a status under the name in 1965 under Section 17.

The suspended deportation status at once implied that someone is required to leave German territory, yet, seemingly paradoxically, also that their deportation has been temporarily and perhaps even indefinitely suspended due to its practical or legal unenforceability. Even though the Duldung was understood as a tool within the sphere of deportation enforcement law from its beginning,⁶⁴ facilitating deportation does not seem to have been the primary motivation behind the Duldung's initial introduction. The justification for the new 1965 immigration system through which the Duldung was introduced asserted that police law, under which migration had until then been regulated, was no longer sufficient to comprise the reasons that migrants might be present in Germany: 'Since the residence of foreign nationals in the federal territory is also a prerequisite for economic or professional activity, legal regulation must go beyond the realm of the police'.⁶⁵ Within this move towards a more market-based understanding of migration, economic considerations were at least one of the reasons for the Duldung's original introduction. The official explanation for the law observes that:

In the past, the legal status of foreigners who were not allowed to stay in Germany but whose deportation was not carried out, e.g. for political or humanitarian reasons, was not regulated. In order to legalise the stay of such foreigners until their deportation and to give them the opportunity to earn a living through work, the draft introduces the institute of the Duldung.⁶⁶

Although Section 47 of the 1965 law stated that the non-possession of a passport or the evasion of identificatory measures aimed at determining identity and nationality were criminally prosecutable, it also introduced important exceptions to this general rule. The possession of a Duldung freed migrants from prosecution for not only unlawful residence, but also for not possessing a passport.⁶⁷ Thus, though the residence of Duldung-holders in

64. Riecken, *Die Duldung Als Verfassungsproblem*, 178.

65. Deutscher Bundestag, "Drucksache IV/868. Entwurf Eines Gesetzes Über Den Aufenthalt Der Ausländer (Ausländergesetz)," 1962, p. 10.

66. *Ibid.*, 11.

67. Riecken, *Die Duldung Als Verfassungsproblem*, 177; Section 47 Sub-Section 1 Nr. 2 Foreigner's Act 1965. Note also that since its inception, many though – importantly – not all Duldung-holders first applied for humanitarian protection before falling into the status. The logic of the non-punishability of passportless residence for Duldung-holders may therefore also be connected to Article 31 of the Geneva Convention, which in 1951 had already clarified that those seeking protection as a refugee were not to be prosecuted for unauthorized entry if they could demonstrate 'good cause', though the precise meaning of this phrase appears to have been hotly debated since its inception. See: G. S. Goodwin-Gill, "Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-Penalization, Detention, and Protection," in *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, eds E. Feller, V. Türk and F. Nicholson (Cambridge: Cambridge University Press, 2003), 185–252.

Germany is considered in immigration law to be ‘unlawful’ [*nicht rechtmäßig*], the issuance of a Duldung implies that their continued presence alone is not criminally prosecutable [*strafbar*].⁶⁸

In the draft legislation, the illegalization of deportable individuals, which made them unable to pursue legal work, was defined as a problem, and the Duldung was designed as a concession to this reality: ‘In the absence of a residence permit, they cannot pursue gainful employment and are thus forced into illegality’.⁶⁹ The Duldung thus at once was seen to serve an economic function, and also became a way of registering and monitoring individuals who might have otherwise evaded contact with state authorities. Importantly, from its outset, it was also a compromise with the reality that people remained in Germany despite not qualifying for a residence permit.

The Duldung has since been applied as a sort of catch-all status for many different ends since its introduction, and was not initially issued in exactly the same circumstances as in its present iteration. Already at the moment of the Duldung’s inception, lawmakers observed that one reason for which a deportation might be suspended included the possibility that ‘no other state is prepared to accept the person’.⁷⁰ However, for much of its history, the Duldung was applied significantly more widely than currently, serving as a second-rate form of humanitarian protection in cases where someone did not fulfill the requirements for asylum under the German constitution or refugee status according to the Geneva Convention.⁷¹ Following a 1966 decision of the conference of interior ministers to not deport refugees of countries of the Eastern Bloc, even in cases where individuals could not demonstrate individual political persecution, led to the issuance of Duldung to a large group of de facto refugees from these countries for over twenty years until the praxis began to shift in the late 80s. Migrants displaced by the Lebanese Civil War formed another important group of Duldung-holders in the 1980s.⁷²

