

Constructing Society and Its Margins

Austrian Deportation Policy-Making in 1990 and 2005

Abstract: In this article, I examine two episodes of policy-making in the field of deportation policy, in 1990 and 2005, in the context of prevailing social, economic, and border policy dynamics in Austria. In both cases, the emergence of a specific deportable subject served larger issues. In 1990 the construct of the 'economic refugee' shifted the focus towards migration management. In 2005 the notion of asylum abuse distracted from the government's competitive and polarizing political approach.

Keywords: deportation, expulsion, migration, asylum, Austria

In many Western European countries, the 1980s marked a shift in modern-day deportation from being an exceptional measure to becoming a normalized practice of immigration control.¹ Neoliberal reforms, followed by severe economic crises in the Global South and East, as well as a number of civil wars, led to complex migration and refugee movements towards Europe.² Using the argument of saturated labour markets and capitalizing on long-standing cultures of racism towards postcolonial subjects and migrants from former socialist countries, many governments adopted harsher deportation policies and accelerated their enforcement.³ The change was so drastic that deportation scholar Matthew Gibney referred to it as the "deportation

DOI: <https://doi.org/10.25365/oezg-2025-36-3-5>



Accepted for publication after external peer review (double blind)

Judith Welz, PhD-student at the Institute of Contemporary History, University of Innsbruck, Austria;
Judith.welz@student.uibk.ac.at

1 William Walters, *Deportation, Expulsion, and the International Police of Aliens*, in: *Citizenship Studies* 6 (2002), 265–292; Alice Bloch/Liza Schuster, *At the Extremes of Exclusion. Deportation, Detention and Dispersal*, in: *Ethnic and Racial Studies* 28 (2005), 491–512.

2 Fabian Georgi, *Kritik des Migrationsmanagements. Historische Einordnung eines politischen Projekts*, in: *juridikum* 2 (2009), 82–85.

3 Bloch/Schuster, *Extremes*, 2005, 509.

turn”.⁴ In the following years – and in parallel with a general trend in migration policy of classifying, selecting, and stratifying migrants more rigorously according to numerous criteria (key term: ‘migration management’) – the grounds upon which non-citizens could be expelled proliferated. Losing one’s job, failing a language test, or even recovering from a serious health condition could suddenly lead to residence insecurity.⁵

However, while the deportation turn produced a remarkable rise in deportation numbers in the first two decades, from the year 2000 onwards it might be better understood in qualitative terms – namely as the ready availability and sophistication of deportation as a coercive state measure. While the legal basis and technology for large-scale deportation remained in place,⁶ a growing “number of people eligible for removal” were never actually deported.⁷ In an attempt to explain this seeming contradiction, many scholars refer to the liberal paradox: liberal states, they argue, face limitations in carrying out coercive state measures due to self-imposed liberal norms, such as human rights or the proportionality principle.⁸

Nicholas De Genova offers an alternative explanation for why states do not execute deportation orders as often as they could. His concept of “deportability” holds that sovereign state power is fuelled much more by the ability to deport migrants than by actual deportation. By subjecting a large number of people to the threat of deportation, states act not primarily in the interest of border control, but to create a pool of deportable migrants who are politically docile and economically exploitable.⁹ The threat of deportation must be continuously re-actualized through a “redundancy”¹⁰ of marginalizing and criminalizing speech acts against migrants and by an “enforcement spectacle”, in which “some are deported in order that most may remain (un-deported) – as workers”.¹¹

It is crucial to recognize that, as Nicholas De Genova argues, all non-citizens are inherently deportable, given that the authority to determine who may enter or

4 Matthew J. Gibney, *Asylum and the Expansion of Deportation in the United Kingdom*, in: *Government and Opposition* 43 (2008), 146–167, 148.

5 Luin Goldring/Patricia Landolt (eds.), *Producing and Negotiating Non-citizenship. Precarious Legal Status in Canada*, Toronto 2013.

6 Bloch/Schuster, *Extremes*, 2005, 508–510.

7 Gibney, *Asylum*, 2008, 149.

8 Matthew J. Gibney/Randall Hansen, *Deportation and the Liberal State. The Forcible Return of Asylum Seekers and Unlawful Migrants in Canada, Germany and the United Kingdom*, in: *New Issues in Refugee Research Working Paper* 77 (2003), <https://www.unhcr.org/research/working/3e59de764/deportation-liberal-state-forcible-return-asylum-seekers-unlawful-migrants.html> (8 December 2022), 15.

9 Nicholas de Genova, *Spectacles of Migrant ‘Illegality’. The Scene of Exclusion, the Obscene of Inclusion*, in: *Ethnic and Racial Studies* 36 (2013), 1180–1198, 1188.

10 *Ibid.*, 1181.

11 Nicholas De Genova, *The Production of Culprits. From Deportability to Detainability in the Aftermath of “Homeland Security”*, in: *Citizenship Studies* 11 (2007), 421–448, 426, 443.

remain within a territory is a key part of being a sovereign state.¹² Consequently, the violence inherent in deportability can, at any moment, be directed towards anyone designated as deportable by policymakers. Importantly, however, the intensity of this threat is not distributed uniformly across all non-citizens. In light of this, the focus of this paper is on the acute manifestations of deportability, specifically those categories of non-citizens who are explicitly targeted by expulsion legislation and for whom the “enforcement spectacle” presents a tangible and immediate risk.

Deportability, as conceptualized by De Genova, constitutes a relational dynamic between states and migrants. It marks a “zone of indistinction”, fusing a state of near-statelessness with one that is deeply entangled with state authority. As he writes: “It is no mere contrivance or exaggeration, therefore, to say of the ‘deportable alien’ that despite being ‘excluded from all political life, disqualified from any judicially valid act, and yet in a continuous relationship with the power that banishes it – no life is more ‘political’ than hers’.”¹³ Deportability, according to De Genova, structures the interaction between migrants and the state. However, it also shapes the broader relationship between the state and society. As Meyer and Purtschert argue, state-sanctioned violence and exclusionary practices function as a form of biopolitics: by expelling certain individuals from the ‘imagined community’,¹⁴ policymakers articulate and reinforce specific conceptions of the ideal social subject. In other words, excluding the so-called “other” reinforces a sense of shared citizenship while obscuring internal inequalities among citizens related to race, class, and gender.¹⁵ Thus, political discourse surrounding deportable subjects manifests not only in deportation laws and their enforcement but also shapes and transforms society.¹⁶

Moreover, when states officially legitimize the perception of certain non-citizen groups as dangerous and promote state violence as the primary means of addressing these perceived threats, society becomes increasingly reliant on the state for protection. This, in turn, reinforces and expands state power.

