
The “Safe Harbor” of Berlin

Socio-Legal Constellations and Complex Strategies of Divergence

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1 Introduction

In a joint statement in September 2018, the mayors of the German cities of Berlin, Bremen and Hamburg declared that it was their “shared humanitarian duty to do everything to save people from drowning, to bring migrant vessels to safe harbors, and to admit refugees in accordance with European and national asylum rules.”¹ This municipal declaration, though certainly not the first even in Germany, stood out for being proclaimed by the only three cities that also constitute a state (*Land*) in the constitutional structure of the Federal Republic of Germany. Explicitly affirming their status as “city-states” (*Stadtstaaten*), the mayors committed to remaining “engaged in the accommodation and integration of refugees” – though only insofar as these are already admitted to Germany in accordance with agreements that the federal government has made with other EU Member States.² This qualification, while easy to gloss over, hides a larger puzzle when it comes to the actions of local authorities, especially those that enjoy comparably more competencies: Will they use their elevated legal status and the resulting additional discretion confrontationally and in defiance of restrictive national policies, or more subliminally, to exert political influence “softly” or even avoid political debates altogether? Moreover, what are the motives that underpin the approaches that they decide to adopt?

This chapter explores these questions by examining the case study of Berlin and specifically the conduct of its local government following widespread mobilization in Germany calling for increased high sea rescue

¹ Senatskanzlei, “Stadtstaaten bleiben sichere Häfen für Flüchtlinge” (our translation).

² *Ibid.*

by a popular social movement known as *Seebrücke* (in English: “pier”). While Berlin is usually regarded as a supporter having first declared itself a “safe harbor” (*sicherer Hafen*) and then created the municipal “Cities of Safe Harbors” Alliance, we argue that its role is more nuanced in reality. Building upon theorizations concerning local “strategies of divergence,”³ the chapter shows that the local authorities in Berlin deploy multiple and seemingly contradictory strategies that, although challenging restrictive national policies in principle, are guided by distinct strategic considerations, notably including legal ones, rather than only by humanitarian motives. The example of Berlin also highlights the interconnection between strategies and the extent to which legal competencies delineate their outlook.

Looking at the reason behind such “complex” strategies of divergence, this chapter further contends that the approach taken by municipal actors, in this case in Berlin, is shaped fundamentally by the various “socio-legal constellations” that they are confronted with. The introduction of this novel concept allows us to unpack the contextual specificity of municipal strategies in an analytically meaningful way by drawing attention to two sets of factors (and their interplay): first, the interaction of local authorities with civil society actors (here: *Seebrücke*), which have an influence on both its willingness and political capacity to take certain actions; and second, the legal position of the local government in larger constitutional structures. In concrete terms, Berlin has been able to “prove” its political commitment to *Seebrücke* by exploiting its hybrid legal status as a “city-state” to file a legal challenge against the national government at the federal level.⁴ This circumstance, in turn, allows the local government to be less forthcoming on the interest of forced migrants in other areas, most notably when it comes to housing.

In a final instance, we discuss how the coexistence of these multiple distinct (yet interrelated) socio-legal constellations confronting cities with specific challenges and opportunities complicates our normative assessment of local authorities “decoupling”⁵ from national policies – and the “local turn”⁶ in migration policy in general. Particularly in the case

³ Oomen et al., “Strategies of Divergence.”

⁴ “Berlin klagt gegen Seehofer im Streit um Flüchtlingsaufnahme.”

⁵ Scholten, “Agenda Dynamics and the Multi-Level Governance of Intractable Policy Controversies.”

⁶ Zapata-Barrero et al., “Theorizing the ‘Local Turn’ in a Multi-Level Governance Framework of Analysis.”

of legally resourceful cities such as Berlin, scholarship must account for the possibility of municipal approaches that are contradictory and potentially ambiguous in outcome, yet pragmatic from a city’s own perspective, which raises questions about the promise of legally empowering cities in this area.

Before proceeding, we need to clarify the choice of our case study. As the country’s capital and largest city with around 3.7 million inhabitants, Berlin is an “atypical” case to consider for the purpose of identifying and explaining strategies of divergence. It is widely perceived as a cosmopolitan and diverse city of immigration, even if this outlook is arguably rather recent.⁷ While such features are shared by “global cities”⁸ in other countries (making the case study theoretically relevant also for this reason), we are interested in Berlin primarily because of its hybrid legal status. The fact that it is not “just” a municipal entity but also a *Land* empowers it in a manner that is rare: Constitutional law and practice in Western countries have largely marginalized the potential of cities to address issues of public policy.⁹ The case study of Berlin therefore offers instructive insights on the outlook of strategies of divergence where local authorities’ (presumably) growing appetite for political influence in the domain of migration is somewhat matched by their actual legal position. While we observe that more legal authority does empower cities, the results are not necessarily only positive when viewed from the perspective of migrants and migrant rights defenders.

In terms of methodology, this chapter adopts a socio-legal approach that combines a legal analysis of the demands of German constitutional and administrative law with empirical insights. More specifically, seven semi-structured interviews were conducted during the period between September and November 2020 with municipal representatives in Berlin (and the neighboring city of Potsdam) as well as members of migration advisory councils and the local chapters of *Seebrücke*. Interviewees were initially selected using a “key informant” sampling method to target the most relevant people in the field, which was followed by “snowball” sampling based on information provided during these first interviews. The purpose of these conversations was to gauge the origins, content, and motivation of Berlin’s strategies of divergence pertaining to sea rescue

⁷ Lanz, “Berlin oder Das umkämpfte Terrain der Einwanderungsstadt.”

⁸ Sassen, *The Global City*.

⁹ Hirschl, *City, State*.

and refugee admissions, as well as the attitudes held by interviewees concerning these strategies and the considerations that, actually or presumably, lie behind them.

The remainder of this chapter features five more sections, with the next one providing a short background of both the *Seebrücke* movement, which has sought to mobilize German society in favor of high sea rescue, as well as the “Cities of Safe Harbors” (*sichere Häfen*) Alliance, co-founded by Berlin. Thereafter, we zoom in on Berlin’s strategies of divergence to highlight the coexistence of multiple, seemingly contradictory strategies in different competency areas. The following section looks at the interaction between the city authorities and the *Seebrücke* movement, which has its origins in the city and continues to critically appraise Berlin’s actions and motives. Here, we claim that it is the combination of the pressure as exerted by the social movement and the legal authority held by Berlin as a *Land* that explains the latter’s specific strategic choices to take first legislative, and eventually judicial action against the federal German government. The final substantive section discusses the normative implications of such complex strategies of divergence, where it appears that local authorities navigating differing “socio-legal constellations” leads to ambiguous results from a migrant rights perspective. The conclusion summarizes the findings as well as their relevance for scholarship theorizing the “local turn” in migration policy and proposes avenues for future research.