Working bans as an instrument of migration control first appeared more prominently at the time of the recruitment freeze. In 1973, a working ban for asylum seekers was first introduced. However, this was already reversed in 1975 as it rather predictably led to significant increased costs for the municipalities, because it forced people out of the possibility of legal employment, thereby obliging them to apply for social benefits to sustain themselves.⁷³ In subsequent years, lawmakers experimented with working bans, mostly involving general waiting periods of various lengths rather than absolute bans, arguing

68. N. Cyrus, *Aufenthaltsrechtliche Illegalität in Deutschland: Sozialstrukturbildung – Wechselwirkungen – Politische Optionen* (Oldenburg: Universität Oldenburg, 2004), 11.

69. Riecken, *Die Duldung Als Verfassungsproblem*, 16.

70. Deutscher Bundestag, “Drucksache IV/868,” 10.

71. Riecken, *Die Duldung Als Verfassungsproblem*, 180. Legal commentator Renner argues that Duldung’s use as a lesser form of humanitarian protection ran counter to legislators’ original intentions. See: G. Renner and W. Kanein, *Ausländerrecht. Ausländergesetz Und Asylverfahrensgesetz Mit Materiellem Asylrecht Sowie Arbeits- Und Sozialrechtliche Vorschriften. Kommentar* (Munich: Beck, 1991).

72. Riecken, *Die Duldung Als Verfassungsproblem*.

73. Aktion Bleiberecht, “Arbeitsverbot Für Geflüchtete von 1973 Bis 2015: Verkürzte Betrachtung,” 2015, <https://www.aktionbleiberecht.de/blog/wp-content/uploads/2015/08/Arbeitsverbote-von-1973-bis-heute-%C3%9Cberblick.pdf>.

that this would limit pull effects to Germany and discourage migration.⁷⁴ These working bans were initially largely aimed at sanctioning larger groups of people (e.g. asylum seekers) as a mechanism for discouraging migration generally by creating disincentives rather than at sanctioning the behaviour of specific individuals to facilitate deportation.⁷⁵ Working bans were also accompanied by the use of social benefits as a means of enacting migration politics. Social support for asylum seekers and Duldung-holders was reduced and in part replaced by goods-in-kind, and some social benefits were granted only discretionarily. From 1993 onwards, the Asylum Seekers Social Benefits Law [*Asylbewerberleistungsgesetz*] also clearly separated asylum seekers and Duldung-holders from 'regular' social assistance, granting them only a smaller allowance compared to German citizens.

The concept of the 'Inländerprimat' (primacy of nationals), which affected Duldung-holders and other migrants alike, also made the permission to work conditional upon a check by the Federal Work Agency that no Germans were willing to take the same job, and was established at the latest by 1959.⁷⁶ With some changes, such as the length of applicability, related procedures [*Vorrangsprüfung*] remained largely intact through to 2019.⁷⁷

Nevertheless, Duldung-holders were not principally banned from work initially. In 1966, just one year after the Duldung's introduction, the legal commentator (and police director) Günter Weißmann commented that potential sanctions could be issued in circumstances similar to those later targeted through the Duldung Light, expressing the opinion that: 'The Duldung can also only be granted if the foreigner himself has cooperated on realizing the conditions that could lead to deportation, i.e. if he has submitted the relevant applications for the issue of a passport or passport substitute and the application for an entry permit to the other state. If the foreigner refuses to cooperate in this way, they can still be punished and the immigration office is not obliged to issue a Duldung and provide them with residence and work opportunities'.⁷⁸ Kanein's legal commentary from the same year, however, does not mention the role of documentlessness in its explanation of the Duldung or suggest an obligation to cooperate on deportation.⁷⁹ Legal commentaries consulted from subsequent years also do not present arguments along the lines made by Weißmann, suggesting that this more restrictive interpretation may not have cemented itself as dominant praxis at the time, or at least seems not to have been a prominent enough issue to make it into most contemporary legal commentaries. Whether some

74. Ibid.; Meier-Braun, *Integration Und Rückkehr?*, 13.

75. Ghadban, *Die Libanon-Flüchtlinge in Berlin*.

76. S. Karakayali, *Gespenster der Migration: zur Genealogie illegaler Einwanderung in der Bundesrepublik Deutschland* (Bielefeld: transcript, 2008), 109.