12 De Genova, *Spectacles*, 2013, 1188.

13 Nicholas de Genova, *The Deportation Regime. Sovereignty, Space, and the Freedom of Movement*, in: Nicholas de Genova/Nathalie Peutz (eds.), *The Deportation Regime. Sovereignty, Space, and the Freedom of Movement*, Durham 2010, 33–68, 46 f.

14 De Genova, *Spectacles*, 2013, 1181.

15 Grada Kilomba, *Plantation Memories. Episodes of Everyday Racism*, 4. edn., Münster 2016, 16.

16 Katrin Meyer/Patricia Purtschert, *Migrationsmanagement und die Sicherheit der Bevölkerung*, in: idem/Yves Winter (eds.), *Gouvernementalität und Sicherheit. Zeitdiagnostische Beiträge im Anschluss an Foucault (Sozialtheorie)*, Bielefeld 2008, 149–172, 150.

1. Research interest, material, and methods

Against this theoretical backdrop, I examine two instances of contestation regarding deportability in Austria. The first case explores how the construct of the ‘economic refugee’ in 1990 facilitated the transformation of deportation policy and practice, turning them into instruments of “extended border control”.¹⁷ The second case examines how, in 2005, asylum claimants became more easily deportable as the discourse surrounding the ‘fraudulent asylum seeker’ became dominant. My primary interest lies in the political construction of deportable subjects and the discursive struggles surrounding this process. I focus on competing framings and narratives concerning the (un)desirability or (in)tolerability of migrants and asylum seekers at specific historical moments, as well as the factors that contributed to certain narratives achieving hegemony while others were marginalized.

The Austrian parliament is the primary site of my analysis of hegemonic struggles; accordingly, my material largely consists of parliamentary debate transcripts. While parliamentary deliberations represent only a fragment of the wider discursive landscape, they are a crucial “hegemonic apparatus” in which social power relations and political struggles converge.¹⁸ Speeches in national assemblies are particularly valuable for discourse analysis, as they are typically prepared in advance and structured to establish a logical connection between a specific issue and the proposed solution. The openings and closings of speeches are particularly revealing of how Members of Parliament (MPs) position themselves regarding deportation policies. Additionally, interruptions and spontaneous exchanges between parliamentarians offer further insight into the dynamics of these discursive struggles.

As with all terminology, legal terminology often appears neutral, concealing its socially constructed nature and the power relations from which it emerges. Terms such as ‘deportation’ or ‘removal’ are widely used and largely unquestioned, as if they merely describe the state’s legitimate authority to expel unwanted non-citizens from its territory. However, the criteria determining how non-citizens may acquire or lose the right to reside in a foreign country are established by policymakers, who hold certain positions of power and who draw on hegemonic knowledge to make their claims sound plausible. As a result, policies are not neutral; rather, they are crystallizations of the power relations and hegemonies that prevail at the time of their formulation.

17 Daniel Kanstroom, *Deportation, Social Control, and Punishment. Some Thoughts about Why Hard Laws Make Bad Cases*, in: *Harvard Law Review* 113/8 (2000), 1890–1935, 1906.

18 For a media analysis of the discursive struggles surrounding these two episodes of policymaking, which includes non-state actors such as journalists, NGOs, and advocacy groups, see my doctoral dissertation (forthcoming 2025). *Gruppe Perspektiven, Herrschaft durch Konsens? Macht und Politik bei Antonio Gramsci*, in: *Perspektiven. Magazin für Linke Theorie und Praxis* 0 (2006), 36–39, 37.

Just as terminology arises from material conditions, it also shapes material reality and influences existing power relations. In the case of ‘deportation’ and ‘removal’, it lends legitimacy to the use of force against migrants, while also playing a crucial role in shaping how race and labour are articulated within society.

To account for these dynamics, my analysis follows three steps: (1) an examination of the broader political and social context, (2) a discourse analysis of political conflicts in parliamentary debates, and (3) an assessment of the material effects of the hegemonic views established.¹⁹

2. The construction of society and its margins: two cases of struggles over deportability in the Austrian parliament in 1990 and 2005

Until 1990 Austria’s border regime was relatively liberal, at least in terms of legal regulations. Between 1954 and 1990, non-citizens were generally entitled to reside in Austria indefinitely, as stipulated in § 2 (1) of the Aliens’ Police Act of 1954. As most nationalities were exempt from visa requirements, entry conditions were limited to possessing a valid travel document. Even individuals who entered without the necessary documentation were rarely prosecuted due to very narrow legal possibilities. However, while it was relatively easy to obtain residency rights in Austria, maintaining them proved more challenging. The so-called prohibition to stay (*Aufenthaltsverbot*, § 3 Aliens Police Act 1954) outlined various circumstances – primarily relating to labour market participation and criminal conduct – that could lead to the revocation of residency rights for non-Austrian residents. Prior to the oil crisis, when employment opportunities were abundant, deportation remained an exceptional measure applied almost exclusively in cases involving criminal offences.²⁰

The first shift occurred in the 1970s when the economic crisis led to a contraction of the labour market. Migrant workers were among the first to lose their jobs and

19 These three steps are informed by Sonja Buckel et al., *Theorie, Methoden und Analysen kritischer Europaforschung*, in: Forschungsgruppe “Staatsprojekt Europa” (eds.), *Kämpfe um Migrationspolitik. Theorie, Methode und Analysen kritischer Europaforschung (Kultur und soziale Praxis)*, Bielefeld 2014, 15–84; Ulrich Brand, *State, Context and Correspondence. Contours of a Historical-materialist Policy Analysis*, in: *Österreichische Zeitschrift für Politikwissenschaft* 42/4 (2013), 425–442.