2 From the *Seebrücke* Movement to the “Safe Harbor” Alliance

The *Seebrücke* movement came into being in 2018 after a rescue ship of the organization *Lifeline* had been prohibited to dock at an Italian harbor, despite having more than 200 rescued migrants on board. A “small circle of activists in Berlin”¹⁰ used this crisis moment to create a “decentralized, open-source campaign” that achieved nationwide mobilization even of people who had not joined political protests before.¹¹ The initiators thus set the direction for the strategic approach that *Seebrücke* has taken since: In practice, the movement is made up of numerous engaged

¹⁰ Schwiertz and Steinhilper, “Countering the Asylum Paradox through Strategic Humanitarianism,” p. 208.

¹¹ Schwiertz and Keß, “Safe Harbours: The Cities Defying the EU to Welcome Migrants.”

individuals who become active by protesting and exercising pressure on political actors to change their migration policies. Many of these activists have created local *Seebrücke* chapters, of which there are currently 180, both in large metropolitan cities like Berlin and in medium-sized and small and rural municipalities.¹² Deliberately engaging in a “switching of solidarity to the local scale as a tactic in light of the shrinking space of contentious solidarity on both the European and national level,”¹³ *Seebrücke* has also called on local authorities to publicly declare themselves open to refugees and opposed to the criminalization of high sea rescue. The result has been the initiation of a movement of so-called safe harbors that is composed of 267 cities and towns.¹⁴ With the EU’s asylum and migration policy prioritizing border control rather than the admission of refugees – and many migrants consequently embarking on dangerous journeys to get to Europe – cities of “safe harbor” argue that they can “take on responsibility” where the German government fails to do so.¹⁵

In concrete terms, *Seebrücke* expects local authorities of “safe harbor” cities to make full use of their political resources. Local municipal councils that seek to become safe harbors have to officially declare themselves such. *Seebrücke*’s further demands from local authorities an active support for maritime rescue, admission of more than required by the established quota, support for admission programs, making sure that people settle into the community, networking on national and European levels, entry into the “Cities of Safe Harbor Alliance,” and transparency in their actions. Since declarations alone leave significant room for symbolic politics that is not followed up with concrete actions, *Seebrücke* also tracks the progress of cities with criteria that it considers vital for safe harbors. These, as well as *Seebrücke*’s evaluation of the process, are publicly available online.¹⁶

¹² *Seebrücke* thus represents at the same time a grass-roots social movement as well as a civil society actor with an organizational structure. While we are mindful of the differences and even tensions that exist between the two concepts (see, e.g., De Bakker et al., “Social Movements, Civil Society and Corporations”), we still use both terms to refer to *Seebrücke*, which seems appropriate both in this case and for the purposes of this chapter.

¹³ Fischer and Jørgensen, “Scale-Switching as a Response to a Shrinking Space for Solidarity,” p. 157.

¹⁴ *Seebrücke*, “267 Sichere Häfen.”

¹⁵ *Ibid.*

¹⁶ *Ibid.*

2.1 Berlin as a “Safe Harbor”

Discussions about Berlin becoming a safe harbor started in 2018. However, local political actors including parts of the local government brought forward arguments against signing a declaration. According to critics, it was not up to Berlin as a city and even a federal state to decide on these issues but rather to await a nationwide, if not European decision. There also was concern that it would be “presumptuous” for a small city-state of 3.7 million inhabitants to criticize the actions taken at higher levels of government and attempt to change matters that are outside of their legal competencies.¹⁷ Proponents of a safe harbor declaration responded that such actions would never be taken at a higher level considering that the attitude of the German government leaned more toward deportation than refugee admission or inclusion. Within Berlin’s local government, discussion arose specifically also on whether the adoption of “safe harbor” policies should directly involve Mayor Michael Müller and his office. This was eventually done to underscore the urgency of the issue.¹⁸ In addition, the open support of the Mayor of Berlin, who is also a member of the Social Democrats (SPD), demonstrated that the safe harbors “project” was widely endorsed and therefore not merely a partisan initiative by the two more left-leaning coalition partners, the Green (*Bündnis 90, Die Grüne*) and the Left (*Die Linke*) party.

However, Berlin’s commitment to the cause of *Seebrücke* and the safe harbor movement goes beyond being one of the first cities to sign a declaration of support. Since 2019, cities that signed declarations have the additional option of joining the inter-city alliance “Cities of Safe Harbors.” Berlin was one of the Alliance’s founding cities, with Mayor Müller opening the inaugural conference in June 2019.¹⁹ The stated aim of the Alliance is to bring together local authorities around Germany to share capacities and resources to promote bottom-up a migration policy that stands in solidarity with refugees and the movement created by *Seebrücke*. Furthermore, the Alliance demands that the national government accelerate and deepen its cooperation with municipalities that are willing to welcome refugees. By 2021, the Alliance had grown to over 100 member cities and towns.²⁰

¹⁷ Interview with the Secretary of State for Integration in Berlin, conducted on September 7, 2020 (our translation).

¹⁸ Ibid.

¹⁹ Senatskanzlei, “Michael Müller eröffnete Kongress ‚Städte zu sicheren Häfen‘ der Initiative Seebrücke.”

²⁰ Stadt Potsdam, “Städte Sicherer Häfen: Die Mitglieder.”

3 Multiple, Coexisting, and Complex Strategies of Divergence in Berlin

To be sure, the proactive approach taken by the authorities in Berlin is not unique: Other cities and towns have started similar initiatives, with many even developing comprehensive local policies in the area of refugee reception and inclusion. This holds true not only for German cities of safe harbor but also localities across Europe, leading migration scholars to pivot toward theoretical frameworks of “multilevel governance” that take into account developments at the local level.²¹ Recounting this rich body of literature²² is beyond the scope of this chapter. In addition, these approaches also (even if implicitly) downplay the significance of legal frameworks and questions of legal interpretation in how local authorities come to decide on how they act,²³ which this chapter identifies as highly relevant. We consequently build on the more specific notion of “strategies of divergence” as introduced by Oomen et al. to analyze in concrete terms how the local government in Berlin inhabits and shapes the “discretionary spaces” that are offered by the applicable legal frameworks.²⁴ In fact, we are able to identify multiple such strategies, seemingly contradictory at first glance, which can however be distinguished by reference to the specific competencies that they address.