77. Though largely no longer required, the priority check is in fact still not completely abolished for certain professions. While asylum seekers and residence permit-holders are mostly no longer required undergo a priority check to access work, in many cases they must still apply for authorisation for each individual contract from the Federal Work Agency, adding an additional bureaucratic hurdle.

78. G. Weißmann, *Ausländergesetz: Kommentar* (Berlin: Walter de Gruyter & Co, 1966), 142.

79. W. Kanein, *Ausländergesetz Und Die Wesentlich Fremdenrechtlichen Vorschriften: Kommentar* (Munich: C.H. Beck'sche Verlagsbuchhandlung, 1966), 151.

local immigration offices already adopted this approach early on is difficult to say with certainty, given the significant regional variation that has long shaped the implementation of German immigration law due to its federal organization and the significant role of bureaucrats' discretionary power in interpreting legal norms.⁸⁰

The idea of penalizing non-cooperation on deportation thus already emerged early on after the introduction of the Foreigner's Act, but it seems to have become a more widespread praxis only later on. In a 1980 legal commentary, the jurist Werner Kanein commented that, although limitations of the right to work for Duldung-holders was permissible, a 'Duldung is regularly connected with the permission to work'⁸¹ and does not mention any specific potential grounds for sanctions. Kanein notes that having a Duldung was, in fact, much preferable compared to an asylum seeker 'certificate' for those seeking work⁸² 'since employers and landlords are not ready to sign contracts when only such certificates are present'.⁸³ Nevertheless, the short validity periods of the Duldung may have in practice made finding work rather difficult, as the priority check procedure had to be repeated upon each extension.⁸⁴

As discussed in the previous section, along with the specific concern with unclarified identity and missing identity documents that crystallized especially throughout the 1990s, sanctions were increasingly reframed as a matter of the discretion of individual bureaucrats at the immigration office aiming to punish specific individuals for non-cooperation.⁸⁵ Disciplinary strategies for 'micro-managing'⁸⁶ deportability, by sanctioning Duldung-holders for their individual behaviour as a matter of bureaucratic discretion, has become increasingly common in parallel. In 1987, the Waiting Period Act [*Wartezeitgesetz*] introduced a 'labour market ban motivated by aliens law' in Section 19 para. 2 of the Employment Promotion Act [*Arbeitsförderungsgesetz*] and legitimized the already-established practice of prohibiting asylum seekers from taking up gainful employment by imposing conditions. This allowed bureaucrats at the migration office to exercise increased

80. German immigration offices are organized differently in each federal state and many immigration norms permit bureaucrats to apply them according to their own discretion. Local German immigration offices implementation of law has therefore been described by some scholars as frequently chaotic and regionally variable. See: T. G. Eule, *Inside Immigration Law: Migration Management and Policy Application in Germany* (Abingdon: Routledge, 2016).

81. W. Kanein, *Ausländergesetz Und Die Uebrigen Vorschriften Des Fremdenrechts Und Den Einschlaegigen Arbeitsrechtlichen Bedingungen: Kommentar*, 3rd ed (Munich: C.H. Beck'sche Verlagsbuchhandlung, 1980), 171.

82. However, at the time the Duldung was often issued in different circumstances than the present. At that time, in much of Germany it was usual to issue asylum seekers with Duldung during their procedure, while in Bavaria and Berlin there was a divergent practice of issuing 'certificates' to asylum seekers.

83. Kanein, *Ausländergesetz Und Die Uebrigen*, 171.

84. Böcker and Vogel 1997, p. 12.

85. K. Lauber, "Clankriminalität und Migrationsrecht - Eine Sache des Ermessens," *Bürgerrechte & Polizei/CILIP*, 12 August 2023, Zugriffen 4 April 2025, <https://www.cilip.de/2023/08/12/clankriminalitaet-und-migrationsrecht-eine-sache-des-ermessens/>.

86. R. Schweitzer, *Micro-Management of Irregular Migration: Internal Borders and Public Services in London and Barcelona*, 1st ed (Cham: Springer International Publishing, 2022).

discretionary influence on the possibility of employment.⁸⁷ Jurisprudence linking non-cooperation on identification to the issuance of a working ban can subsequently be found increasingly throughout the 1990s.