20 Kenneth Horvath, *Policing the Borders of the ‘Centaur State’. Deportation, Detention, and Neoliberal Transformation Processes – The Case of Austria*, in: *Social Inclusion* 2/3 (2014), 113–123, 116.

were then officially requested to leave the country.²¹ Of the approximately 110,000 people who lost their jobs and residency rights between 1973 and 1984, it is not known exactly how many left of their own accord. According to migration researchers, only a small fraction were forcibly deported.²² The so-called policy of reducing the number of guest workers was more prominent in political discourse than in actual practice, as it met with resistance from migrants and their families, numerous employers, and certain administrative authorities.²³ Consequently, immigration levels remained high even in the aftermath of the oil crisis. In response, the Austrian government introduced the first national Migrant Labour Act in 1975, which implemented a quota system designed to limit the number of migrant workers and reduce the existing foreign population in Austria.²⁴ For another 15 years, immigration was primarily regulated through labour market policies and the criminal code, rather than explicit border control measures.

Similarly, Austria's asylum policies and their implementation were relatively liberal in the post-war period. Providing refuge for asylum seekers, almost all of whom came from Eastern Europe, played a crucial role in Austria's nation-building process until the early 1980s. As Patrik-Paul Volf argues, successive governments sought to project an image of Austria as a liberal, human rights-oriented state, contrasting with its recent past of racial violence and genocide. Austria's openness to refugees also showcased its anti-communist stance and alignment with the Western bloc.²⁵ However, significant shifts in Austria's asylum policy began in the late 1970s and early 1980s. As socialist regimes in Eastern Europe began to weaken and travel restrictions in communist states eased, refugees from these regions became less significant symbolically, resulting in a less welcoming reception.²⁶

Nevertheless, it was not until 14 March 1990 that Austria underwent a major transformation in its migration and asylum policies. On that day, the dominant factions in the Austrian parliament abolished the universal right to reside, replacing it with a residence permit system. They also introduced mechanisms to facilitate the

21 Eva Kreisky, *Vom bürokratischen Nutzen ständiger Unsicherheit. Arbeitsmigration zwischen Anwerbung und Abschiebung*, in: Hannes Wimmer (ed.), *Ausländische Arbeitskräfte in Österreich*, Frankfurt am Main 1986, 381–432, 411.

22 Ibid., 425.

23 Vida Bakondy, "Austria Attractive for Guest Workers?" Recruitment of Immigrant Labor in Austria in the 1960s and 1970s, in: Günter Bischof/Dirk Rupnow (eds.), *Migration in Austria*, New Orleans/Innsbruck 2017, 113–138, 137.

24 Hannes Wimmer, *Zur Ausländerbeschäftigungspolitik in Österreich*, in: Hannes Wimmer (ed.), *Ausländische Arbeitskräfte in Österreich*, Frankfurt am Main 1986, 5–32, 11–13, 17.

25 Patrik Paul Volf, *Der Politische Flüchtling als Symbol der Zweiten Republik. Zur Asyl- und Flüchtlingspolitik seit 1945*, in: *Zeitgeschichte* 22/11–12 (1995), 415–436, 425–426.

26 Ibid., 432–433.

deportation of so-called ‘economic refugees’. As a result, the number of deportations increased significantly, reaching approximately 10,000 in 1991.²⁷

Table 1: Legal provisions before and after the 1990 reform

Right to reside	
<i>Formerly: § 2 (1) Aliens’ Police Act of 1954 Non-citizens are allowed to take residence in Austria for an unlimited period of time.</i>	<i>New: § 2 (1) Aliens’ Police Act of 1954, version 1990 Non-citizens require a residence permit.</i>
Order to leave	
<i>Formerly: non-existent</i>	<i>New: § 10 a. Aliens’ Police Act of 1954, version 1990 Non-citizens without a residence permit may be ordered to leave.</i>
Push-back	
<i>Formerly: § 10 Aliens’ Police Act of 1954 Non-citizens lacking authorization to enter may be turned away at the border immediately.</i>	<i>New: § 10 a. Aliens’ Police Act of 1954, version 1990 Non-citizens may be turned away within seven days of entering without authorization</i>

The following discussion examines how this fundamental shift in border politics came to be considered politically feasible. According to the official narrative and the dominant public discourse, the turning point in Austria’s migration policies in the early 1990s was caused by an increase in immigration and asylum applications following the fall of the Iron Curtain. However, this explanation warrants closer scrutiny. First, the legal reforms underpinning this shift were initiated as early as December 1989, well before immigration became a salient issue in public debate.²⁸ Indeed, Austrian society, which had long internalized the notion that generosity towards asylum seekers was integral to national identity, showed little interest in the idea that stricter border controls were necessary. Second, the introduction of restrictive measures in March 1990 was followed not by a decrease, but by a surge in legal immigration.²⁹

What is indisputable, however, is that, by late 1989, the Austrian government had come to view the liberal border regime as being in a state of crisis. This percep-

27 Judith Welz, In the Service of Deportation. The Development of Detention and Other Forms of Movement Restrictions in the Austrian Asylum System from 1990 to 2020, in: Wolfgang Mueller/Dirk Rupnow (eds.), *Migrants and Refugees from the 1960s until Today*, Göttingen 2022, 389–423, 402.

28 Judith Welz, Inclusion through Exclusion. Crafting Hegemony about the Deportability of ‘Economic Refugees’ in 1990, in: Marc Landry/Eva Pfanzelter/Christian Stenico (eds.), *The Second Austrian Republic*, New Orleans 2022, 83–103, 90.

29 [No author], *Ostzuwanderer finden auch legale Jobs*, in: *Der Standard*, 20 March 1990, 1.

tion was shaped by several converging factors. First, the collapse of the Iron Curtain meant that the refugee's symbolic role in Austrian national identity was no longer relevant; there was no longer a need to demonstrate solidarity with the 'liberal West' by offering refuge to those fleeing the 'socialist East'. Second, Austria's anticipated accession to the EU made stricter border controls appear increasingly inevitable. Policymakers were aware of ongoing intergovernmental debates on immigration and asylum within the European Community, and they recognized that EU membership would eventually place Austria on the Union's external frontier.³⁰ Third, the country's liberal entry regime intersected with mounting class tensions: labour representatives feared that unregulated immigration would enable employers to drive down wages, while capital interests saw an opportunity to push for a more selective and economically strategic immigration model.