To recount, Oomen et al. challenge conventional theorizations of multilevel governance as presenting levels as largely static and unchanging. They instead decide to “foreground and classify the strategies that local authorities adopt to make use of and enlarge the discretionary spaces that are offered (or indeed foreclosed) by domestic law.”²⁵ The authors differentiate local migration and integration policies that diverge from national ones along two axes: the legal nature of the action in question on the one hand and their explicit or implicit outlook on the other hand. The result is a fourfold typology of strategies of divergence that include defiance (extralegal and explicit), dodging (extralegal and implicit), deviation (legal and explicit), and dilution (legal and implicit). The subsequent paragraphs identify three such strategies in the context of Berlin. While

²¹ See introduction to this volume.

²² For an overview of this body of work, see Caponio, Scholten and Zapata-Barrero (eds.), *The Routledge Handbook of the Governance of Migration and Diversity in Cities*.

²³ See Baumgärtel and Miellet, introduction to this volume.

²⁴ Oomen et al., “Strategies of Divergence.”

²⁵ *Ibid.*, p. 3609.

the possibility of their combination is not explicitly discussed by Oomen et al. in their article, their taxonomy is still useful for the purposes of our analysis because it allows us (a) to name and compare the complex heterogeneous strategies, which emerge in relation to different legal questions confronting the local authorities and (b) highlight their potential effects, which may target the national and European levels as well.

The first instance of divergence is one of dilution, an implicit and legal practice with which Berlin, in its capacity as a city-state, effectively takes in more forced migrants than assigned. According to Section 45 of the German Asylum Act (*Asylgesetz*), states are required to admit a certain number of asylum seekers following a yearly preset quota known as the “Königstein key” (*Königsteiner Schlüssel*).²⁶ The implementation of these quotas is tasked to a central distribution agency,²⁷ with states being allowed to interfere with the automated mechanism only through “targeted” actions.²⁸ More specifically, and according to Section 51, states can decide to disperse asylum seekers for humanitarian reasons, which have been further defined by state representatives in the so-called “Hamburg catalogue”. These encompass, among others, minors older than 16 years whose parents are applying for asylum in a particular state, elderly persons unable to travel, or persons in need of or providing care.²⁹ According to Berlin’s State Secretary Tietze, the city has used this instrument “very actively” to go beyond its nationally designated quotas.³⁰ In our view, one of the likely pragmatic reasons for this usage is the disproportionate number of asylum seekers arriving in German cities in general,³¹

²⁶ For a description of the key as well as its genesis, see Bartl, “Institutionalization of a Formalized Intergovernmental Transfer Scheme for Asylum Seekers in Germany.”

²⁷ Section 46(2), Asylum Act (*AsylG*), promulgated on 2 September 2008 (Federal Law Gazette I, p. 1798), last amended by Article 2 of the Act of 11 March 2016 (Federal Law Gazette I, p. 394). The application of the distribution key falls on the Federal Office for Migration and Refugees (BAMF), which executes it through the usage of a computer-based system commonly known under the acronym “EASY” (*Erstverteilung von Asylbewerbern*, translated as “initial distribution of asylum seekers”).

²⁸ Arbeitsgruppe der EASY-Beauftragten, “Asyl: Ausnahmen von Verteilungsentscheidungen mit dem System EASY.”

²⁹ *Ibid.*

³⁰ Interview with the Secretary of State for Integration in Berlin, conducted on September 7, 2020.

³¹ Large cities such as Berlin “function as hubs for initial reception and transit ... and are often the end destination of the refugees’ journeys”; the infrastructures and social (diaspora) networks that they offer likewise attract many newly arrived forced migrants. See Katz et al., “Cities and Refugees – The German Experience,” p. 4.

which necessarily also implies the presence of higher numbers of vulnerable migrants that would fall within the categories set by the “Hamburg catalogue.” However, the regular if not frequent usage of such hardship categories has not received much public attention as online research confirms.³² It therefore counts as an instance of *dilution* where the centrally organized dispersal system is set aside by legal means and implicitly, meaning without the city flagging it, leading to localized results that do not challenge the structure of the national system.³³

In a second instance, this time related to refugee admission, Berlin opposes the national government more explicitly. The legal question pertains hereby to Section 23(1) of the Residence Act (*Aufenthaltsgesetz*) allowing states to “order a temporary residence permit to be granted to foreigners from specific states or to certain groups of foreigners.” Importantly, however, the provision also stipulates that “[i]n order to ensure a nationwide uniform approach, the order requires the approval (*Einvernehmen*) of the Federal Ministry of the Interior.”³⁴ In line with the demands by *Seebrücke*, Berlin took two different types of actions to challenge the requirement for approval by the national authorities. Berlin, joined by the state of Thuringia, put forward an amendment proposal to the Federal Council of Germany (*Bundesrat*) that would lower the requirement from approval to a mere consultation (*Benehmen*) of the Federal Ministry of the Interior.³⁵ After this proposal was rejected by the Federal Council and its reigning majority of conservatives states, Berlin decided to take further action by filing a case against the national government before the Federal Administrative Court.³⁶ The main legal claim, in this context, has been that the approval of such temporary residency permits exists only insofar as it ensures national uniformity, which is however not

³² A Google News search for “Hamburger Katalog” AND Berlin did not yield any relevant results. A more general Google search, using the same key words, resulted in forty-nine results, only three of which were relevant. These include, next to the specialist publication referred to in footnote 28, pages providing legal advice by the Berlin Refugee Council and *Schwulenberatung Berlin*, an LGBT counselling center.

³³ Oomen et al., “Strategies of Divergence.”

³⁴ Section 23(1), Residence Act (*AufenthG*), promulgated on 25 February 2008 (Federal Law Gazette I p. 162), most recently amended by Article 4b of the Act of 17 February 2020 (Federal Law Gazette I p. 166).

³⁵ Bundesrat, “Gesetzesantrag der Länder Berlin, Thüringen: Entwurf eines Gesetzes zur Änderung des § 23 Absatz 1 Aufenthaltsgesetz.”

³⁶ Mai, “Berlin will grundsätzliche Klärung.”

actually threatened by the actions of a state that holds the capacity to take in more refugees.³⁷

Berlin's actions arguably fall within the category of *defiance*, designating a strategy of divergence that is explicit and outside the law. For one, Berlin's Interior Senator Andreas Geisel, after conducting a widely mediated visit to Greece, took an openly confrontational course in describing the national government's reluctance to transfer large numbers of people from the burnt-down Moria camp as "embarrassing."³⁸ The legal proceedings, likewise, made national headlines; the parliamentary group of the SPD in the *Bundestag* even joined Berlin as a plaintiff in March 2021, which was unexpected given that the party was also a part of the national government.³⁹ At the same time, it seems appropriate to classify Berlin's strategy as extralegal, though arguably in a broader sense than proposed by Oomen et al. While not illegal in the sense of already taking *ultra vires* measures that would entail adjudication of a *fait accompli*, the State of Berlin defends an interpretation of Section 23(1) of the Residence Act that, judged by the conduct of the federal government and other German states, is not seen as legally permissible, at least until the Federal Administrative Court declares otherwise. This course of action is clearly meant to lead to "a change in the law" that "produce[s] large-scale results."⁴⁰ It is notable that Berlin's defiant legal challenge to national frameworks follows an initial push for legal reform, even if these efforts failed in the present case.