In 1990, the German Federal Administrative Court re-confirmed that it was permissible to limit the possibility to work for Duldung-holders if there was a ‘public interest’ in doing so.⁸⁸ An analysis of jurisprudence from the time suggests that the practice of banning work for Duldung-holders becomes increasingly prevalent throughout the 1990s. While earlier decisions used a language that centred the purported general public interest in upholding the credibility of the looming threat of deportation for all foreigners, a shift takes place throughout the 1990s towards a language that increasingly framed failed deportation in terms of individual blame. For instance, in summary proceedings in 1999 the Munich Administrative Court upheld the Immigration Office’s assertion that ‘the Immigration Office regards it as lawful to issue a working ban to a foreigner in cases in which a foreigner with a Duldung carries *the decisive responsibility* [emphasis added] for the obstacle to their deportation after the negative conclusion of their asylum procedure’.⁸⁹

In 2004, alongside the new Residence Act, an ordinance on employment was created in parallel. The new Ordinance on the Employment Procedure [*Beschäftigungsverfahrensverordnung*] explicitly made a link between non-cooperation on identity and the right to work in Germany, and states clearly that employment is not to be permitted to those considered to hinder their deportations: ‘in particular when they created an obstacle to deportation through deception about their identity or by providing false information’.⁹⁰ From this time at the latest, the link between sanctioning non-cooperation on identification with a working ban becomes firmly cemented in law. The jurisprudence on the subject increasingly centres the notion of cooperation ‘duties’, which, if violated, imply guilt. For instance, in 2014 the Würzburg Administrative Court argued that:

If the foreigner does not comply with their obligation to obtain home travel documents . . . they are responsible for the obstacle to deportation . . . In this context, they cannot limit themselves solely to fulfilling the obligations specifically imposed on them by the immigration authority, but is rather required to take the initiative independently and take the necessary steps to remove the existing obstacle to departure to the best of their ability.⁹¹

According to this understanding, cooperation thus implies not only fulfilling the ‘duties’ set out in law but increasingly also ‘[taking] initiative’ on one’s own deportation.

Although sanctions on unclarified identity through differentiating the access to social benefits or barring the right to work thus already significantly predate the 2019 introduction of the Duldung Light, the change further stabilized the sanctions instrument and

87. Lauber, “Clankriminalität und Migrationsrecht.”

88. Bundesverwaltungsgericht, 1 B 14.90, 28 December 1990.

89. Verwaltungsgericht München, M 7 S 99.4357, 8 November 1999.

90. Section 11, Ordinance on the Employment Procedure. Section 11 BeschVerfV is later replaced by Section 33 of the Ordinance on the Employment of Foreigners (BeschV), however the logic of the two norms is similar.

91. Verwaltungsgericht Würzburg, W 7 K 14.26, 8 December 2014.

provided more legal clarity on when such sanctions apply. The Duldung ‘for persons without a clarified identity’ was thereby clearly set apart from other forms of Duldung. The justification for the law argued ‘German authorities need to know who is in our country. The obligation to present a passport document must be enforced more strongly for those who are required to leave the country’.⁹² The law cemented the classification of the Duldung Light as a status isolated from other residence possibilities. Periods spent in the possession of a ‘Duldung Light’ do not count towards regularization possibilities such as Section 25b of the Residence Act,⁹³ which otherwise provides Duldung-holders with the possibility to obtain a regular residence permit through work after four to six years in Germany. Time in the status is thus immobilized.⁹⁴ Even without this additional temporal obstacle, making a transition to a legalized status requires overcoming immense difficulties, as without the right to work it is not possible to show employment, generally another key pre-condition for regularization.