The government's desire to introduce more restrictive immigration policies clashed with the country's still-prevalent self-image as an asylum-friendly nation, as reflected in the early stages of the struggle over deportability. On 11 December 1989, the first attempt by members of the then ruling parties (the Social Democrats and the People's Party) to reform the legal framework was cautiously framed as a campaign against human trafficking. This initiative, however, went largely unnoticed by the public,³¹ with media coverage at the time focusing on the surge in cross-border travel by newly mobile Eastern Europeans and the political upheaval in Romania, which culminated in the execution of Nicolae Ceauşescu.³² In early January 1990, Franz Löschnak (Social Democratic Party), the Minister of the Interior, initiated the next phase of the struggle with a notable level of alarm. However, repeated warnings of an impending refugee crisis were met with disinterest.³³ Instead of reporting on overcrowded refugee accommodation centres or the need to impose visa obligations on Turks and Czechoslovakians, as the Ministry of the Interior had suggested, the liberal press reported on the newly won right to mobility by Romanians in the tourism section.³⁴

30 Austria held observer status during the negotiations on the Schengen Implementation Convention, and it was part of the ad hoc Immigration group, which prepared the Dublin Convention. Rainer Bauböck, "Nach Rasse und Sprache verschieden". Migrationspolitik in Österreich von der Monarchie bis heute, IHS Political Science Series Working Paper 31 (1996), 1–29, 18; Ulrich Brandl, Die Europäisierung der Asylpolitik, in: Karl Althaler/Andrea Hohenwarter (eds.), Torschluß. Wanderungsbewegungen und Politik in Europa, Wien 1992, 46–60, 49–51.

31 For an extensive media analysis, see my doctoral dissertation (forthcoming 2025).

32 Around Christmas 1989, public discourse centred on Austrian humanitarian efforts, particularly donations raised to support Romanians during the harsh winter. Österreichs helles Licht im Dunkel. Geld, Helfer und Hilfe für Rumänien, in: Der Standard, 27 January 1989, 5; Welz, Inclusion, 2022, 90.

33 Peter Zuser, Die Konstruktion der Ausländerfrage in Österreich. Eine Analyse des öffentlichen Diskurses 1990, IHS Political Science Series Working Paper 35 (1996), https://irihs.ihs.ac.at/id/eprint/916/1/pw_35.pdf (23 January 2022), 1–89, 20.

34 Rumänien/Tourismus. Reisefreiheit, in: Der Standard, 27/28 January 1990, 18.

Despite the general lack of public attention surrounding the issue, the coalition government sought to fast-track the reform of residence rules and push it through parliament before the end of January. To achieve this, it relied on the procedural instrument of a parliamentary motion, which would have allowed it to bypass the customary review process.³⁵ However, the Green Party, the opposition, uncovered the plan, intervened and successfully prevented the circumvention of due process. As a result, the government was forced to schedule committee meetings and expert hearings throughout February and March.³⁶

Concerns about migration only began to gain public traction in early March, when Löschnak announced plans to relocate 800 male Romanian asylum seekers to a decommissioned military base in a small village in Burgenland. The proposal sparked intense local opposition, with arguments centring around assumed (sexualized) dangers. Villagers organized road blockades, demonstrations, and press conferences, ultimately forcing the minister to withdraw the plan. According to Zuser, Löschnak's handling of the situation marked a watershed moment, turning migration from a marginal issue into an ongoing source of political controversy.³⁷

3. The crafting of hegemony around the 'economic refugee' in the Austrian parliament

The legal amendment to the Aliens' Police Act of 1954 was adopted on 14 March 1990, when the controversy surrounding the planned refugee accommodation centre was still ongoing. At that time, the Austrian parliament consisted of four parties: the Social Democratic Party (SPÖ) and the conservative People's Party (ÖVP) formed a coalition government headed by the Social Democratic Chancellor Franz Vranitzky; the extreme right-wing Freedom Party (FPÖ) and the centre-left Green Party (Grüne) were in opposition. Of these parties, only the Green Party opposed the amendment to Austria's migration law.

The three parties in favour of the amendment, SPÖ, ÖVP, and FPÖ, developed three argumentative strategies. First, they argued for deportation in the name of *protecting the nation*. This argument essentially relied on statistics, with conclusions presented as being based on 'straightforward facts'. One figure that was widely circulated was that 6,000 Romanians were crossing into Austria daily, as suggested by Austrian border guards. Members of the two government parties declared, in almost

35 The review process allows political parties and other stakeholders to comment on draft laws.

36 Welz, Inclusion, 2022, 90–91.

37 Zuser, Konstruktion, 1996, 22.

identical words: “We cannot accommodate half of the Romanian population” (Burgstaller, ÖVP, for example).³⁸ Another figure that was referred to several times was the 500 million refugees reported by UNHCR officials to be on the move globally. A Freedom Party MP expected a large proportion of these refugees to make their way to Austria due to its asylum legislation, which she considered to be much too welcoming (Partik-Pablé, FPÖ).³⁹ Interior Minister Franz Löschnak drew a comparison between the then current migratory movements and the historical “*Völkerwanderung*” (Löschnak, SPÖ),⁴⁰ a period of massive migration known to Austrians as having changed the cultural, social, and political composition of Europe between the fourth and the sixth centuries. Together, these arguments conjured up the spectre of two nations on the brink of extinction if developments were not reversed immediately: the Romanian nation due to large-scale emigration and the Austrian nation due to immigration.

A second narrative argued for deportation in order to protect ‘real’ refugees. The three parties adopting the legal changes claimed that Austrian identity as an “asylum country” was under threat from the unfolding developments (Fister, SPÖ; Frischenschlager, FPÖ; Ettmayer, ÖVP).⁴¹ MPs claimed that present-day refugees were not like those “with their tiny suitcases” (Ettmayer, ÖVP)⁴² who had fled communist dictatorships in previous years, rather, they were ‘simply’ people looking for better living conditions. If they were not sent back, the Austrian asylum system would be exhausted and its very existence threatened. MPs called for a distinction to be made between ‘real’ and ‘economic’ refugees, with the latter to be deported so that the former could continue to be accommodated. Accordingly, the future of Austria’s role as an asylum country – and thus the future of its national identity – was made dependent on deportation (Ettmayer, ÖVP; Parnigoni, SPÖ).⁴³

The third strand of pro-deportation arguments addressed the economic impact of deportation. While the governing parties were unanimous on the first two arguments, they differed considerably on the economic impact of incoming migrants and refugees.⁴⁴ The Social Democrats feared that the newly arriving refugees could inflate the labour supply, leading to a deterioration of working conditions and wages.