Berlin's hesitancy to use another provision, namely Section 22 of the Residence Act, marks an interesting contrast to this strategy of defiance. This provision offers the possibility to grant admission "for the purpose of admission from abroad in accordance with international law or on urgent humanitarian grounds" – though on an individual basis.⁴¹ Legal experts assert that local authorities in Berlin could use this basis to facilitate admissions specifically in the case of transfers from the Greek camps because of their inadequate reception conditions.⁴² Likewise, it could be a ground to facilitate family reunifications if read in conjunction with Art. 6

³⁷ Ibid. as well as interview with Member of *Seebrücke* Berlin, conducted on November 21, 2020.

³⁸ "«Beschämend»: Berlins Innensenator kritisiert Seehofer."

³⁹ Starzmann, "SPD-Bundestagsfraktion unterstützt Berliner Klage gegen Seehofer."

⁴⁰ Oomen et al., "Strategies of Divergence."

⁴¹ Section 22, Residence Act.

⁴² Lehnert, "Rechtliche Spielräume der Bundesländer bei der Aufnahme von Geflüchteten aus griechischen Lagern," pp. 6–7.

of the German Basic Law, which holds that the family “shall enjoy the special protection of the state.” Civil society representatives interviewed for this chapter criticize Berlin for not using this particular provision and the discretionary space that it offers,⁴³ with Berlin’s Refugee Council explicitly demanding such a step in a policy document prepared for the state elections in 2021.⁴⁴

A third strategy of divergence appears in Berlin’s approach to housing those who have reached in the city, which is another key priority identified by *Seebrücke* under the category “communal arrival.”⁴⁵ Section 47 of the Asylum Act places an obligation on asylum seekers to remain in a reception center until a decision on their application has been made and up to a maximum of eighteen months after their arrival (six months in the case of families).⁴⁶ Interestingly, Berlin in its role as a *Land* has made use of the broadly discretionary Section 49(2) of the Asylum Act to relieve vulnerable asylum seekers of this obligation.⁴⁷ This policy, which is unique in Germany,⁴⁸ was mentioned as a notable though largely implicit welcoming practice by Berlin’s State Secretary Tietze.⁴⁹ The impact of this strategy of *dilution* is however limited in practice by the shortage of available affordable housing in Berlin,⁵⁰ due to which most asylum seekers still end up in accommodation provided by the local authorities. This outcome is highly problematic from the perspective of the refugees who arrive: Some of the housing in Berlin as provided by the local authorities is designated as a reception center (in the sense of Section 47 of the Asylum Act) rather than a “collective accommodation” (as established under Section 53), one key difference being that asylum seekers residing in the latter are allowed to work and rent an apartment.⁵¹ However, in several instances, the designation provided by the local government did not correspond to the narrow definition of a reception center provided in Section 44 of the Asylum

⁴³ Interview with Member of *Seebrücke* Berlin, conducted on November 21, 2020.

⁴⁴ Flüchtlingsrat Berlin, “Berlin braucht eine menschenwürdige Flüchtlingspolitik.”

⁴⁵ *Seebrücke*, “Forderungen.”

⁴⁶ Section 47(1), Asylum Act.

⁴⁷ More specifically, Section 47(2) holds that “The obligation [to reside at a reception center] may be terminated for reasons of public health, for other reasons of public security and order, or for other compelling reasons.”

⁴⁸ Berlit et al., *Jahrbuch des Migrationsrechts für die Bundesrepublik Deutschland 2020*, p. 442.

⁴⁹ Interview with the Secretary of State for Integration in Berlin, conducted on September 7, 2020.

⁵⁰ Berlit et al., *Jahrbuch des Migrationsrechts für die Bundesrepublik Deutschland 2020*, p. 442.

⁵¹ Flüchtlingsrat Berlin, “Berlin braucht eine menschenwürdige Flüchtlingspolitik,” p. 41.

Act.⁵² In other words, Berlin's ostensible dilution strategy, which would have been favorable for migrants, is effectively transformed into an extra-legal but implicit strategy of *dogging* national laws, according to the Berlin Refugee Council for the purposes of deterring migrants.⁵³

There are more aspects of Berlin's local policies (and wider practices) that could have been discussed here; most notably, the question of deportations has loomed large in the city; even the different parties within the local government coalition are not presenting a united front.⁵⁴ However, crucial for our chapter is the insight that within the same locality, there can be multiple and, from the vantage point of migrants and their supporters, contradicting strategies of divergence – as well as the occasional nonusage of discretionary spaces, in Berlin's case when it comes to Section 22 of the Residence Act. While this is in line with recent scholarship that highlights variance in local policies (as opposed to earlier works that seem to have presumed a more unitary “local dimension”),⁵⁵ we have further been able to show how these strategies can still be classified using the four-fold taxonomy by Oomen et al., which offers us a tool to describe and map them in their heterogeneity.

4 Interaction between the *Seebrücke* Movement and Berlin's Local Government

Those familiar with past and present narratives on Berlin as a city might not be surprised to read that Berlin's “safe harbor” policies are complex, even contradictory. The notion of Berlin as a diverse and cosmopolitan “global city” is rather recent, with urban scholar Stephan Lanz identifying three stages in its urban governance of migration: The notion of a “nationally homogenous city” (from 1871) was replaced first by a “multi-cultural, differential” dispositive (from 1981) and later, from 2001, by said less nationally focused, more cosmopolitan vision.⁵⁶ Even then, however, “against a backdrop of social polarization and fragmentation processes, exclusionary elitist and racist discourses [have been] on the rise as well,” with historian Paul Nolte and especially former SPD politician Thilo

⁵² Ibid. and Classen, *Ratgeber für Geflüchtete in Berlin*, pp. 121–122.

⁵³ Flüchtlingsrat Berlin, “Berlin braucht eine menschenwürdige Flüchtlingspolitik,” p. 41.

⁵⁴ “Breitenbach und Geisel: Keine Lösung im Abschiebestreit.”

⁵⁵ See, for instance, Spencer and Delvino, “Municipal Activism on Irregular Migrants” and Van Breugel, “Towards a Typology of Local Migration Diversity Policies.”

⁵⁶ Lanz, “Berlin oder Das umkämpfte Terrain der Einwanderungsstadt.”