While continuing many pre-existing tendencies, the increasing differentiation of the Duldung over the past several years into various sub-forms, such as the Duldung Light, also made increasingly apparent some of the tensions that had long shaped the sanctions regime around the Duldung. Shortly after the introduction of the Duldung Light, two other sub-forms of the Duldung aimed at generating labour were clarified in their own sections of the Residence Act. In 2020 (building on changes first introduced in 2016), a more secure form of Duldung for migrants completing a vocational training was distinguished from other forms of Duldung in Section 60c of the Residence Act [*Ausbildungsduldung*].⁹⁵ Long-term employment was also introduced as a justification for a more secure Duldung status [*Beschäftigungsduldung*]. Yet the working bans of the Duldung Light often made these statuses practically inaccessible, blocking movement between different sub-forms of the Duldung. Sanctions connected to their status ban Duldung Light-holders from working or enrolling in vocational training, thereby making it highly challenging to work in these prioritized fields even if they wish to. Given the highly discretionary nature of the Duldung, if migrants hand in their passport to obtain the right to work and begin a vocational training, they might be allowed to work but, if they are unlucky and meet the wrong caseworker, they might also be deported instead.⁹⁶ To obtain an Employment-Duldung was similarly extremely challenging in practice:

92. Deutscher Bundestag, “Drucksache 19/1004. Gesetzentwurf Der Bundesregierung: Entwurf Eines Zweiten Gesetzes Zur Besseren Durchsetzung Der Ausreisepflicht,” 2019, p. 1.

93. See Section 60b Sub-Section 5 AufenthG.

94. On the temporality of the Duldung, see: K. A. Drangland, “Bordering Through Recalibration: Exploring the Temporality of the German ‘Ausbildungsduldung’”, *Environment and Planning C: Politics and Space* 38, no. 6 (2020): 1128–45, <https://doi.org/10.1177/2399654420915611>.

95. In 2016, an improved Duldung status was already introduced for Duldung-holders completing a vocational training, but first in 2020 given a separate section in the Residence Act. cf. A. Bauer and F. Schreyer, “Ausländerbehörden Und Ungleichheit: Unklare Identität Junger Geflüchteter Und Der Zugang Zu Ausbildung,” *Zeitschrift Für Rechtssoziologie* 39, no. 1 (2019): 112–42, <https://doi.org/10.1515/zfrs-2019-0006>.

96. Cf. Fischer-Uebler, “‘Sag Mir, Wer Du Bist’.”

According to the 2020 version of the law, a person must have worked thirty-five hours a week for eighteen months (twelve of which they must have already had a Duldung) to qualify. This was practically impossible for individuals with a Duldung Light, who were of course not allowed to work in the first place. As of December 2024, according to official figures only 739 people (plus their family members) held an Employment-Duldung.⁹⁷ Practitioners often reported the status was irrelevant given the near impossibility of attaining it (the requirements have now been slightly reduced through a 2024 law). While a higher number of people were able to obtain a Vocational-Training-Duldung, this was still generally associated with great obstacles and uncertainty in switching from the Duldung Light status.⁹⁸

VI. Politics of Persistence and Legal Compromises Around the Duldung

The history of the Duldung and associated sanctions thus demonstrates the competing state logics pursued through the category. However, the ultimately often contradictory status is also a testament to the persistent politics of presence of migrants that German authorities sought to deport. Though, almost since its introduction, politicians promised to eliminate the so-called ‘chain Duldung’ (‘Kettenduldung’, i.e. a Duldung prolonged again and again for short periods over a long duration), with particularly heated discussions to this effect just after the turn of the millennium, it has proven to be a tenacious feature of the German migration regime and continues to play a central role within German immigration law up through the present. Moreover, state authorities regularly made concessions to Duldung-holders over the past decades through periodic amnesties.

From its introduction to the 1980s, the number of Duldung-holders steadily increased. Many were rejected asylum seekers who could not be deported, but in some cases, migrants who came from countries for which there was a deportation ban but little chance of obtaining asylum applied directly for a Duldung, without making an asylum application first.⁹⁹ As of 1986, official figures put the number of Duldung-holders at 50,413.¹⁰⁰ Berlin became home to a particularly high number of Duldung-holders, including a large number of migrants who had been displaced from Lebanon, and in response, began the practice of issuing periodic regularization possibilities, referred to as ‘old case’ regulations. The first of these was in 1984, for migrants from Lebanon who had already been in Germany for many years with a Duldung. Although very few people benefited from this regulation due to its restrictive nature, in 1987, a similar but broader regulation was passed, and later followed by similar practices at a national level.¹⁰¹

97. Deutscher Bundestag, “Drucksache 21/192: Antwort der Bundesregierung,” 2025, <https://dserv.bundestag.de/btd/21/001/2100192.pdf>, p. 39.