38 All translations from German to English by the author. Stenographic protocol, XVIIth legislative period, 133rd national assembly, 14 March 1990, Paul Burgstaller (ÖVP), 15682.

39 Ibid., Helene Partik-Pablé (FPÖ), 15695.

40 Ibid., Franz Löschnak (SPÖ), 15690.

41 Ibid., Albert Fister (SPÖ), 15705; Friedhelm Frischenschlager (FPÖ), 15719; Wendelin Ettmayer (ÖVP), 15707.

42 Ibid., Wendelin Ettmayer (ÖVP), 15708.

43 Ibid., Wendelin Ettmayer (ÖVP), 15706; Rudolf Parnigoni (SPÖ), 15708–09.

44 Although MPs claimed to distinguish between ‘migrants’ and ‘refugees’, the categories appeared to be blurred in some of the speeches. This is why I have opted to use the expression ‘migrants/refugees’ here.

They stated that this would negatively affect all workers in Austria, but stressed that the consequences would be particularly severe for the ‘foreign’ workforce, who would be the first to be laid off. One MP went so far as to claim that keeping the border open would go against the interests of migrants and asylum seekers already in Austria, and was therefore intrinsically “xenophobic” (Fister, SPÖ).⁴⁵ The People’s Party’s position was more ambivalent: they demanded that the Austrian labour market be opened to newcomers, but also warned that Austria could become a country of immigration.

These conflicting scenarios were resolved by calling for the border to be closed immediately and reopened once a comprehensive legal framework for labour immigration had been outlined (Khol, ÖVP).⁴⁶

The Green Party was at odds with both the government and the Freedom Party, and they put forward counter-narratives. Green MPs argued that the problem lay within the proposed legislation, not the refugees. They criticized the government for reacting to “political challenges simply with pitiful [...] police state-like responses” (Manfred Srb, Grüne),⁴⁷ and called for a more general debate on how to deal with migrants and refugees in Austria. The Greens presented an alternative perspective on the current migratory situation, combining historical and transnational aspects. According to them, the division of the world into communist and capitalist blocs was a direct consequence of World War II, to which Austria had also contributed. Accordingly, they held Austria responsible and called for the government to allow migrants and refugees from transitioning countries to enter, settle, and work (Pilz, Grüne).⁴⁸ The Green Party also refused to draw a discursive distinction between political and economic refugees, claiming that politics and the economy were too closely linked to make such a distinction meaningful (Wabl, Grüne).⁴⁹ In their eyes, refugees were worthy of protection regardless of the reason for their flight.

4. Resolving the contradictions between a restrictive turn in border politics and society’s self-perception as being welcoming to refugees

As detailed above, Austria’s liberal border policies faced a crisis in the late 1980s and early 1990s due to the fall of the Iron Curtain, the requirement for stricter border control ahead of EU membership, and growing class tensions. However, shifting to

45 Ibid., Albert Fister (SPÖ), 15705.

46 Ibid., Andreas Kohl (ÖVP), 15713.

47 Ibid., Manfred Srb (Grüne), 15677.

48 Ibid., Peter Pilz (Grüne), 15689.

49 Ibid., Andreas Wabl (Grüne), 15687.

more restrictive immigration laws was challenging as Austria had built its national identity on being a generous asylum country. Changing this perception risked fueling structural racism. The policymakers responsible for the restrictive turn in 1990 addressed these challenges by redefining the concept of the refugee, distinguishing between the ‘real’ or political refugee, who was deemed worthy of protection, and the ‘false’ or economic refugee, who was considered a target for deportation. They claimed that deporting ‘false’ refugees was a national survival strategy and a necessity to maintain the system of international refugee protection. This guaranteed the social order and balance between societal classes, offering the electorate ways to morally identify with the restrictive border policy, allowing for a face-saving shift away from being a liberal immigration and asylum country.

In general, discourse and material reality are co-constitutive.⁵⁰ In our case, the altered constructed meaning of the concept of the refugee, coupled with the introduction of the ‘economic refugee’, made a number of legal changes plausible. The universal right to reside was replaced by a residence permit system, removals were extended, and administrative expulsion was introduced. Previously a measure of social control, deportation policy transmuted into a measure of “extended border control” in 1990.⁵¹ In other words, regulation shifted from the labour market and the criminal code to the border.

The policing of migrants and denied asylum seekers became a common practice: 10,000 administrative removals were recorded in 1991, the year after the new legal framework was adopted.⁵² However, this did not put an end to immigration. Indeed, data shows that while deportations were high, so was immigration.⁵³ With the new laws in place, the state was able to decide more rigorously who to admit and who to expel, and it performed well in both areas. The provisions on removals and expulsions adopted in 1990 paved the way for an increasingly selective immigration regime, which was realized in the following years. These measures introduced ‘migration management’ in Austria, the migration policy paradigm shift that was underway across Europe at the time.⁵⁴

50 Brand, *State*, 2013, 425–442; Buckel et al., *Theorie*, 2014, 15–84.

51 Kanstroom, *Deportation*, 2000, 1906.

52 Welz, *Service*, 2022, 402.

53 [No author], *Ostzuwanderer*, 1990, 1.

54 Ilker Ataç/Albert Kraler, *Gewünschte, Geduldete und Unerwünschte. Klassifizieren, Selektieren, Stratifizieren. Migrationspolitik als Strategie des Filterns*, in: *Malmoe* 33 (2006), 25–26.

5. The construct of the ‘fraudulent asylum seeker’ as being deportable (2005)

In July 2005, the Austrian parliament adopted a legislative package that replaced the existing Asylum Act and the Aliens’ Police Act with a new Residence Act. The reform was supported by the governing coalition consisting of the conservative People’s Party (ÖVP) and the right-wing Alliance for the Future of Austria (BZÖ), a party formed by former members of the Freedom Party (FPÖ) following a party split earlier that year. The reform package also received backing from the opposition Social Democratic Party (SPÖ)⁵⁵ and all but one member of the FPÖ. The only party to vote against the reforms in their entirety was the Green Party (Grüne). Several of the adopted laws significantly expanded the conditions under which asylum claimants could be rendered deportable.