Sarrazin giving these factions a voice from the early 2000s onward.⁵⁷ In short, the outlook of the city (in its broadest sense) has been shaped by discourses that change as the social and urban structures and demographic composition of Berlin themselves evolve – a finding that resonates with scholarship underlining the impact of structural forces such as economic globalization on local approaches to migration governance, including at different scales of governance.⁵⁸ While it is important to keep all of this in mind, our narrower focus on the Berlin’s recent policies concerning the support of sea rescue and the transfer and reception of forced migrants allows us to demonstrate how these are shaped specifically by the interaction between the local government and the *Seebrücke* movement. It is here, in our view, that we find important explanations for the adoption of the complex set of strategies outlined in Section 3.

To better understand the dynamic between the local authorities and *Seebrücke*, it is helpful to consider first where the City “stood” at the time when the movement gained traction in 2018. During our interviews, we asked to what extent Berlin was a safe harbor even before signing its declaration – prior engagement toward similar goals would speak in favor of any subsequent strategies genuinely seeking to advocate admitting and integrating refugees. According to State Secretary Tietze, “some formats and part of the demands of initiatives like *Seebrücke* had already been a part of the government’s agenda during the coalition talks”⁵⁹ in autumn 2016, thus prior to the rise of *Seebrücke*. This is confirmed by statements made by Berlin’s Mayor Müller in December 2016 that Berlin still had capacities to accept refugees and that “we can perhaps do even more than we have done up to this point.”⁶⁰ It should be noted in this context that *Seebrücke* with its specific agenda draws on the similar, though somewhat less popular *Save Me* campaign in Germany in 2008, which sought to establish a permanent refugee admissions program.⁶¹ Still, the importance of the inclusion of refugees (as well as asylum seekers and persons with

⁵⁷ Lanz, “Be Berlin! Governing the City through Freedom,” p. 1316.

⁵⁸ See, for example, Glick Schiller and Çağlar, “Towards a Comparative Theory of Locality in Migration Studies.”

⁵⁹ Interview with the Secretary of State for Integration in Berlin, conducted on September 7, 2020 (our translation).

⁶⁰ Fiedler and Hackenbruch, “So viele Flüchtlinge leben in den Bezirken.” (our translation).

⁶¹ Schwirtz and Steinhilper, “Countering the Asylum Paradox Through Strategic Humanitarianism,” pp. 204–206. As the authors explain, this campaign was launched by the Bavarian Refugee Council and accomplished a public commitment by fifty German cities to host resettled refugees.

exceptional leave to remain) were already flagged in the Senate's 2007 integration concept, which portrayed diversity "as an asset that shall be fostered by public policy."⁶²

All this evidence points to Berlin having taken a principally progressive approach already prior to the mobilization that led to the safe harbor declaration and the establishment of the Safe Harbor Alliance. A member of *Seebrücke*, however, takes a more critical perspective:

Berlin always emphasizes that their signature only affirmed what they have already been practicing: a refugee policy based on solidarity. I'm not so sure about that. I believe that there still is much room for improvement. It's partly symbolic politics to make such a claim about oneself, even though that does not mean that it is totally useless. A clear commitment to taking in people, that is definitely very valuable ... But obviously a lot more would have to happen to really fill it with content and to implement it in practice.⁶³

Besides offering a more differentiated evaluation, the quote illustrates the ambivalent relationship between local governments, in our case in Berlin, and civil society actors, which could variably be "cooperating, tolerating, or conflicting."⁶⁴ This stands in contrast to early scholarship on the "local turn" in migration policy that often stressed the collaborative, results-oriented interaction between these actors.⁶⁵ Still, in the case of Berlin and *Seebrücke*, it even goes beyond Ambrosini's piercing metaphor of "battleground" of asylum and immigration policy,⁶⁶ which still does not fully capture the story: "allies" and "adversaries" at the same time and depending on the policy question, the two actors' strategies are both distinct *and* co-productive. The terrain of the "battleground" is a rather distinctive one, resembling more the volatile and situational interaction of business competitors in a growth market, which find their interest converge and diverge at different moments. At the same time, it represents a strong "bond" in the sense that it generates dynamics with potentially far-reaching consequences such as changing the accepted interpretation of Section 23(1) of the Residence Act, which would elevate the competency of all states, including city-states such as Berlin and allow more autonomous

⁶² Gluns, "Refugee Integration Policy and Public Administration in Berlin," p. 10.

⁶³ Interview with Member of *Seebrücke* Berlin, conducted on November 21, 2020 (our translation).

⁶⁴ Ambrosini, "The Battleground of Asylum and Immigration Policies," p. 380.

⁶⁵ Filomeno, *Theories of Local Immigration Policy*, p. 31.

⁶⁶ Ambrosini, "The Battleground of Asylum and Immigration Policies."

action on refugee admissions. The possibility for such a change adds a concrete dimension to recent studies that, looking at the ambitions behind Berlin’s policies and the mobilization by *Seebrücke*, have concluded that these “urban solidarities ... transcend municipal boundaries.”⁶⁷

It has been pointed out that multilevel governance frameworks have done poorly in integrating the “horizontal” dynamics between state and nonstate actors into their largely “vertical” approach focused on different levels of government.⁶⁸ Not surprisingly, they therefore do not provide enough conceptual material to explain how, even within the same locality and a relatively narrow timeframe (2018–2020), the interaction between local authorities (like the ones in Berlin) and a forceful civil society movement (like *Seebrücke*) can bring about the complex and partially contradictory set of strategies outlined in Section 3. “Scalar thought” and “multi-scalar” perspectives fare only marginally better. While both *Seebrücke* and the Safe Harbor Alliance are arguably involved in “a profound transformation in the very logic of governance” that is of “immanently political character” and “embedded ... in hierarchies of power,” it is not obvious what is gained analytically by the mere characterization of these specific interactions as a part of “processes of scaling.”⁶⁹

We claim that this theoretical vacuum can be filled (at least partially) by distinguishing various constellations that local authorities find themselves in, which are defined by both social *and* legal realities – the relevance of latter being worth noting given that they have been frequently sidelined in migration scholarship.⁷⁰ These factors, in their combination, place a local government in different strategic positions vis-à-vis the same civil society actors depending on the issues that are at stake. Furthermore, in their sum and also considering their interplay, these socio-legal constellations allow us to grasp the strategies taken by the local authorities in Berlin in their variance and seeming inconsistency.

What we mean by socio-legal constellations is best illustrated by means of example: In the case of Berlin, the first strategy of divergence that we identified (in Section 3) was one of dilution, with the local authorities invoking “humanitarian reasons” in accordance with Section 51 of the Asylum Act to accept especially vulnerable migrants beyond their designated state (*Königsstein*) quota. Given that these are mostly refugees

⁶⁷ Bauder, “Urban Migrant and Refugee Solidarity Beyond City Limits.”