98. Drangsdland, “Bordering Through Recalibration”; Bauer and Schreyer, “Ausländerbehörden Und Ungleichheit.”

99. Ghadban, *Die Libanon-Flüchtlinge in Berlin*, 165.

100. Deutscher Bundestag, “Drucksache 10/6004 12.09.86 Schriftliche Fragen mit den in der Woche vom 8. September 1986 eingegangenen Antworten der Bundesregierung,” 1986, pp. 3–4.

101. “Weisung des Berliner Senators für Inneres zur Regelung des Verbleibs von Ausländern (‘Altfall-Regelung’) vom 1.10.1987,” *Informationsbrief Ausländerrecht* 5 (1988): 140–1; Ghadban, *Die Libanon-Flüchtlinge in Berlin*.

In 1990, as legislators were rewriting much of Germany's existing immigration law, they argued that:

The institute of the *Duldung* currently regulated in Section 17 Foreigner's Act 1965 is indispensable. A foreigner's obligation to leave the country cannot always be enforced without delay. Sometimes it is even impossible to enforce it for an unforeseeable period of time.¹⁰²

Major legislative reforms took place several times through the following years, including through the 'Asylum Compromise' of 1993, through which the right to asylum laid out in Germany's post-war constitution was radically diluted. Despite the major reworkings of migration and asylum law that took place in the early 1990s, lawmakers repeatedly defended the existing practice of issuing *Duldung* and a deportation decision even when deportations could not take place. The 1992 justification for the new Asylum Procedure Law [*Asylverfahrensgesetz*], for instance, states:

The grounds for *Duldung* set out in Section 55 (3) Foreigner's Act are of a temporary nature. They do not concern the 'if', but only the timing of the execution of the deportation. . . There are individual cases in which deportation has been successful despite the lack of a passport. The authority must retain the possibility of attempting this.¹⁰³

In 2005, debates around the abolition of the *Duldung* came to a peak again when the Foreigner's Act was replaced by the Residence Act [*Aufenthaltsgesetz*], after over five years of debate and fifty years of applicability. The widespread political dogma that Germany is 'not a land of immigration', always demonstrably false, had grown increasingly untenable, and the new Immigration Law [*Zuwanderungsgesetz*] was a grudging concession that migration should sometimes be facilitated, though it followed a highly regulatory approach that provided possibilities to do so primarily for highly trained specialized workers.¹⁰⁴ Amongst the central debates around the reform had been the demand to abolish the *Duldung*. The *Duldung* does not appear in early drafts of the law and was only re-included very late into parliamentary proceedings. In the words of the Federal Interior Minister, it had been retained as 'an instrument for fine-tuning'.¹⁰⁵ However, legal experts wrote in a commentary on the new law at the time that:

practitioners had however always known that this demand arose from a serious misconception: the imagination that a foreigner can always immediately upon entry either be issued a residence

102. Deutscher Bundestag, "Drucksache 11/6321. Gesetzentwurf der Bundesregierung: Entwurf Für Ein Gesetz Zur Neuregelung Des Ausländerrechts," 1990, p. 76.

103. Deutscher Bundestag, "Drucksache 12/2062. Gesetzentwürfe Der Fraktionen Der CDU/CSU, SPD Und F.D.P.: Entwurf Eines Gesetzes Zur Neuregelung Des Asylverfahrens," 1992, p. 44.

104. See example, M. Bojadžijev, T. Mulot and V. Tsianos, "Kommentar Zum Zuwanderungsgesetz," *Kanak Attak*, 2004, <https://www.kanak-attak.de/ka/text/wander.html>.

105. D. Oberndörfer, "Eine Schande Für Deutschland - Geduldete Ausländer Leben Hierzulande Wie Im Ghetto: Sie Haben Kein Bleiberecht Und Fast Keine Aussicht Auf Arbeit," *Süddeutsche Zeitung*, 10 August 2005.

permit or have their residence ended. In a very considerable number of cases, however, neither the one nor the other is possible, sometimes over years (especially in the case of doubts about identity, passportlessness, etc. [. . .])¹⁰⁶

Lawmakers had found no way around the fact that deportations are often unrealizable: Eliminating the Duldung would have effectively implied a mass-scale illegalization.¹⁰⁷ The persistence of the legal category of the Duldung is also a concession to this reality. While a 2022 law allowing Duldung Light-holders who had been in the country for five years to regularize their status was cast as a one-time possibility,¹⁰⁸ the history of German immigration law demonstrates that lawmakers have regularly made such concessions.