Table 2: Legal provisions before and after the 2005 reform

Force-feeding of hunger strikers	
Formerly: non-existent	New: § 78 (6 and 7) Aliens’ Police Act 2005 Detainees facing deportation who suffer from a medical condition that makes them unfit for deportation as a result of their own actions may be transferred to the medical centre of a regular prison for treatment
Detention of asylum seekers having served criminal sentence in regular prisons	
Formerly: non-existent	New: § 78 (3) Aliens’ Police Act 2005 Asylum claimants who have served a criminal sentence may be detained in regular prison facilities pending deportation.
Deportation of asylum seekers suffering from PTSD	
Formerly: § 24b Asylum Act 2003 Applications of asylum claimants who suffer from post-traumatic stress disorder will have their asylum applications dealt with in Austria, even if another country is formally responsible.	Asylum Act 2005 (barred)
Maximum duration of detention pending deportation	
Formerly: § 69 Aliens’ Act 1997 a maximum of six months within two years	New: § 80 Aliens’ Police Act 2005 a maximum of ten months within two years

By the time the legislative package was adopted in 2005, Austria had been under a centre-right government, inaugurated in 2000, for five consecutive years. This

⁵⁵ On the day of adoption, five of the most vocal critics of the reform called in sick.

period was marked by accelerated neoliberal reforms, which contributed to rising social inequality and a discursive shift towards exclusionary rhetoric targeting migrants, the unemployed, and welfare recipients.⁵⁶ In addition to its policy agenda, the new government introduced a markedly different political style. Whereas previous Austrian governments had generally favoured collaborative governance, the centre-right coalition adopted what has been termed a “democracy of competition”.⁵⁷ This approach prioritized political dominance over consensus-building, with legislation frequently passed with the support of the governing parties, sidelining opposition voices and civil society actors. The government also demonstrated a willingness to pursue controversial legislation, even at the risk of a constitutional challenge – a strategy which drew persistent criticism from opposition parties and contributed to growing political polarization.

From its inception, the government was scrutinized both domestically and at the European level for including the far-right Freedom Party in the governing coalition. Particular attention was given to the coalition’s approach to migration and asylum. Although the centre-right government identified reducing the foreign population and enforcing deportation orders more effectively as key priorities in its initial programme,⁵⁸ it did little during the first legislative period (2000–2002), most likely due to being under close public and institutional scrutiny. Its legislative activity focused primarily on aligning migration policy with neoliberal principles, specifically emphasizing the economic utility of migrant labour, while minimizing associated social costs and legal entitlements.⁵⁹

A major internal conflict erupted within the Freedom Party in 2003, leading to early elections that consolidated the power of the People’s Party. However, the Freedom Party remained divided and this culminated in a party split. On 4 April 2005, the breakaway faction established the Alliance for the Future of Austria, with all former Freedom Party government members transferring to the new party. From this point onwards, the governing coalition comprised the People’s Party and the newly formed Alliance for the Future of Austria.

56 Max Preglau, Max Preglaus Regierungswatch. Umbruch der politischen Kultur in Österreich: Von der schwarz-blau/orange Wende 2000 über das rot-schwarze Interregnum 2006–2017, Schwarz/Türkis-Blau 2.0 und ExpertInnenregierung 2018/19 zu Türkis-Grün 2020–2024, 24 May 2024, 60, 243, https://www.uibk.ac.at/media/filer_public/0f/23/0f23b7c7-3d4e-4154-b83c-7dbb30113f19/info_fpo_e_preglau_max.pdf (29 July 2024).

57 Ferdinand Karhofer/Emmerich Tálos, Sozialpartnerschaft am Abstieg, in: Emmerich Tálos (ed.), Schwarz-Blau. Eine Bilanz des ‘Neu-Regierens’, Wien/Münster (2006), 102–116, 110.

58 Austrian Government, Österreich neu regieren [Government Programme] (2000), 1–125, 60.

59 One example is the change to the seasonal worker status, which made it easier to obtain but left migrants in an even more precarious situation with regard to social and residency rights. Another example is the highly controversial ‘integration contract’, which required certain groups of migrants to prove language competency in order to renew their residence permits.

Immediately after the start of the new legislative period, Interior Minister Ernst Strasser (ÖVP) introduced a new Asylum Act with the explicit aim of reducing the number of asylum applicants. The proposal met strong opposition from the Green Party, the Social Democrats, human rights organizations, and legal experts, who criticized it for its disproportionate use of coercive measures and its disregard for the rights of asylum seekers.⁶⁰ Following legal challenges initiated by the Social Democrat-led governments of Vienna and Upper Austria, the Constitutional Court struck down several provisions of the law in late 2004, forcing the responsible minister to revise the legislation.

However, the new proposals took things even further in a controversial direction. Among other provisions, they included the force-feeding of hunger strikers in detention centres while they were awaiting deportation, the deportation of trauma survivors who had been medically certified under the Dublin II Regulation,⁶¹ and an extension to the maximum duration of administrative detention. Mounting criticism eventually led to Strasser's resignation, after which he was replaced by his colleague Liese Prokop (ÖVP). Meanwhile, two EU directives necessitated further amendments to Austria's asylum and migration legislation. Instead of limiting the reform to the areas requiring compliance, Prokop used the opportunity to overhaul the Asylum Act and the Aliens' Police Act in their entirety.⁶² Much to the surprise of many, the final version of the package retained several of the controversial clauses that had led to Strasser's political downfall. Nevertheless, shortly before the legislation was adopted, the Social Democrats – previously consistent critics of the government's migration and asylum policies, alongside the Greens – signalled their willingness to support the proposal. Party representatives argued that engaging in dialogue with the government and ensuring the constitutional soundness of the final draft were preferable to outright rejection.

6. Redefining the meaning of 'the refugee' in the Austrian parliament

The dominant argumentative strategy among MPs supporting the 2005 reform centred on the idea of the 'fraudulent asylum seeker', who was portrayed as a threat to Austria's rule of law and national integrity. Central to this discourse was the claim

60 The proposed provisions extending the maximum length of administrative detention, reducing appeal deadlines and limiting services for asylum seekers were under criticism.

61 This is the regulation that determines which member state is responsible for examining an application for asylum in the EU (Council Regulation No 343/2003).