⁶⁸ Campomori and Ambrosini, “Multilevel Governance in Trouble.”

⁶⁹ Baumgärtel and Mielliet, Introduction to this volume, p. 1.

⁷⁰ Ibid.

that already find themselves in Berlin when these decisions are taken, we observe the pragmatic recognition of the *status quo* rather than an attempt to change it. This, in turn, reduces the incentives for the local authorities to engage in a substantive public debate on this practice. In such a case, local migrant rights defenders would likely question the progressiveness of the policy and draw attention to the relatively narrow scope of Section 51, whose application is therefore an exception rather than a rule. They would also start scrutinizing the vulnerability categories defined in the “Hamburg catalogue,” which are determined by the representatives of the states (Länder), including Berlin. It should be mentioned here that *Seebrücke* members are already critical of the selectiveness of the local government, for example, in the context of the state admission program whose legality is currently being assessed in court:

Given the number [of admissions] that is on the table, there is a risk that [the local authorities] will make a very strict selection. In fact, that’s already the case: only unaccompanied minor girls. There aren’t enough of these, and it is absurd! Behind it lies a racist prejudice that Arab and African young man are prone to violence.⁷¹

Rather than opening Pandora’s Box regarding the application of Section 51 of the Asylum Act, the local authorities thus stick to a dilution strategy. Even during our interview, State Secretary Tietze mentioned the provision but did not elaborate on his claim that the City was using it “very actively.”⁷² One possible reason for this lies in the scope of Section 51, presently appropriately narrow from the point of view of the local authorities, as well as the fact that their – in this context pragmatic – approach does not fully resonate with the principled goals of *Seebrücke* and other progressive movements.

In the case of the second strategy of divergence, we observe an entirely different socio-legal constellation. Pursuing a defiant approach, Berlin is pushing for a new interpretation of Section 23(1) of the Residence Act, one that would essentially remove the requirement of consent by the federal authorities to adopt state admissions programs. The interests of Berlin’s local authorities and *Seebrücke* are hereby fully aligned in opposition to the national government and the limitations that, based on Section 23(1),

⁷¹ Interview with Member of *Seebrücke* Berlin, conducted on November 21, 2020 (our translation).

⁷² Interview with the Secretary of State for Integration in Berlin, conducted on September 7, 2020.

are placed on the city’s admission program. Accordingly, the *Seebrücke* member who we interviewed was positive about the fact that Berlin used its specific legal status to launch judicial proceedings against the Ministry of the Interior. He even expressed the hope that such open defiance of restrictive national policies would become “a role model” for other cities.⁷³ This assessment was made in clear awareness of the inherent limitations of legal action:

The lawsuit is an important step, but it will not lead to a quick solution. The proceedings are intricate and can last for months or years ... Well, now they are taking legal action, before, you had the feeling that they are resting on [the argument that], “oh, Seehofer [the Minister of the Interior of the Federal Government] prohibits this,” and thereby releasing themselves from the duty to act themselves.

The last part of the quote illustrates that the decision to take legal action proves to local civil society that Berlin “very much stands up” for the shared goal of creating noncentralized admission programs.⁷⁴ That said, it is analytically significant that the local authorities are using their specific, constitutionally allocated competencies to show their support. This sets them apart from all (but two) other cities in Germany that do not have this option, effectively elevating Berlin’s importance as a strategic partner for *Seebrücke*. On the flipside, the movement created the political momentum that allowed the City of Berlin to push for this expansion of its competencies through the initial legislative initiative and eventually the legal proceedings, both in full confrontation with the national government. It is also hard to believe that without the mobilization achieved by *Seebrücke*, the SPD would have joined Berlin as a plaintiff against the national government, of which it was a coalition partner. In short, in this specific socio-legal constellation, the relationship between Berlin and *Seebrücke* seems almost symbiotic as both could act in ways that they would not be able in the absence of the other.

The previous quote brings up another aspect: As the movement’s stand-in plaintiff, Berlin seems to feel less pressure to take other measures. Notable is yet again the contrast with its nonusage of Section 22 of the Residence Act permitting admissions on an individual basis. This (lack of) action is mentioned by *Seebrücke* members but does not seem to be

⁷³ Interview with Member of *Seebrücke* Berlin, conducted on November 21, 2020 (our translation).

⁷⁴ *Ibid.*

as important a factor in their evaluation of the local government's overall performance, which illustrates how Berlin's status as a city-state works to its advantage. In general, the highly specific socio-legal constellation arising from the debate on Section 23(1) enables the local government in Berlin to position the city-state as a true champion of admission programs and even as a potential role model for safe harbors when its policies are actually more ambiguous in practice – and the eventual outcome of the legal proceedings uncertain.

Berlin's third and final strategy (or rather strategies) of divergence arose regarding the question of housing. Here, what in principle appears to be a dilution strategy – using Section 49(2) of the Asylum Act to relieve vulnerable asylum seekers of a duty of residence – turns out to be a *dodging* of established categories of housing to the detriment of newly arrived refugees and asylum seekers. The fact that the latter runs clearly against *Seebücke's* demand for “communal arrival” explains the implicit nature of the local authorities' actions in this area. The situation certainly could have been otherwise: academic reports approvingly note the principled decision “[to] consider ... the accommodation of vulnerable persons in collective reception centers *per se* as unreasonable (in derogation from the general principle).”⁷⁵ Were the implementation of this policy not structurally inhibited by Berlin's pressured housing market – and members of *Seebücke* recognize that it is “a city-wide problem that there is not enough affordable housing”⁷⁶ – the local authorities would almost certainly have made their legal yet uniquely progressive reading of Section 49(2) more explicit to buttress Berlin's standing as a welcoming city. All in all, this example shows how economic factors are also relevant when it comes to the formulation of strategies of divergence, though it is yet again the strong presence of migrant rights supporters and their organizations that is likely at the root of the decision of the local authorities in Berlin to keep their approach to housing questions under wraps.

In conclusion, there is a strong and intimate link between the *Seebücke* movement and the strategies of divergence adopted by the local authorities in Berlin. That is in itself not surprising given the immense success of the mobilization, which eventually led to the creation of the Safe Harbors Alliance. However, this section also revealed that the two actors link up in rather different socio-legal constellations,

⁷⁵ Kluth et al., *Addressing Vulnerabilities of Protection Seekers in German Federalism*, p. 5.