VII. Conclusion

The contradictory agendas pursued through the Duldung across the history of post-war German immigration law thus point to the Duldung as a vehicle through which competing state agendas have been pursued, but which also becomes an important site of struggle for those denied a place within Germany's immigration system. The history of the status thereby points to an understanding of legal norms as the sedimentation of various forms of conflict and struggle.¹⁰⁹ This article has traced the emergence of the Duldung Light, the history of work sanctions connected to the Duldung more broadly, and growing state concerns around 'unclarified identity' in Germany in the 1980s and 90s as exemplified by the AG Rück. The Duldung Light, while in many ways a continuation of tendencies observed in previous decades, crystallized tensions between state attempts to render migrants legible on the one hand, and to generate labour on the other.

Tracing the role of working bans and other Duldung-related sanctions across time further points to the observation that the Duldung never served a single, coherent function. Initially introduced as a pragmatic compromise that legalized presence and enabled work where deportation was not possible, the Duldung gradually became a site for

106. C. Storr, *Kommentar Zum Zuwanderungsgesetz: Aufenthaltsgesetz und Freizügigkeitsgesetz/EU* (Stuttgart: Boorberg, 2005), 397.

107. Bojadžijev, Mulot and Tsianos, "Kommentar Zum Zuwanderungsgesetz."

108. As with many such regularization possibilities, important exclusionary criteria such as a very low threshold for past criminal charges excluded many from this status, however. The law was also criticized as a 'trap' that encouraged migrants to hand in identity documents but could be revoked after eighteen months if they did not find work by the end of this period, making them more deportable than in the first place. Dorothea, "Chancen für wenige," *Bleiberecht Für Alle - statt Chancenfalle!*, 16 December 2022, accessed 2 January 2026, <https://bleiberecht-statt-chancenfalle.net/2022/12/chancen-fuer-wenige/>.

109. Cf. S. Buckel and A. Fischer-Lescano, *Hegemonie gepanzert mit Zwang: Zivilgesellschaft und Politik im Staatsverständnis Antonio Gramscis* (Baden-Baden: Nomos, 2007); S. Buckel, *Welcome to Europe« – Die Grenzen Des Europäischen Migrationsrechts* (Bielefeld: transcript, 2013). Also: W. Brown, 'Suffering Rights as Paradoxes', *Constellations*, 7, no. 2 (2000), 208–229.

disciplining illegibility and differentiating migrants into different sub-statuses. From the 1970s onwards, working restrictions and reduced social benefits were repeatedly mobilized as tools to discourage migration, to manage labour, and later to enforce cooperation with deportation. The 2019 Duldung Light, while to some extent continuing pre-existing policies sanctioning undocumentedness, isolated ‘unclarified identity’ as a ground for exclusion, and foreclosed pathways to regularization that elsewhere hinge on labour market participation. By foregrounding the contradictions of the Duldung Light, I have suggested that sanctions aimed at enforcing cooperation in deportation should be understood less as effective tools of migration control than as symptoms of unresolved tensions within the state’s own projects.

While German authorities have increasingly relied on biometric technologies, databases, and early-stage information gathering to establish nationality in deportation procedures, the history of related efforts to produce ‘identity clarification’ also demonstrates the frequent frustrations of state actors around deportation. Ultimately, the complex legal regimes pursued by states to coerce out ‘truth’ around nationality within the deportation regime underscores the fragility of state projects of legibility in a transnational context, as attempts to make migrants knowable often hinge on the cooperation of other states and on the active performance of nationality by deportable subjects. Legal sanctions regimes such as the Duldung Light respond to this fragility of the deportation regime but do not resolve it, instead shifting responsibility onto migrants through a confessionary logic. Future work might explore similar confessionary legal regimes in other contexts or further unpack the post-colonial dimensions of struggles around deportation-related identification, which is deeply interlinked with conflicts over who holds the authority to transnationally determine national boundaries and citizenship.

Funding

The author disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: Funded by the Deutsche Forschungsgemeinschaft (DFG, German Research Foundation) – Project number 262780673.

ORCID iD

Kelly Bescherer  <https://orcid.org/0009-0006-5426-7888>