62 Bernhard Perchinig, *Einwanderungs- und Integrationspolitik*, in: Tálos (ed.), *Schwarz-Blau*, 295–311, 289–301.

that migrants and asylum seekers had undermined the state's capacity to enforce legal norms, necessitating its reassertion through stronger measures.

Proponents of the reform introduced the new term of 'problematic' asylum seekers, defined as individuals allegedly engaged in asylum fraud. As in the early 1990s, this notion was not legally defined, but constituted a political construct whose meaning was derived from a positioning – both explicit and implicit – vis-à-vis the 'genuine' or 'deserving' refugee. A wide range of behaviours and characteristics were attributed to the category of the 'fraudulent asylum seeker', many of which were entirely lawful under the existing legal framework. Nevertheless, according to some MPs, engaging in multiple rounds of legal appeal, suffering from post-traumatic stress disorder (PTSD), or participating in a hunger strike were all considered indications of fraudulent intent.

Supporters of the reform broadly agreed that asylum fraud represented a direct assault on the principle of the rule of law, one of the core tenets of Austrian statehood (Miedl, ÖVP; Partik-Pablé, FPÖ).⁶³ This framing created a clear divide between the state and certain migrants, with the latter being seen as undermining the legal order and necessitating a response "with all severity" from the former.⁶⁴ As People's Party MP Vincenz Liechtenstein stated: "The new asylum and migration acts are strengthening the fortress of Austria. The rule of law must assert itself fully. If it loses its teeth, the law of the jungle will return."⁶⁵

According to this logic, specific legal provisions were presented not as harsh or exceptional, but as necessary instruments to restore state authority and minimize the risk of abuse. For example, MPs from the Freedom Party justified the deportation of asylum claimants diagnosed with PTSD, arguing that the condition was being increasingly exploited to avoid removal. They cited a 30 per cent "surge" in "allegedly traumatized" asylum applicants as evidence of strategic abuse (Partik-Pablé, FPÖ).⁶⁶ Similarly, in response to concerns over hunger strikes among detainees, one MP claimed that the state must defend itself against "blackmail" (Partik-Pablé, FPÖ).⁶⁷ However, some People's Party MPs seemed less comfortable with this measure, and it was unclear whether they fully endorsed the provision or doubted its practical enforceability (Molterer, ÖVP).⁶⁸ Finally, a newly introduced law permitted asylum seekers who had completed criminal sentences to remain in detention if they had

63 Stenographic protocol, XXIIInd legislative period, 116th national assembly, 7 July 2005, Werner Miedl (ÖVP), 73; Helene Partik-Pablé (FPÖ), 47.

64 Ibid., Karin Miklautsch (BZÖ), 64.

65 Ibid., Vincenz Liechtenstein (ÖVP), 90.

66 Ibid., Helene Partik-Pablé (FPÖ), 46.

67 Ibid., Helene Partik-Pablé (FPÖ), 48.

68 Ibid., Wilhelm Molterer (ÖVP), 40.

submitted their asylum claim from prison. Proponents defended this clause as a preventative measure to protect the public from further criminal acts (Freund, ÖVP).⁶⁹

As in 1990, the Green Party was the sole parliamentary party to reject the 2005 legislative amendments in their entirety. Unlike in 1990, they did not challenge the majority's framing of asylum fraud as a policy concern. While Green MPs accepted the state's prerogative to protect itself from abuse of the asylum system, they emphasized that several provisions of the proposed legislation failed to meet constitutional and human rights standards (Stoisits, Grüne).⁷⁰ In particular, they condemned the proposed deportation of traumatized asylum seekers and the force-feeding of hunger-striking detainees, describing these practices as inhumane and tantamount to torture. During the debate, they warned of the potentially fatal consequences of such measures. As Eva Glawischnig-Piesczek (Grüne) cautioned: "Do you really think that this will happen without accidents, [...] without deaths?"⁷¹

The position of the Social Democrats was more ambivalent. In the weeks preceding the vote, internal party divisions emerged and many prominent members expressed serious concerns about the legislation's implications for human rights. Even though five of the reform's most vocal critics were absent on the day of the vote, a sense of unease remained palpable, particularly evident in the defensive tone adopted by many MPs. Much of their contribution to the debate focused on emphasizing their role in shaping the final version of the bill. They maintained that they had succeeded in aligning the most problematic provisions with constitutional and human rights standards through persistent negotiation. As MP Maier (SPÖ) remarked, the revised package was "good from an overall perspective."⁷² Despite these assurances, internal unease persisted. One MP noted that the party simply adhered to a "different interpretation" (Maier, SPÖ) of certain contentious clauses.⁷³ Others attempted to downplay the severity of the measures by suggesting that force-feeding, for example, would be difficult to implement in practice due to constitutional constraints. Similarly, they argued that the newly extended maximum duration of administrative detention (normally set at ten months) would rarely be applied in full (Parnigoni, SPÖ, 58; Darabos, SPÖ, 43–44).⁷⁴ As a final indication of their ongoing concerns, Social Democrat MPs submitted a draft bill at the end of the session proposing a ban on deporting asylum seekers with PTSD. As expected, the motion did not receive the necessary majority support.

69 Ibid., Karl Freund (ÖVP), 78.

70 Ibid., Terezija Stoisits (Grüne), 35.

71 Ibid., Eva Glawischnig-Piesczek (Grüne), 53

72 Ibid., Johann Maier (SPÖ), 75.

73 Ibid., Johann Maier (SPÖ), 74.

74 Ibid., Rudolf Parnigioni (SPÖ), 58; Norbert Darabos (SPÖ), 43 f.

7. Pushing the Limits

In the early 2000s, the political context surrounding asylum policy reform in Austria was shaped by increased scrutiny of the government's work, driven by the participation of the far-right in government, as well as by a confrontational style of governance. Within this contentious environment, two previous attempts to pass a revised Asylum Act had failed (in 2003 and 2004). The responsible minister, Ernst Strasser, was eventually replaced by his colleague Liese Prokop, who inherited the challenge of pushing through controversial provisions without triggering a constitutional crisis. A key discursive strategy that facilitated this effort was the construction of the 'fraudulent asylum seeker' as a symbolic threat to the rule of law.