⁷⁶ *Ibid.* (our translation).

with their interests aligning on some occasions and being at odds in others. These constellations also have an impact on their legal and political capacities. The decision of the City of Berlin to instigate legal proceedings against the federal authorities on the interpretation of Section 23(1) of the Residence Act is closely linked to the rise of *Seebrücke* in a twofold way: not only does Berlin use its heightened legal capacity (as a city-state) to bring such a case and thus accommodate the demands of the movement, but it also simultaneously benefits from the political momentum created by the latter pushing for state admission programs in Germany and beyond. Given all of this, the metaphor of migration and asylum policy being a "battlefield" only describes an abstract condition where the concrete terrain, alliances and specific tactical decisions are contingent on the specific socio-legal constellations in which local authorities and civil society find themselves.

5 Normative Implications of Complex Strategies of Divergence

One persistent assumption, both in migration scholarship and more generally, is that large, metropolitan cities will be welcoming to migrants. As "global cities"⁷⁷ that are "characterized both by a relatively high scale of migration ... and by a growing complexity of diversity,"⁷⁸ they often tend to consider the arrival of newcomers as a given and as desirable, with local authorities being responsible for managing the *how*, rather than the *if*, of the phenomenon. Berlin appears to be a typical specimen in this regard, with both the local government and the majority of the population embracing an "urban imaginary"⁷⁹ that considers Berlin to be open to migrants and progressive in the formulation of its policies. The signing the safe harbors declaration was, from this perspective, not just in line with governing policy but arguably inevitable once the political movement initiated by *Seebrücke* had gained sufficient political momentum. A quote from State Secretary Tietze serves to illustrate this self-image:

It is of course the aspiration of Berlin as a metropole governed by Red-Red-Green [the SPD, the Green and the Left Party] to be open to people in need. And that also means to go beyond your magisterial competencies to give a signal to people in need ... [and] to create a 'safe harbor' through

⁷⁷ Sassen, *The Global City*.

⁷⁸ Scholten, "Cities of Migration," p. 242.

⁷⁹ Hoekstra, "Governing Difference in the City."

extraordinary formats in which one can also, by means of state-specific admission programs, set in motion relocation and resettlement.⁸⁰

From this angle, the creation of the Cities of Safe Harbor Alliance can also be interpreted as a measure to stay abreast of the movement. Even if only declaratory in nature, these commitments are as genuine as they are self-speaking, being rooted in the social and political reality typical of many other global cities. Normatively speaking, the example of Berlin thus seems to support arguments for a reorientation of migration policy toward urban, cosmopolitan areas for the purpose of protecting diversity and affirming migrant rights.⁸¹

That said, our evaluation shows that the picture is more nuanced when it comes to concrete local policymaking and implementation. Some decisions that are favorable to forced migrants (such as the legal proceedings) are flagged while others (such as the regular usage of Section 51 of the Asylum Act) are not; more importantly still, there are policies such as the dodging of established categories of housing for migrants that are straight up dubious from the perspective of migrant rights. To be sure, the theorem that large cities are necessarily more open and welcoming to newcomers has already been challenged on empirical grounds: Particularly when one takes a process perspective, it turns out that “in some cities ... the transformation into a superdiverse city is more problematic and accompanied by political upheaval, while in other cities it seems to be a more smooth process.”⁸² Previous research has in fact demonstrated that even local authorities that pioneer progressive reception policies are forced to navigate the “conflicting demands” of stakeholders.⁸³ Such pulls in different directions are also palpable in Berlin, where the cosmopolitan imaginary is arguably still recent and subject to contestation.⁸⁴ In our interviews, local civil society members likewise suggested that the local government in Berlin will seek to “accommodate ... different constituencies” by adopting varying approaches to different policy questions.⁸⁵ Taken by itself, this insight would not be as

⁸⁰ Interview with the Secretary of State for Integration in Berlin, conducted on September 7, 2020 (our translation).

⁸¹ See chapter by Morales in this volume.

⁸² Crul et al., “Conclusions: Coming to Terms with Superdiversity?,” p. 226.

⁸³ De Graauw, “Municipal ID Cards for Undocumented Immigrants.” See also Hinger, “Integration through Disintegration?”

⁸⁴ Lanz, “Berlin oder Das umkämpfte Terrain der Einwanderungsstadt.”

⁸⁵ Interview with Member of Seebrücke Berlin, conducted on November 21, 2020 (our translation).

normatively problematic considering that conflict seems unavoidable in a city as large and diverse as Berlin – as long as the general trend, in spite of setbacks, points to an increasingly welcome and open attitude.

Still, our specific findings lead us to take a more skeptical attitude. With multiple policies co-existing simultaneously, it becomes even more pressing to question the reasons behind the discrepancy between the “overarching discourse” and “actual policy practices,” a finding also made by Hoekstra in her study of local migration policies in The Hague and Amsterdam.⁸⁶ Hoekstra’s explanation is that “policy actors locate difference ... unevenly across spatial scales, urban areas, and population groups,” which leads her to emphasize that “municipal policy actors make sense of difference in relation to the urban context.”⁸⁷ While this is a generally sensible interpretation also of the situation in Berlin, our findings suggest that policy practice may be less “fragmented”⁸⁸ than it first appears. Although seemingly contradictory strategies of divergence are rooted in various socio-legal constellations, there are good reasons to believe that they still form part of a wider whole; at the very least, evidence demands us to consider their interrelation. Based on its interaction with its constituencies and especially the *Seebrücke* movement, the local government in Berlin decided to defy the national government on the question of state admission program but kept a relatively low profile in diluting national quotas through “beyond quota” admission of vulnerable migrants who are already present. Not only is the prior better suited to show support with the *Seebrücke* movement (which, after all, pushes for systemic change to introduce local-level admissions), but it also enables Berlin to divert attention away from legal categories of vulnerability that could, in principle, be expanded. What is more, the preponderance of questions of legal interpretation renders both these strategic actions and their interrelation concrete: They require the involvement of the same legal officers and departments. Indeed, as State Secretary Tietze revealed during our interview (which took place shortly prior to the launching of the court proceedings), the possibility of taking legal recourse was undergoing a process of “internal review,” the question being “what the better way is to lead this contest also legally speaking.”⁸⁹

⁸⁶ Hoekstra, “Governing Difference in the City,” p. 375.

⁸⁷ *Ibid.*, pp. 375–376.

⁸⁸ *Ibid.*

⁸⁹ Interview with the Secretary of State for Integration in Berlin, conducted on September 7, 2020 (our translation).