Much like the 'economic refugee' of the 1990s, this construct was a political rather than a legal term and thus required no precise definition. In statements supporting the reforms, MPs reinterpreted a wide range of behaviours – many of which were lawful – as evidence of moral and political deviance. The 'fraudulent asylum seeker' was not only portrayed as undeserving of protection but also as actively undermining the integrity of the liberal democratic order. The framing was powerful because it served two purposes: it legitimized the implementation of restrictive new measures and deflected accusations of authoritarianism against the government by redirecting blame towards the asylum seekers themselves.

Although several provisions of the legislative package remained contentious among the Social Democrats, their continued emphasis on the constitutional validity of the reforms ultimately served to normalize the controversial proposals, helping the government to recover from its earlier constitutional failures.

The 2005 reform and the surrounding debate had two main effects. First, the increased level of coercion introduced by the 2005 legislation did not translate into greater efficiency in deportation enforcement. The so-called "deportation gap",⁷⁵ or the discrepancy between the number of rejected asylum claims and the number of actual deportations, remained virtually unchanged. In Austria, this gap fluctuated between 91 and 96 per cent from 2005 to 2011, indicating that the vast majority of individuals who had their asylum claims rejected were not deported.

Second, the government's increasingly punitive stance towards asylum seekers contributed to legitimizing its broader neoliberal economic agenda. Persistent calls for reduced state spending along with repeated warnings about public debt persuaded parts of the population to accept the withdrawal of the state from its social welfare obligations, despite the resulting rise in personal insecurity and material

75 Gibney, *Asylum*, 149.

Table 3: Deportation gap: expulsions and deportations of rejected asylum seekers, 2005–2011

Jahr	Rejected asylum applications	Deportations of rejected asylum seekers
2005	5,542	462
2006	5,893	349
2007	6,646	455
2008	7,968	330
2009	13,531	477
2010	13,290	579
2011	11,553	445

Source: Amny Knapp, *Überblick Erledigungen der Asylbehörden 1981–2010* [no date], https://www.asyl.at/archiv-2016/fakten_8/stat_2010_01.htm (30 July 2024); answer to parliamentary question, XXV. GP 185/AB.

hardship⁷⁶ – although resistance to these shifts persisted. In this context, the portrayal of asylum seekers as fraudulent and burdensome may not have been coincidental. By 2005 the racialized and morally disqualified ‘fraudulent asylum seeker’ had become an extreme embodiment of the ‘undeserving’ recipient of state support. In response to anthropologist Susan Coutin’s question, “How do non-migrants’ senses of self depend on the foil of the criminalized alien?”,⁷⁷ one could argue that citizens were implicitly encouraged to become more self-reliant and disengage from state support, partly in order to distance themselves from the stigmatized figure of the fraudulent asylum seeker.

8. Conclusion

In this article, I examined two instances of policy-making in the area of deportation policy, one from 1990 and one from 2005, in the context of the prevailing social, economic, and border policy dynamics in Austria.

The first case occurred in 1990. While Austrian asylum policies were comparatively liberal up to the 1980s, this approach lost political traction during the final phase of the Cold War, coinciding with a rise in asylum applications. The prospect of EU membership and intensifying class tensions also influenced the government’s decision to push for more restrictive border controls. However, the government had

⁷⁶ Ibid., 140.

⁷⁷ Susan Bibler Coutin, *Deportation Studies: Origins, Themes and Directions*, in: *Journal of Ethnic and Migration Studies* 41/4 (2015), 671–681, 678.

to determine how to implement a restrictive turn without undermining Austria's long-cultivated self-perception as a country that is welcoming to asylum seekers.

Through an analysis of parliamentary debates, this paper has traced the shift in discursive strategies that enabled this transition. Supporters of the legislative amendments did not frame asylum seekers arriving in Austria in 1990 as legitimate political refugees – like those who had arrived during the Cold War – but rather as ‘economic refugees’, seeking to improve their quality of life rather than fleeing persecution. Welcoming such ‘false’ refugees, policymakers argued, would constitute a moral failure, as it would endanger the future of Austria and the integrity of the Austrian asylum system. Consequently, the adoption of coercive measures in March 1990 was presented as both a technical necessity and a moral imperative.

These policy shifts normalized coercive measures in the domain of migration governance. Between 1991 and 1999, Austrian authorities carried out 85,000 deportations, compared to only 16,400 throughout the entire 1980s.⁷⁸ The 1990 amendments paved the way for far-reaching changes in migration and labour policy. Like other European states, Austria formally ended the guest workers’ programme and adopted a new migration policy paradigm centred on ‘migration management’. This new approach aimed to control migration more effectively by allowing entry on a selective basis and enforcing tighter border control, including the use of coercive measures, based on labour market needs.

The second case concerned legislative reforms in 2005, which unfolded in a markedly different political climate. Five years earlier, a coalition government had been formed in Austria between the conservative People's Party and the far-right Freedom Party, which made more efficient deportation procedures a political priority. However, several attempts to reform the Asylum Act were met with vocal criticism from human rights advocates and the political opposition, and were in some cases overturned by the Constitutional Court.

Subsequent attempts at reform saw the figure of the ‘fraudulent asylum seeker’ emerge as a central object of concern and portrayed as a threat to liberal democracy itself. By allegedly violating the asylum system's procedural norms, these individuals were framed as attacking the very foundations of Austrian statehood, particularly its rule of law. Within this framework, intensified state violence was reframed as a form of self-defence. Coercive policies, such as force-feeding hunger strikers, detaining people pending deportation, and deporting asylum seekers suffering from PTSD, were justified as necessary and morally legitimate tools in the fight against asylum fraud.

78 Karl Blecha, Answer to parliamentary question, XVII. GP 1230/AB to 1223/J.

One of the core ideals of liberal democracy is the rejection of violence in favour of consent and cooperation to ensure social order. Yet violence persists, often being directed at marginalized and devalued groups. When liberal states do use violence, it is frequently preceded by the rhetorical construction of the targeted group as an existential threat. This creates antagonism, transmuting the state's coercive measures into a morally necessary response – violence appears not as violence, but as a protective duty. This rhetoric dehumanizes the incarcerated, the expelled, and the deported; rendering their suffering illegible and their absence “ungrievable”.⁷⁹

79 Judith Butler, *Frames of War. When Is Life Grievable?* London 2009, 15.