Taken in isolation, our observation that Berlin's approach is reflective of (rather than evidence against) deliberateness on the part of the local authorities could be perceived positively if reactive, ad hoc decision-making is the alternative. At the same time, much has been made in the past of the "pragmatic problem-coping" character of local governments as one of the reasons behind "the emergence of inclusionary local immigration policies in the context of restrictive national immigration policies."⁹⁰ The example of Berlin shows that this dichotomy is not helpful: While clearly adjusting their responses to particular socio-legal constellations as they present themselves, the *combination* of the strategies still forms what can be seen as a coherent whole. Put differently, deploying a complex set of strategies of divergence represents a pragmatic approach from the perspective of the local government. Echoing Hoekstra's claim that "the notion of pragmatism ... should be unpacked,"⁹¹ we must then ask what the normative consequences are. Our analysis in Section 3 shows that our view of pragmatism as strategic deliberativeness does not necessarily entail only positive outcomes from the perspective of forced migrants. Even in the "global city" of Berlin, socio-legal constellations lead the local authorities to adopt a set of strategies that generally resonates with local migrant rights supporters but also retains significant gaps in protection. While "urban imaginaries" existing within a city certainly matter, practical outcomes are thus also shaped by the opportunities that present themselves to city governments, with the symbolically most rewarding options not necessarily being the ones that are most beneficial for migrant populations.

One final normative aspect that arises from our analysis concerns the question of the legal competencies of local authorities. More specifically, given that "[i]ssues of immigrant settlement and integration ... tend to bear more directly on cities than on the countryside,"⁹² *should* cities such as Berlin be legally empowered? While we still believe that such empowerment would overall be favorable for forced migrants, our case study does caution against overly firm normative conclusions. On the one hand, we find that even Berlin, a city-state with significantly more legal powers compared to other German cities, still adopts complex strategies of divergence with ambivalent outcomes. Providing further legal competencies for local

⁹⁰ Filomeno, *Theories of Local Immigration Policy*, p. 30.

⁹¹ Hoekstra, "Governing Difference in the City," p. 376.

⁹² Hirschl, *City, State*, p. 174. See also the chapter by Morales in this volume.

authorities does not, therefore, *necessarily* improve the situation of forced migrants. While this might not be too surprising of a finding, it is still striking in the case of Berlin, where the overall context seems particularly favorable for migrants: a legally resourceful city governed by a center-left/left coalition that is also experiencing social and political tailwind, in the form of the *Seebrücke* movement, for its principally cosmopolitan and inclusive orientation. On the other hand, had the city-state of Berlin more competencies, most notably to introduce a state admission program, no high-profile legal action would have to be launched against the national government – this would open up the space to discuss other relevant questions, such as Berlin’s housing policies or the scope of vulnerability criteria. The legal fight over competencies thus stifles the emergence of other debates that could be meaningful for the practical enjoyment of migrant rights, but possibly also more troublesome from the municipality’s perspective. Strikingly, this downside of formal debates concerning the scope of legal authority echoes issues that have arisen in the United States in the context of sanctuary policies.⁹³

6 Conclusion

Berlin, a cosmopolitan “global city” located in the heart of Europe, has the reputation of being open and welcoming to refugees. This was true already prior to 2018, marking the arrival of the *Seebrücke* movement, which has stood up for increased sea rescue and human rights-compliant policies based on direct admission to cities and towns. Since then, the local authorities in Berlin continue to be perceived as supportive of this mobilization – and plausibly so, having publicly declared the German capital a “safe harbor” that would be willing to host stranded refugees, and even creating the Cities of Safe Harbor Alliance, which rallies over 100 German cities and towns in solidarity with *Seebrücke* and the refugees the movement seeks to protect.

This being said, our chapter shows that is worthwhile to take a closer look at the strategies that Berlin has adopted in practice. Even within the narrow timeframe of our study focusing on the three years following the rise of *Seebrücke*, we find that Berlin adopts multiple, at first glance contradictory strategies to diverge from the restrictive policies of the national government. More specifically, using the conceptual framework by

⁹³ See Lasch’s chapter in this volume.

Oomen et al., we were able to identify the coexistence of strategies of defiance, dilution and dodging, as well as inaction, on different policy questions. Berlin's authorities are defiant insofar as state admission programs are concerned, initiating first legislative and then legal proceedings to get rid of the legal requirement of obtaining prior consent from the national government. By contrast, the local government does not make use of another legal basis in the same Residence Act to proceed with transfers on an individual basis. Dilution and dodging strategies can be found when it comes to providing accommodation for refugees: The City does not flag its decision, although unique among all German states, to dispense vulnerable refugees of a duty of residence. Its implicit strategy can be understood against the backdrop of pressures in the housing market and the fact that in practice, many refugees still end up in reception centers that are wrongly designated as such, thereby barring its inhabitants from work or looking for private accommodation. In short, the actual approach taken by the municipality in Berlin is much more complex and indeed ambivalent for migrants than its vocal support for *Seebrücke* would suggest.

To explain the existence of these complex strategies of divergence, we referred to the multitude of "socio-legal constellations" in which they arise. Particularly in a context where the rise of the *Seebrücke* movement has given rise to considerable civil society pressure, the local government in Berlin finds itself in various rather specific strategic positions as shaped by legal and social realities. Most notably, its legal status as a city-state enables it to file legal proceedings against the national government on the question of state admissions programs. This puts it in an almost symbiotic relationship with *Seebrücke*, which has achieved considerable political mobilization for this point. By contrast, the local authorities have little to show but much to lose were the issue of housing to gain greater salience among migrant rights supporters. Importantly, those differing socio-legal constellations should be considered in their interplay, with the decision to launch openly defiant legal proceedings dampening at least some of the pressure that Berlin could face on other fronts, such as on housing. Having identified both the strategies of divergence and the socio-legal constellations that underlie them, we finally cautioned against normative perspectives that all too quickly embrace legal empowerment of cosmopolitan cities such as Berlin as a silver bullet to securing the rights of refugees and other forced migrants. While it is true that their urban imaginaries are mostly pro-migrant, the example of Berlin demonstrates that local authorities may find ways to position themselves within such a frame while also pursuing policies that are not congruent with it. Whether

or not legal empowerment would diminish such ambivalent strategies is an open question; the fact that the city-state of Berlin already enjoys relatively more constitutional powers as compared to other German cities renders us at least somewhat skeptical in this regard.

Having considered only one case study, our findings would have to be tested in other contexts, both in and outside Germany, and in large as well as medium-sized and small cities. We would hypothesize that strategies of divergence are more likely to be fractured and complex in large and especially in legally resourceful cities that face a greater variety of socio-legal constellations. That said, our framework would place any strategy of divergence, even a “singular” one adopted by a smaller town, within a particular socio-legal constellation. More empirical case studies and comparisons are needed to further delineate the relation between strategies of divergence and socio-legal constellations: Ideally, the taxonomy of the former should be matched by a separate set of categories of the latter. If we reach a better understanding of the prevalence of particular socio-legal constellations and the strategies of divergence that they produce, we would also be able to draw firmer normative conclusions as to whether greater involvement of cities and other subnational authorities in migration is desirable at the end of the day.

